IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2015

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE G.CHOCKALINGAM

C.M.A. No.1984 of 2015
M.P.No.1 of 2015

M/s. United India Insurance Co. Ltd.,
by its Manager,
Bangalore, Karnataka State. .. Appellant/2nd Respondent

vs

1.Sudha
2.Minor Manisha
3.Santha
4.Duraisamy
5.N.Muniraj ..Respondents/Claimants 1 to 4
1st Respondent

(2nd respondent minor is represented by
next friend, 1st respondent-Mother)

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decretal order dated 15.10.2014 passed in M.C.O.P.No.116 of 2013, on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

For Appellant .. Mr.J.Chandran

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

Challenge in this appeal, by the United India Insurance Co. Ltd., Bangalore, is to the finding, fixing negligence on the driver of the Eicher Mini Lorry, bearing Registration No.KA 03 B 5022, belonging to the 5th respondent. Quantum of compensation of Rs.16,63,000/-, awarded by the legal heirs of the deceased/respondents 1 to 4, is also in dispute.

2. Facts leading to the appeal are as follows:

On 26.03.2009, breadwinner of the respondents, Vijayan, aged about 25 years, self-employed, as a two-wheeler mechanic, was riding a Motorcycle, bearing Registration No.TN 24 B 5307, on Krishnagiri to Dharmapuri NH Road, at Jabedar medu Angappanottai, a Eicher Mini Lorry, bearing Registration No.KA 03 B 5022, belonging to the 5th respondent and insured with the appellant-Insurance Company, driven in a rash and negligent manner, dashed against the motorcycle, from behind. Though he was taken to Government Hospital, Krishnagiri, he died on the way to the Hospital. The Kaveripattinam Police Station registered a case against the driver of the Mini Lorry, in Cr.No.237 of 2009, for the offences, under Sections 279, 304(A) IPC. Legal representatives of the deceased/respondents 1 to 4, claimed compensation of Rs.15,00,000/-.

3. The appellant-Insurance Company has opposed the claim, contending inter alia that National Highways Bye-Pass Road, has four lanes with two service roads. At the place of accident, the road lies North to South. There are two lane roads on the Western side, for the vehicles moving towards the Northern direction. On the Eastern side, there are two lane road for the vehicles moving towards the Southern direction. In between the four lane roads, there was a preventive structure with 6" width, between the service road and the two lane roads. The motorcyclist first entered on the Western side of the service road and thereafter, entered the two lane road, lying South to North, through the dismantled preventive structure. After entering into the two lane road, the motorcyclist has crossed to the other two lanes, through the dismantled structure between the four lane roads. Thus, while attempting to cross the four lane on the North-South, lying National Highway, between Salem and Bangalore, the accident has occurred. Thus, it was contended that the accident occurred, due to the negligence of the motorcyclist, who had not followed proper caution, before crossing the four lane National Highways road. Thus, the appellant-Insurance Company has disputed the manner of accident and consequently, the liability. Without prejudice to the above, they disputed the quantum of compensation claimed under various heads.

4. Before the Claims Tribunal, wife of the deceased, examined herself as PW.1 and reiterated the manner of accident, but she has not witnessed the same. PW.2, is stated to be an eye-witness to the accident. Ex.P1 - FIR, Ex.P2 - Post-mortem certificate, Ex.P3 - Insurance Policy, Ex.P4 - Motor Vehicles Inspector's Report, Ex.P5 - Legal heir certificate and Ex.P6 - Driving Licence, have been marked on the side of the respondents/claimants. Investigating Officer has been examined as CW.1. On the side of the appellant-Insurance Company, Ex.R1 - Sketch by CW.1, has been marked.

5. On evaluation of pleadings and evidence, the Claims Tribunal came to the conclusion that it was the driver of Eicher Mini Lorry, bearing Registration No.KA 03 B 5022, belonging to the 5th respondent and insured with the appellant-Insurance Company, who caused the accident. The Tribunal quantified the compensation as Rs.16,63,000/-, with interest at the rate of 7.5% per annum, from the claim, till the date of realiation, under various heads:

Loss of Earning Capacity	: Rs.14,58,000/-
Loss of Consortium	: Rs. 1,00,000/-
Loss of Love and Affection: (Daughter of the deceased)	Rs. 50,000/-
Loss of Love and Affection: (Parents)	Rs. 30,000/- (Rs.15,000 x 2)
Funeral Expenses	: Rs. 25,000/-
Total:	Rs.16,63,000/-

6. Placing strong reliance on Ex.R1 - Sketch, prepared by CW.1, Investigating Officer, Mr.J.Chandran, learned counsel for the petitioner submitted that the accident occurred wholly due to the negligence of the motorcyclist. He further submitted that the Claims Tribunal has failed to consider that the accident did not occur, as averred in the claim petition. Thus, he submitted that the Tribunal ought not to have fastened liability on the appellant-Insurance Company to pay compensation.

