

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.1759 of 2015
M.P.No.1 of 2015

M/s.New India Assurance Co. Ltd.,
Motor Third Party Cell,
No.45, Moore Street,
Chennai 600 001.

...Appellant/2nd Respondent

versus

1. S.Nemavathi ...1st Respondent/Petitioner

2. M.Ranjitham ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.5344 of 2012, dated 10.10.2014, on the file of the learned Motor Accident Claims Tribunal (IV - Judge), Small Causes Court, Chennai.

For Appellant : Mr.J.Chandran

JUDGMENT

(Judgement of the Court was made by S.MANIKUMAR ,J.)

Challenge in this appeal is to the judgment and decree in MCOP No.5344 of 2012 dated 10.10.2014 by which the learned Judge, IV Small Causes Court, Chennai and the Motor Accidents Claims Tribunal, Chennai has ordered compensation of Rs.15,65,000/- with interest, at the rate of 7.5% per annum, to the respondent/claimant.

2. Facts of the case, as adduced from the material on record are that on 05.08.2005 about 19.15 hours, when S.Raghuman, was riding

his motor cycle bearing Regn.No.TN22 BZ 7097, and proceeding from Vandalur towards Padappai on Wallajahbad Road, near Appalam Company, Manivakkam, Kancheepuram District, a bus bearing Regn.No.TN21AE9399, which came from the opposite direction, driven in a rash and negligent manner by its driver, dashed against the motorcycle, resulting in the death of Mr.S.Raghuman. According to the legal representative of the deceased, at the time of accident, the deceased was aged 22 years and as a welder in Thagu Engineering, Electrical & Fabricator, Chennai, earned Rs.15,000/- per month. Legal representative of the deceased filed claim petition in MCOP No.5344 of 2012 for Rs.15,00,000/-.

3. New India Assurance Company Limited, the appellant herein has denied the manner of accident. They submitted that the accident occurred solely due to the negligent riding of the motorcyclist. With prejudice to the above, they pleaded composite negligence. Non impleadment of the owner and the insurer of the motorcycle bearing Regn.No.TN22BZ7097, was also one of the grounds raised for dismissal of the claim petition. Without prejudice to their liability, they have also disputed the age, avocation, income of the deceased and the quantum of compensation claimed under various heads.

4. Before the claims tribunal, mother of the deceased examined herself as PW1 and reiterated the manner of accident. PW2, is the eye witness. PW3, is a witness examined to prove employment. Ex.P1, copy of FIR, Ex.P2, Copy of Postmortem Certificate, Ex.P3, Copy of Death Certificate, Ex.P4, Legal Heir Certificate, Ex.P5, Copy of voter identity card of deceased, Ex.P6, Copy of family card, Ex.P7, Salary Certificate, Ex.P8, Copy of driving license of PW2, Ex.P9, copy of Aadhaar Card of PW3 and Ex.P10, Certificate issued by Tamilnadu Government to PW3's company, have been marked. No oral or documentary evidence was adduced on the side of the appellant-Insurance Company.

5. On evaluation of pleadings and evidence, the Claims Tribunal, came to the conclusion that the driver of the bus, bearing Registration No.TN 21 AE 9399, insured with the appellant-Insurance Company, was negligent in causing the accident. After considering the age, avocation and determining the monthly income of the deceased, as Rs.10,000/-, computed the total compensation as Rs.15,65,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of realisation, as hereunder:

Loss of Dependency : Rs. 14,40,000/-
(Rs.10,000/- x 12 x 18 x 1/3)

Loss of Consortium : Rs. 1,00,000/-

Funeral Expenses : Rs. 25,000/-

Total: Rs. 15,65,000/-

6. Being aggrieved by the finding, fixing negligence and the quantum of compensation, on behalf of the appellant-Insurance Company, Mr.J.Chandran submitted that the Claims Tribunal has erred in fixing negligence, on the driver of the bus, bearing Registration No.TN 21 AE 9399, without considering the averments made in the counter affidavit filed by the Company. He further submitted that the Tribunal ought to have held that the accident occurred solely due to the negligent act of the deceased, rider of the Motorcycle, bearing Registration No.TN 22 BZ 7097.

