IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 04-09-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.Nos.1968 & 1969 of 2015

C.M.A.No.1968/2015 :
The Branch Manager,
ICICI Lombard General Insurance Company Limited,
'Zenith House', Keshavrao Khadye Marg,
Mahalakshmi,
Mumbai-400 034. ... Appellant/2nd Respondent

-vs-

1.Muthulakshmi
2.Minor G.Sekar
3.Minor Gajendiran
4.Venkataramappa (Blind)
5.Rajamma
Respondents 2 and 3 are minors,
rep.by N.F.Mother Muthulakshmi

6.Narayanan ... Respondents/Petitioners 1 to 5 and 1st Respondent

C.M.A.No.1969/2015 :
The Branch Manager,
ICICI Lombard General Insurance Company Limited,
'Zenith House', Keshavrao Khadye Marg,
Mahalakshmi,
Mumbai-400 034. ... Appellant/2nd Respondent

-vs-

1.Gowramma
2.Minor Mala
3.Minor Paveen
4.Bottappa
5.Eeramma
(2nd respondent minor, rep.by
N.F.Mother Gowramma)
(3rd respondent minor, rep.by
grandfather Bottappa)
6.Narayanan ... Respondents/Respondents 1 to 5/1st Respondent

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C.M.A.No.1968 of 2015 is filed against the order, dated 30.09.2013, made in MACT OP.No.124 of 2013, on the file of the Motor Accident Claims Tribunal (District Judge), Special District Court, at Krishnagiri.

C.M.A.No.1969 of 2015 is filed against the order, dated 30.09.2013, made in MACT OP.No.337 of 2013, on the file of the Motor Accident Claims Tribunal (District Judge), Special District Court, at Krishnagiri.

For appellant in both the appeals : Mrs.R.Sreevidhya

COMMON JUDGMENT

(Judgment of the Court was delivered by S.Manikumar)

Arising out of an accident, which occurred on 26.07.2011, both the rider and pillion died. Legal representatives of the deceased rider Ganesan have filed M.A.C.T.O.P.No.124 of 2013. Legal representatives of the deceased pillion rider Abaiah also filed M.A.C.T.O.P.No.337 of 2013. As both the claim petitions arose out of the same accident, appellant, pleadings and evidence being the same, the learned District Judge, Special Court for Motor Accident Claims casses, Krishnagiri, adjudicated the disputed issues, and by common judgment, dated 30.09.2013, fixing negligence on the driver of 407 Tempo bearing regn.No.TN 25-D-2230, insured with ICICI Lombard General Insurance Company Limited, Mumbai, the appellant herein, awarded compensation to the legal representatives of the deceased.

2. Being aggrieved by the finding, fixing negligence on the driver of 407 Tempo, insured with the appellant, and on the quantum of compensation awarded to the legal representatives of the deceased, in both, the claim petitions, ICICI Lombard Insurance Company Limited, has filed two C.M.A.Nos.1968 of 2015 and 1969 of 2015, respectively. As both the appeals relate to the same subject matter, they are heard together and disposed of by this common judgment.

3. Facts similar in both cases are deduced hereunder :

On 26.07.2011, about 19.30 hours, deceased Ganesan was riding a Suzuki motor cycle bearing Registration No.TCW 6863 along with the pillion rider Abbaiah; near Odderapalayam Poultry Farm, when the motorcyclist was proceding on the left side of the road cautiously, by observing traffic rules, a 407 Tempo bearing Registration No.TN 25 D 2230, insured with the appellant, driven in a rash and negligent manner by its driver in an uncontrollable speed, came from Bigganapalli side towards Denkanikottai, and dashed against the motorcyclist. In the result, both the rider and pillion fell down on the road and sustained fatal injuries. Both died on the spot. In this regard, a case in Crime No.191/2011 under Sections 279 and 304-A of IPC has been registered against the driver of 407 Tempo, on the file of Denkanikottai Police Station.

4. Before the Claims Tribunal, wives of the deceased rider and pillion examined themselves as P.W.1 and P.W.2, respectively. P.W.3 is stated to have witnessed the accident and given intimation to 108 ambulance in his mobile phone. That apart, the legal representatives of the deceased have marked Ex.P-1 copy of FIR, Ex.P-2 Post-mortem Certificate of the deceased Ganesan; Ex.P-3 copy of Death Certificate of

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Ganesan; Ex.P-4 Copy of Insurance Policy of Tempo Van bearing Registration No.TN-25-D-2230; Ex.P-5 Legal heir certificate in M.C.O.P.No.124 of 2013; Ex.P-6 copy of the postmorterm certificate of deceased Abbaiah; Ex.P-7 Legal heir certificate in M.C.O.P.No.337 of 2013. No oral or documantary evidence has been adduced by ICICI Lombard General Insurance Company Limited, the appellant herein.

5. On evaluation of pleadings and evidence, the Claims Tribunal found that the driver of 407 Tempo Van bearing Registration No.TN 25 D 2230, insured with the appellant, was negligent in causing the accident, and the Claims Tribunal quantified the compensation.

