

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.1596 of 2015
and

M.P.No.1 of 2015

HDFC ERGO General
Insurance Company Ltd.
No.177, Reheja Towers
Chennai-2.

... Appellant/2nd Respondent

Vs.

1.Ammu
2.D.Meena (Minor)
3.D.Dillibabu (Minor)
4.Pooswamy

... Respondents 1 to 4/
Petitioners 1 to 4

(Respondents 2 and 3 are
minors represented by mother
and next friend Ammu).

5.K. Prasad

... 5th Respondent/1st Respondent

Prayer: Challenge is made, in this Civil Miscellaneous Appeal
filed under Section 173 of Motor Vehicle Act 1988 against to the
award, dated 11.10.2014 and made in the Motor Accident Claim
Petition in M.C.O.P.No.300 of 2012 on the file of the Motor
Accident Claims Tribunal, (Subordinate Judge), Tiruttani,
Tiruvallur District.

For appellant : M/s.R. Sree Vidhya

For respondents : Mr.K. Varadha Kamaraj

JUDGMENT

(Judgment of the Court delivered by T. MATHIVANAN, J.)

Challenge in this civil miscellaneous appeal is made to
the award, dated 11.10.2014 and made in the claim petition in
M.C.O.P.No.300 of 2012 on the file of the Motor Accident Claims
Tribunal (Sub Court), Tiruttani.

2. The appellant herein is the Insurance Company, viz., HDFC ERGO General Insurance Co. Ltd., whereas the respondents 1 to 3 are the wife and minor children of the deceased and the respondent 4 is the father of the deceased. The fifth respondent is owner of the offending vehicle.

3. It is manifested from the records that the respondents 1 to 4 being the wife, minor children and father of the deceased Dhanapal had filed a claim petition in M.C.O.P.No.300 of 2012 claiming a sum of Rs.20.00 lakhs towards the loss of the death of the deceased in a road traffic accident said to have been taken place on 12.6.2012.

4. The Tribunal based on the evidences both oral and documentary adduced on behalf of both sides, had proceeded to award a sum of Rs.15,70,000/- on all heads and directed the appellant/Insurance Company to pay this amount to the claimants with interest at 7.5% p.a. from the date of the petition till the date of realisation with costs and also directed to recover the same from the first respondent, who is the owner of the offending vehicle.

5. Having been aggrieved by the impugned award, dated 11.10.2014, the second respondent/Insurance Company stands before us with this appeal.

6. Heard M/s.Sree Vidhya, learned counsel appearing for the appellant and M/s.K.Varadha Kamaraj, learned Counsel appearing for the first respondent.

7. M/s.R. Sree Vidhya, learned counsel appearing for the Insurance Company has mainly articulated her arguments on the following two grounds:-

a. The selection of multiplier 15 by the Tribunal is absolutely wrong.

b. The direction of the Tribunal to the appellant/Insurance Company to pay the award amount with interest and costs to the respondents 1 to 4/claimants and to recover the same from the first respondent, who is the owner of the vehicle, is against the settled principle of law and is liable to be set aside.

8. With reference to the first ground, i.e., the selection of multiplier, obviously, the Tribunal has proceeded to adopt the multiplier of 15 as the age of the deceased was determined at 41 years at the time of the accident. This multiplier has been adopted by the Tribunal as per Second

Schedule to Section 163-A of the Motor Vehicles Act.

9. What M/s.R. Sree Vidhya would argue is that as per Sarla Verma's case the appropriate selection of multiplier would be 14 and not 15 and if the Tribunal had selected the multiplier of 14 as per Sarla Verma's case, then the quantum of compensation would have been considerably reduced.

10. In this regard, it has become imperative for us to have reference to the decision of the Apex Court in Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another ((2009) 6 SCC 121).

11. As per Second Schedule to Section 163-A of the Motor Vehicles Act, for the age of 41, the selection of multiplier would be 15.

12. It is significant to note here that this petition has not been filed under Section 163-A of the Motor Vehicles Act, instead, it has been filed under Section 166 of the Motor Vehicles Act and Rule 3 of the MACT Rules.

13. In the said decision, while speaking on behalf of the Division Bench, Hon'ble Mr.Justice R.V.Raveendran, in paragraph Nos.41 and 42, has observed as under:-

41.Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service

with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under section 166 and not under section 163A of MV Act. In cases falling under section 166 of the MV Act, Davies method is applicable.

14. Paragraph No.42 is also very much important, which is extracted as under:-

"42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

15. From paragraph 21, it is plausible that the selection of multiplier 14 for the age group between 41 and 45 years was considered to be more appropriate.

16. As afore stated, the present claim petition has been filed under Section 166 of the Motor Vehicles Act (hereinafter be referred to as "the Act", wherever the context so require) and not under Section 163-A of the Act.

17. In so far as the cases filing under Section 166 of the Act is concerned, the Apex Court has felt that 'Davis Method' is applicable.

18. On coming to the instant case on hand, since the deceased was aged about 41 years at the time of occurrence, as per 'Davis Method' the appropriate multiplier would be 14 as the claim petition has been made under Section 166 of the Act.

19. The deceased was working as printing machine operator and was earning, as per the claimants, a sum of Rs.15000/- per month. However, the Tribunal had proceeded to fix his monthly income at Rs.10000/-. After giving 1/4th deduction towards the personal expenses of the deceased, the Tribunal based on the ¾th remainder, viz., Rs.7500/- had calculated the life dependency of the family at Rs.13,50,000/- (Rs.7500 x 12 x 15). After granting a sum of Rs.1,00,000/- towards loss of consortium

to the first respondent/claimant, a sum of Rs.1,00,000/- towards loss of love and affection (Rs.25000/- for each claimant) and a sum of Rs.20,000/- towards funeral expenses were awarded. The Tribunal, had ultimately granted a sum of Rs.15,70,000/-.