7. Without prejudice to the above, learned counsel for the appellant-Insurance Company submitted that the Claims Tribunal has erred in fixing a sum of Rs.9,000/- as monthly income of the deceased, for the purpose of computing dependency compensation. Inviting the attention of this Court to Ex.P5 - Legal heir certificate, he submitted that the Claims Tribunal ought not to have awarded any compensation to the father of the deceased, as he was not shown as one of the legal heirs.

Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

8. Wife of the deceased, has reiterated the manner of accident. She has not witnessed the accident. However, she has been cross-examined. PW.2, Subramani, stated to have witnessed the accident, has preferred Ex.P1 - FIR. He had denied the suggestion of the appellant-Insurance Company that the accident occurred due to the negligence of the motorcyclist, who had attempted to cross the four lane road. Evaluating his evidence, the Tribunal has observed that nothing has been elicited from him, in support of the defence, put forth by the Insurance Company.

9. Mr.K.Venkatachalam, Investigating Officer, in Cr.No.237 of 2009, for the offences, under Sections 279, 304 (A) IPC., has been summoned, on behalf of the appellant-Insurance Company, to adduce evidence, regarding the manner of accident and to mark a document, Ex.R1 - Sketch. Before the Claims Tribunal, he has deposed that PW.2, has preferred a

complaint. Based on which, FIR has been registered. He has further deposed that the accident occurred near Salem-Bangalore National Highway. According to him, on the date of accident, there was no iron fence in between the service road and national highway, near the accident spot. There were no dividers or fence between the Salem-Bangalore National Highway from the service road. He has also deposed that a two-wheeler or car, which has to enter the service road, has to move on the Salem-Bangalore National Highway and take "U" turn, near the Highway bridge, joining the National Highway.

10. CW.1, Investigating Officer, has been cross-examined by the appellant-Insurance Company. He has denied the suggestion of the appellant-Insurance Company that the accident occurred due to the negligence of the Motorcyclist. According to him, the accident took place on the left side of the Salem-Bangalore National Highways. Suggestion that the motorcyclist attempted to cross the Bangalore National Highways, has also been denied.

11. Thus, after considering the oral testimony of CW.1, Investigating Officer, the Claims Tribunal has arrived at a categorical conclusion that the testimony of CW.1, was nowhere helpful to the Insurance Company, for fixing negligence on the motorcyclist. The Claims Tribunal has also observed that Ex.R1 - Sketch, was also not helpful to the case of the Insurance Company that the motorcyclist had contributed to the accident. Evaluating the evidence advanced on both sides, the Tribunal has answered the issue of negligence against the driver of the Eicher Mini Lorry, bearing Registration No.KA 03 B 5022, belonging to the 5th respondent and insured with the appellant-Insurance Company.

12. Though Mr.J.Chandran, learned counsel for the appellant-Insurance Company placed strong reliance on Ex.R1 - Sketch, and contended that the accident occurred solely due to the negligence of the motorcyclist, this Court is not inclined to accept the said contention, for the reason that even CW.1, Investigating Officer, examined on the side of the Insurance Company, has denied the suggestion that the motorcyclist was at fault. He has also deposed that the accident occurred on the left side of Salem-Bangalore National Highways. He has also deposed that there were no dividers or fence, between Salem-Bangalore National Highways.