6. The details of awards made by the Claims Tribunal are as under :
M.C.O.P.No.124/2013 :

Future loss of income	- Rs.14,68,800/-
Consortium for the first petitioner	- Rs. 1,00,000/-
Loss of love and affection of the petitioners 2 to 5	- Rs. 80,000/-
Travel expenses	- Rs. 10,000/-
Funeral expenses	- Rs. 20,000/-
	Rs.16,78,800/-

M.C.O.P.No.337/2013 :

Future loss of income	- Rs.14,68,800/-
Consortium for the first petitioner	- Rs. 1,00,000/-
Loss of love and affection of the petitioners 2 to 5	- Rs. 80,000/-
Travel expenses	- Rs. 10,000/-
Funeral expenses	- Rs. 20,000/-
	Rs.16,78,800/-

7. Assailing the correctness of the finding fixing negligence on the driver of 407 Tempo Van Mrs.R.Sreevidhya, learned counsel for the appellant, submitted that the Claims Tribunal has erred in fixing negligence on the driver of the said van. She further submitted that the Claims Tribunal, ought to have fixed negligence on the motorcyclist. She also submitted that in both the claim petitions, the Claims Tribunal has failed to consider that the avocation of the deceased, claimed by the legal representatives, was not steady, subject to fluctuations and uncertainties. It is also her submission, that the Tribunal has failed to note, that it is not possible for the deceased to get employment on all days, without any holidays, and, therefore, adopting 30 days wages for the purpose of computing the loss of contribution to the family, requires reversal. The learned counsel further submitted that the extent of negligence has to be apportioned between the motorcyclist and the van, insured with the appellant, by fixing negligence on the part of the motorcyclist also.

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8. Heard the learned counsel for the appellant and perused the material available on record.

9. Though P.W.1 and P.W.2, wives of the motorcyclist and the pillion, did not witness the accident, they have denied the suggestion of the appellant insurance company, that the accident occurred solely due to the negligence of the rider of the motorcycle. P.W.3 is the witness, who had given intimation to 108 ambulance in his mobile phone, and accompanied the injured persons to the hospital in the ambulance van. During cross-examination by the appellant insurance company, P.W.3 had clearly stated that he had given information to the police and also accompanied the injured to the hospital in 108 ambulance. He had also denied the suggestion of the insurance company that he had not witnessed the accident. He also denied the suggestion of the insurance company that he has adduced false evidence before the Claims Tribunal to help the legal heirs of the deceased. He has also deposed that the motorcyclist Ganesan was a Weaver with his father.

10. After considering the oral evidence of the witnesses, and Ex.P-1 FIR, and in the absence of any rebuttal evidence, the Claims Tribunal, by holding that the testimony of P.W.3 is believable, came to the conclusion, that it was the driver of 407 Tempo Van, bearing Registration No.TN 25 D 2230, insured with the appellant, who was negligent, in causing the accident, which resulted in the death of the rider and pillion.

11. In a decision in Union of India v. Saraswathi Debnath reported in 1995 ACJ 980, High Court of Gauhati has held in Paragraph 6 as follows:

> "The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

12. In Bimla Devi & Ors. Vs. Himachal RTC reported in 2009 (13) SCC 530, the Hon'ble Supreme Court held as follows:

> "It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

13. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the

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Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

14. Testing the correctness of the finding of the Claims Tribunal on the aspect of negligence, in the light of the above discussion and decisions, this Court is of the view, that ICICI Lombard General Insurance Company Limited, appellant herein, has not made out any strong case, for interfering with the findings of the Claims Tribunal, regarding negligence, fixed on the driver of 407 Tempo Van, insured with them. Therefore, finding of negligence is confirmed.

15. In so far as the quantum of compensation, in respect of M.C.O.P.124 of 2013, challenged in C.M.A.No.1968 of 2015 is concerned, the deceased Ganesan is survived by his wife, two minor children, blind father and mother. They claimed that at the time of accident, deceased Ganesan was a Weaver. Legal representatives claimed that the deceased earned Rs.300/- per day. Though they have not marked any document in support of proof of his income, considering the fact that he is survived by wife, two minor children, and parents, this Court is of the view, that to maintain a large family of five persons, to provide food, shelter, health and education to the minor children, as a Weaver in the year 2011, the deceased would have earned Rs.9,000/- per month. Though Mrs.R.Sreevidhya, learned counsel for the appellant insurance company submitted that the Claims Tribunal ought to have considered that there was no possibility for employment on all days without any holidays and that therefore adopting 30 days wages for the purpose of computing the loss of contribution to the family is wrong and requires interference, this Court is not inclined to accept the said contention, for the reasons stated supra. The dependants are five in number and, following the decision of the Hon'ble Apex Court in Reshma Kumari v. Madan Mohan, reported in 2009 (13) SCC 422, the Tribunal, deducted 1/5th of the income towards the personal and living expenses of the deceased and thus, for the purpose of computation, fixed income as Rs.7,200/- per month. Taking note of the entry in Ex.P-2 post-mortem certificate of motorcyclist Ganesan as 27 years, the Tribunal, by applying 17 multiplier, has computed the loss of contribution to the family as Rs.14,68,800/- (Rs.7,200/- x 12x 17).