20. As afore stated, this calculation is based on the application of multiplier 15.

21. As argued by M/s. Sree Vidhya, if the multiplier of 14 is selected and applied as per Sarla Verma's case, the life dependency would come to Rs.12,60,000/- (Rs.7500/- x 12 x 14), which, in our view, can be allowed to remain intact.

22. In so far as the award on other heads, viz., loss of consortium, love and affection and funeral expenses are concerned, we are not inclined to interfere as the same are just and reasonable.

23. With reference to life dependency, the amount of Rs.13,50,000/- is reduced to Rs.12,60,000/- as afore stated. If the amounts awarded under the heads, viz., a sum of Rs.1,00,000/- towards loss of consortium, a sum of Rs.1,00,000/- towards loss of love and affection and Rs.20000/- towards funeral expense, are added with the amount of Rs.12,60,000/-, which was awarded towards life dependency, it would, totally, come to Rs.14,80,000/-.

24. In accordance with our view, to meet the ends of justice, a sum of Rs.14,80,000/- would be the just and reasonable compensation to the respondents 1 to 4/claimants.

25. With reference to the argument advanced by M/s.Sree Vidhya, on the theory of "pay and recover", we are not convincing, because, originally, the appellant/Insurance Company had contended in their counter statement, before the Tribunal that at the time of occurrence, the Tractor bearing Registration No.TN-73-X-8422 was driven by its driver along with the attached trailer bearing Registration No.TN-23-AR 3358.

26. In this connection, it was contended by the appellant/Insurance Company that it was not liable to pay any compensation to the claimants as the fifth respondent herein, who is the first respondent in the claim petition being the owner of the vehicle had allowed his driver to drive the vehicle without the driving license.

27. Hence, it was contended that the owner of the vehicle, who is the fifth respondent herein had violated the policy condition and therefore, the owner of the vehicle alone

was responsible to pay the compensation.

28. Secondly, it was also contended that at the time of the accident, the tractor bearing Registration No.TN-73-X-8422 alone was insured with the appellant Insurance Company and the trailer bearing Registration No.TN-23-AR 3358 was not at all insured and hence, the claim petition without impleading the owner of the trailer was not maintainable. But this position has not been adverted to in the order of the Tribunal.

29. On perusal of the award, dated 11.10.2014, we are able to find that the following two issues have been formulated by the Tribunal:-

a. Whether the accident was due to the rash and negligent act of the driver of the Tractor bearing Registration No.TN-73-X-8422?

b. Whether the petitioners are entitled to any compensation and if so, what is the quantum?

30. In so far as the first issue is concerned, the Tribunal in paragraph No.8 has found that, "on the respondent side stated that the accident is due to the negligent act of the deceased. Further, P.W.2 in his evidence deposed about the rash and negligent driving of the driver of the tractor. In the FIR, it is mentioned that the driver of the Tractor driven the vehicle in a rash and negligent manner. As per the contents of the FIR the driver of the Tractor is alone responsible for the accident. The respondent's side no steps were taken to challenge the FIR. In the above circumstances, in the absence of any contra evidence, admitting the evidence of P.W.1 and P.W.2 it is determined that the accident was happened due to the negligence of the driver of the Tractor and the first respondent being the owner and second respondent being the insurer are liable to pay compensation." सत्यमेव जयते

31. As it appear from the above context, it is apparent that the Tribunal has not absolved the liability of the Insurance Company. On the contrary, based on the evidence of P.W.1 and P.W.2, it has come to the conclusion that the accident was occurred due to the negligent act of the driver of the Tractor and therefore, the first respondent being the owner and the second respondent being the insurer of the offending vehicle are liable to pay the compensation. The finding of the Tribunal would necessarily express the meaning that the respondents 1 and 2 are jointly and severally liable to pay the compensation. With reference to the trailer, which according to the

appellant/Insurance Company, was not insured with their Insurance Company. However, no discussion, in this regard, was made in the award. Even in the grounds of appeal, no such ground is carved out.

32. With reference to the argument of Pay and Recover, we would like to say that the appellant/Insurance Company has stated in Ground No.4 that the Tribunal has failed to note that the selection of multiplier 15 is on the higher side. Excepting this, nothing is found in the grounds of appeal and therefore, we are of the considered view that the appellant/Insurance Company has lost its competency to challenge the direction of the Tribunal, directing the Insurance Company to pay the award amount to the claimants with interest and costs and to recover at the later stage from the owner of the vehicle. However, in the interest of justice, we find that such direction given by the Tribunal is absolutely wrong and therefore, on this ground also, the award of the Tribunal has to be modified.

33. Accordingly, the appeal filed by the appellant/Insurance Company is partly allowed. The Award passed by the Tribunal, viz., Rs.15,70,000/- is reduced to Rs.14,80,000/-. The appellant/Insurance Company is directed to deposit this amount with interest at the rate of 7.5% p.a., from the date of claim petition, till the date of realisation, within a period of six weeks from the date of this Judgment. On such deposit being made, the respondents/claimants are entitled to withdraw their respective shares as per the direction of the Tribunal without making any formal application. However, there will be no order as to costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruttani, Tiruvallur.

+1cc to M/s.K.Varadha Kamaraj, Advocate, S.R.No.36974

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.37207

C.M.A.No.1596 of 2015 and
M.P.No.1 of 2015

GP (CO) CA (04/09/2015)