7. As regards the quantum of compensation, learned counsel for the appellant-Insurance Company further submitted that though mother of the deceased claimed that the deceased was a welder, at the time of accident in Thagu Engineering, Electrical and Fabricator in Chennai, no document, such as, attendance register, certificate for acquiring technical qualification, etc., were produced, before the Claims Tribunal, to substantiate the avocation. According to him, the Claims Tribunal has erred in placing reliance on the evidence of PW.3, stated to be the co-employer, without any document. He also submitted that when mother is the only claimant, the question of awarding compensation of Rs.1,00,000/-, under the head, consortium, does not arise.

Heard the learned counsel for the parties and perused the materials available on record.

8. As regards the manner of accident, PW.1, Mother/claimant has adduced evidence. PW.2, eye-witness, in his evidence, has stated that it was the driver of the bus, who drove the same, in a rash and negligent manner and caused the accident. Though New India Assurance Co. Ltd., appellant herein, has denied the manner of accident and also attributed negligence on the deceased, analysing the evidence of Pws.1 and 2, the Claims Tribunal has categorically recorded that though Pws.1 and 2, were subjected to cross-examination, by the appellant-Insurance Company, nothing was culled out, in their

evidence, contrary to the petition averments and oral evidence. When the Tribunal was prima facie satisfied that the accident had occurred, due to the rash and negligent driving of the bus, bearing Registration No.TN 21 AE 9399, by observing that the burden has been shifted on the shoulders of the appellant-Insurance Company and thereafter, the Tribunal has made an sincere attempt to find out, as to whether, the appellant-Insurance Company has adduced any valid evidence, but there is no evidence at all. Therefore, by observing that in the absence of any strong rebuttal evidence to prove that the deceased was negligent in causing the accident, the Claims Tribunal held that the driver of the bus, bearing Registration No.TN 21 AE 9399, insured with the appellant-Insurance Company, alone was negligent in causing the accident.

9. On the principles to be followed in the Motor Accident Claims Cases, the Tribunal has relied on the decision in Tamil Nadu State Transport Corporation Ltd., Villupuram v. Kumar reported in 2007 (1) TNMAC 481 and held that it is suffice for the claimants, to establish their case, on the touchstone of preponderance of probability and it is not possible to apply the standard of proof beyond reasonable doubt, which is required in a criminal case, unlike in the motor accident claims cases. Going through the impugned judgment, we do not find any perversity or illegality, warranting interference.

10. On the quantum of compensation, it is the case of the mother, the sole respondent that at the time of accident, the deceased was aged 23 years and as a welder in Thagu Engineering Works, earned Rs.15,000/- per month. Upon perusal of Ex.P5 - Voters Identity Card, the Tribunal has fixed the age of the deceased as 23 years. Based on the judgment of this Court in Managing Director, Metropolitan Transport Corporation Ltd., v. K.Murugesan reported in 2014 (1) TNMAC 370 (DB), the Tribunal has fixed '18' as multiplier, for computing the compensation.

11. Though the respondent claimed that her son, as a Welder in Thagu Engineering Works, earned Rs.15,000/- per month and marked Ex.P5 - Voters Identity Card, through PW.3, a co-employer of the deceased, the Tribunal did not accept the salary certificate, but by observing that considering the present market situation and employment, fixed the monthly income as Rs.10,000/-. Mother and widow, was the sole claimant and hence, as per the Sarla Verma v. Delhi Transport Corporation Ltd., reported in 2009 (2) TNMAC 1 (SC), the Tribunal has deduced $1/3^{\text{rd}}$ towards the personal expenses of the deceased.

12. Though Mr.J.Chandran, learned counsel for the appellant-Insurance Company submitted that the Claims Tribunal has erroneously determined the monthly income at Rs.10,000/- and computed the loss of contribution to the family, from the judgment, it could be deduced that though the deceased was aged just 23 years, at the time of accident and considering the avocation claimed, had he been alive, he would have gained future prospects in earning a higher income and therefore, we are of the view that the Tribunal has failed to add 50% of his income, towards future prospects, for computation of loss of contribution to the family, as done in Sarla Verma's case (cited supra). Had 50% of his income, been added, the quantum of compensation awarded to the mother of the deceased, would be more. Even if the argument of the appellant is accepted and any deduction in the income is made, then by adding up another 50% to the said income, towards future prospects and consequently, if computation is made, the loss of contribution to the family, would be more. Illustratively, if the income is reduced to Rs.7,500/-, per month and if 50% is added, as per Sarla Verma's case, then computation towards loss of contribution to the family, would be more.