16. At the time of filing the claim petition, wife Muthulakshmi/P.W.1 was stated to be 23 years. As she had lost the consortium of her husband at a very young age, the Claims Tribunal has awarded Rs.1,00,000/- towards loss of consortium. Though minor children have lost love and affection of their father at a very young age, the Claims Tribunal has awarded compensation of Rs.40,000/- only under the said head. For the parents, who have lost the love and affection, moral support of their beloved son, the Claims Tribunal has awarded only Rs.20,000/- each. Thus, under the head 'loss of love and affection', the Tribunal award a total sum of Rs.80,000/-. The Tribunal awarded a sum of Rs.10,000/- towards transportatation and a further sum of Rs.20,000, for funeral expenses. It is apparent that the Claims Tribunal has not awarded a just and fair compensation under the head 'loss of love and affection'. There is no award for the conventinal damages. Considering the oral and documentary evidence, the Claims Tribunal has awarded a total compensation of Rs.16,78,800/-, with interest at 7.5% per annum from the date of claim till deposit.

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17. In so far as the claim for compensation in M.C.O.P.337of 2013 (CMA No.1969 of 2015), wife, two minor children, and parents, have submitted that at the time of the accident, the deceased Abbaiah, as a building Mason, earned Rs.9,000/- per month. Considering the number of dependants and applying the same yardstick and reasons stated supra, this Court is of the view, that Rs.9,000/- fixed as monthly income of the deceased cannot be said to be on the higher side. As per the entry in Ex.P-2, Postmortem Certificate, the deceased Abbaiah was aged 27 years. Multiplier applicable to his age group is 17. Therefore, considering the number of dependants and following the decision of the Supreme Court in Reshama Kumari's case, the Claims Tribunal has deducted 1/5th towards personal expenses of the deceased and awarded the same compensation of Rs.16,78,800/- to the legal representatives of the deceased and apportioned the shares to the claimants.

18. Going through the common judgment, assailed in the appeals, we find that the Claims Tribunal, by applying the principles of preponderance of probability, has assessed the oral and documentary evidence in proper perspective, and, in the absence of any stong rebuttal evidence, has rightly arrived at the conclusion that it was the driver of 407 Tempo Van, bearing registration No.TN 25 D 2230, insured with the appellant herein, was solely negligent in causing the accident, which resulted in the death of the motorcyclist and pillion. Though the learned counsel for the insurance company has challenged the quantum of compensation on the grounds, inter alia, that the Calims Tribunal has erred in fixing the monthly income of the deceased without proof, and, for the other reasons stated supta, this Court is not inclined to accept the said contentions. As observed earlier, the Claims Tribunal has not awarded a just and reasonable compensation under the head 'loss of love and affection' for both the minor children, in both the claim petitions, and parents. No compensation has been awarded towards 'damages to clothes and articles', which is conventional in nature. Loss of estate, which includes guidance, moral support, assistance, to both the minor children and parents, is also one of the factors, which the Claims Tribunal ought to have taken note of, while awarding compensation, on the principle "just compensation". The quantum of compensation awarded to the legal representatives of the deceased in both the Claim Peitions cannot be said to be a manna or bonanza to them, as both the families have lost their respective bread winners.

19. Finding of negligence and quantum of compensation awarded in both the claim petitions, are confirmed. Consequenlty, Civil Miscellaneous Appeals are dismissed. ICICI Lombard Insurance Company Limited, appellant herein, is directed to deposit the quantum of compensation awarded in each of the claim petitions, with interest at the rate of 7.5% per annum to the credit of M.C.O.P.Nos.124 and 337 of 2013 respectively, on the file of the Motor Accident Claims Tribunal (District Judge), Special District Court, at Krishnagiri, less the statutory deposit, within a period of four weeks from the date of receipt of a copy of this common judgment. Wife and parents, being majors, are permitted to withdraw the shares apportioned to them, with proportionate interest. Costs can also be withdrawn. In so far as compensation apportioned to the minor children in both the Claim Petitions, viz.,M.C.O.P.Nos.124 and 337 of 2013 the Claims Tribunal shall deposit their shares in a Nationalised Bank until they attain majority. Interest accrued on the minor shares in each of the claim petitions is permitted to be withdrawn by the guardians of minors, once in three months. Major claimants are permitted to withdraw the amount approtioned

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to them, by making necesary application, before the Tribunal. Miscellaneous Petition Nos.1 of 2015 are closed.
Dixit

Sd/-
Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal (District Judge),
Special District Court,
Krishnagiri.

+1 C.C. To M/S.R.Sreevidhya, Advocate in SR.NO.48811

C.M.A.Nos.1968 & 1969/2015

RSI(CO)
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