13. Sketch is a piece of evidence, which may be, used as evidence, to analyse the overall evidence adduced by the parties, in arriving at the conclusion of negligence. But that alone cannot be taken as the substantive evidence to prove negligence. As regards credence to sketch, this Court in Divisional Manager, New India Assurance Co. Ltd., v. District Superintendent of Police, Vellore reported in 2012 AAC 2451 (Mad.), held as follows:

> "Rough sketch drawn by the police, in a road accident cannot be taken as a conclusive proof, as to the manner of accident, for the reason that, on the main road or on a high way, depending upon the speed, weight of the vehicles involved in the accident, the last minute attempt on the part of the drivers involved in the accident to swerve the vehicles, to avoid any head on collision, the control of the vehicles, on account of the impact or the injuries sustained by the drivers, the position of the vehicles, may change. After the accident, the vehicles cannot always be expected to come to a sudden halt. In a case involving two or more vehicles, after the impact, the vehicles would come to a halt, on account of either the driver losing control over the vehicle or if the driver, not injured seriously, depending upon gravity of the injuries, and still able to control the vehicle, he would stop the vehicle. If both the drivers sustain injuries and not in a position to control, depending upon the factors stated supra, which are illustrative, the vehicles would come to a halt. There may be a possibility a vehicle like a motor cycle, with a lesser weight may even be dragged on in the same direction, in which, a bigger vehicle is operated."

14. It is the well settled law that proceedings before the Claims Tribunal are being 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 light of the above discussion and decision, stated supra, the finding of the Claims Tribunal fixing negligence on the driver of the Eicher Mini Lorry, bearing Registration No.KA 03 B 5022, belonging to the 5th respondent and insured with the appellant-Insurance Company, is sustained.

15. On the quantum of compensation, it is the case of the respondents/claimants, that the deceased was a two-wheeler mechanic. PW.1, wife of the deceased, has deposed that at the time of accident, he earned Rs.10,000/- per month, but there was no proof. However, taking into consideration the oral testimony of PW.1, regarding avocation, the Tribunal and by observing that the deceased would have earned Rs.300/- per day, has fixed the monthly income of the deceased as Rs.9.000/-.

16. The accident had occurred on 26.03.2009. The deceased was supporting his wife, minor daughter and parents. Considering the number of dependents, coupled with the testimony of PW.1, the deceased would have engaged in some avocation, to meet out the expenditure, to provide food, shelter, education and other basic amenities. A sum of

Rs.300/- as daily wages, fixed by the Claims Tribunal, to a two-wheeler mechanic, cannot be said to be grossly excessive.

17. Though Mr.J.Chandran, learned counsel for the appellant-Insurance Company submitted that the Claims Tribunal ought not to have considered that the father of the deceased was also entitled to compensation, when Ex.P5 - Legal heir certificate, does not contain his name, this Court is of the view that the Tribunal has not committed any serious error in deducting 1/4th from the monthly income of the deceased. Father is certainly entitled to the estate of the deceased.

18. The deceased was stated to be aged 25 years, supported by an entry in Ex.P5 - Post-mortem certificate. At the time of accident, Pw.1, was stated to be 22 years. The Tahsildar, Krishnagiri, has issued Ex.P4 - Legal Heir Certificate, dated 02.02.2010, mentioning the age as 23 years. Though the Claims Tribunal has deducted 1/4th towards personal and living expenses of the deceased, for computing the loss of dependency, apparently, it has failed to add up 50% of the said income, towards future prospects, while computing the loss of dependency.

19. In Santhosh Devi v. National Insurance Co. Ltd., reported in 2012 (6) SCC 421, a question has been considered, as to whether future prospects can be taken into consideration, in the case of persons working in unorganised sector and at Paragraph 14, the Apex Court held as follows:

> "We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma v. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this Rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional

income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma v. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

20. In terms of the abovesaid decision, if 50% of the monthly income is added up and thereafter, the loss of income to the family, is computed, the quantum of compensation will

be on the higher side. There is no award under the heads, transportation and damages to clothes and articles. Quantum of compensation awarded to the legal representatives of the deceased, apportioned accordingly, by the Claims Tribunal, would not be said to be without any materials.

21. For the reasons, stated supra, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, with proportionate accrued interests and costs, less the amount already deposited, to the credit of M.C.O.P.No.116 of 2013, on the file of the Motor Accidents Claims Tribunal (Special District Judge), Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order. The share of the minor shall be deposited in anyone of the Nationalised Bank, in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minor shall be paid to the guardian once in three months, till she attain majority. On such deposit being made, except the minor, the respondents/claimants are permitted to withdraw the same, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

skm

To

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

C.M.A.No.1984 of 2015

VD(CO)
EU 22.02.16