13. The deceased was a bachelor. Hence, at Paragraph 8 of the award, the Tribunal has awarded Rs.1,00,000/- towards loss of love and affection. However, while tabulating the compensation, awarded under the different heads, it has been mistakenly stated that the said amount has been granted towards loss of consortium to the 1st respondent/claimant. The Tribunal, while awarding compensation of Rs.25,000/- towards loss of consortium, has taken note of the guidelines of this Court in Managing Director, Metropolitan Transport Corporation Ltd., v. K.Murugesan reported in 2014 (1) TNMAC 370 (DB).

14. Reading of the judgment shows that the Claims Tribunal has failed to award any compensation towards the conventional damages. No compensation has been awarded for transportation. At any rate, the quantum of compensation, cannot be said to be on the higher side, warranting interference.

15. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, if not already deposited, with proportionate accrued interest and costs less the amount already deposited to the credit of M.C.O.P.No.5344 of 2012, on the file of the Motor Accidents Claims Tribunal (IV Judge, Small Causes Court), Chennai, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw

the same, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

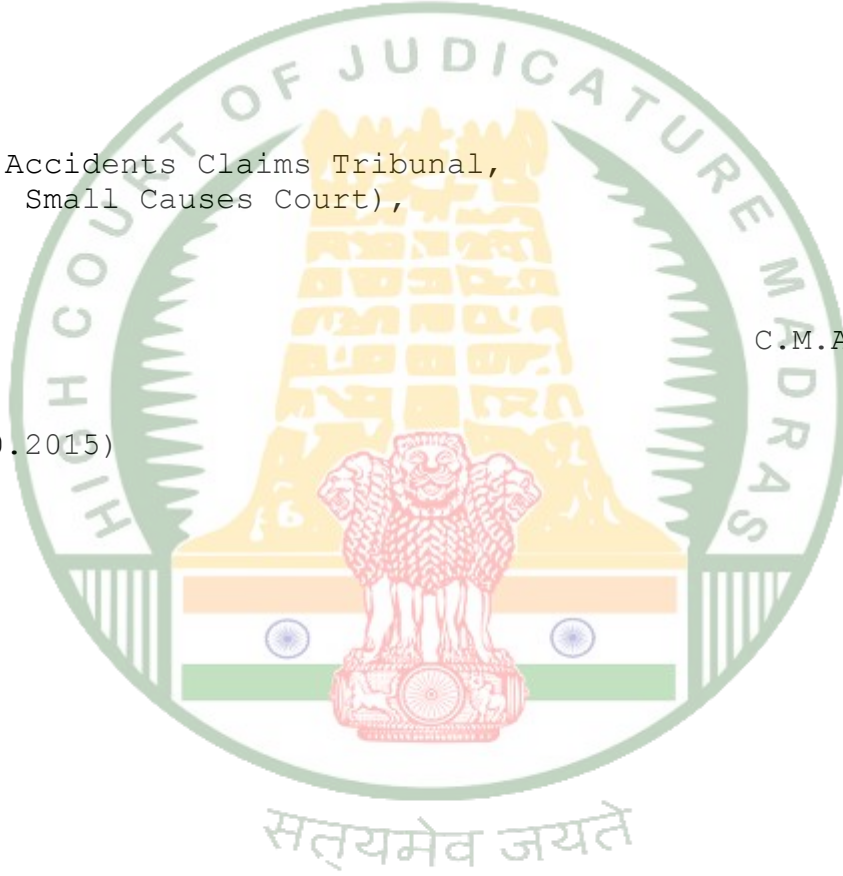
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To

The Motor Accidents Claims Tribunal,
(IV Judge, Small Causes Court),
Chennai.

C.M.A.No.1759 of 2015

MP (CO)
PSI (06.10.2015)



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