IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10-09-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2044 OF 2015

Dr.Aslam Yousuf ...Appellant/1st Respondent

-vs-

1.Indumathi
2.Minor Ajay Devan
3.Minor Sanjay Dev
R2 and R3 are Rep by thier mother and guardian-R1

4.Radhakrishnan
5.Vasuki ....1 to 5 Respondents/Petitioners

6.Branch Manager,
United India Insurance Company Ltd.,
No.58, Purasawalkam High Road,
Chennai-600 007. ....6th Respondent/2nd Respondent

Appeal against the judgment and decree, dated 14.09.2013, made in M.C.O.P.No.63 of 2010, on the file of Motor Accident Claims Tribunal, (District Court), Thiruvarur.

For appellant : Mr.M.Aravind Kumar

For respondents 1,4&5 : Mr.R.Muruga Bharathi

J U D G M E N T
(Judgment of the Court was delivered by S.Manikumar,J.)

Challenge in this appeal is to the liability fastened on the appellant, to pay compensation of Rs.35,00,000/-, with interest, at the rate of 7.5% per annum from the date of claim till deposit, to be paid to the legal representatives of the deceased.

2. Facts leading to the appeal are; that on 15.10.2009, when the husband of the first respondent/claimant, Jayakumar, was returning to his house at 07.30 p.m., in a TVS Centra motorcycle, bearing Registration No.TN-51-C4747, a Scorpio car, bearing Registration No.TN-01-Y3928, which came in the opposite direction, driven in a rash and negligent manner by its driver, dashed against the motorcyclist and, on his way to Pattukottai Government Hospital, he died. Legal representatives, namely, wife, minor sons, and parents have filed

M.C.O.P.No.63 of 2010 on the file of Motor Accident Claims Tribunal, (District Court), Thiruvarur, against Aslam Yousuf, the appellant herein, and United India Insurance Company Limited, Chennai-600 007, sixth respondent.

3. Before the Claims Tribunal, the appellant, in his counter affidavit, filed in the year 2011, has admitted the ownership of the vehicle, Scorpio car, bearing Registration No.TN-01-Y3928. He has also attributed negligence on the motorcyclist. However, in the additional counter affidavit, filed in the year 2012, he has stated that on 26.12.2007, he had already sold the said Scorpio car to one R.Kamaraj of Palakkarai Village, Trichi District and that he has also obtained a Delivery Note. According to him, on the earlier occasion, when he filed the first counter affidavit in the year 2011, he had forgotten to mention about the Delivery Note, hence, filing of additional counter affidavit was necessitated. He has also added that the earlier counter affidavit, filed on the basis of the entries in the Registration Certificate, was wrong. He has also contended that the said R.Kamaraj had used the vehicle, without making necessary changes in the Registration Certificate. In addition to the above, he has submitted that the subsequent owner R.Kamaraj ought to have been impleaded by the respondents/claimants.

4. Before the Claims Tribunal, the insurance company has contended that on the date of accident, the vehicle Scorpio was not covered with insurance and that its driver did not possess valid and effective driving licence. In other aspects, they have put the respondents/claimants to proof, for the relief claimed against the insurance company.

5. On the above pleadings, the Claims Tribunal has framed three questions, as to,

(1) On whose negligence, the accident had occurred ?
(2) Who has to pay the compensation ?
(3) Quantum ?

6. Before the Claims Tribunal, wife of the deceased examined herself as P.W.1 and narrated the manner of accident. P.W.2 is stated to be the eye-witness. He has deposed that on 15.10.2009, at 07.30 p.m., on Pattukottai By-pass Road near Mangalore Junction, a Scorpio car, bearing Registration No.TN-01-Y3928, driven in a rash and negligent manner by its driver, dashed against the motorcyclist and, in the result, the rider Jayakumar sustained head injuries. He has further deposed that though the injured was taken to Government Hospital, the doctors pronounced him dead. He has adduced categorical evidence that it was the driver of the Scorpio car, who was negligent in causing the accident. In support of the above, the claimants have marked Ex.P-1-FIR, dated 16.10.2009, Ex.P-8-Chargesheet, filed against the driver.

7. Considering the oral and documentary evidence, the Claims Tribunal held that the driver of the Scorpio car alone had caused the accident. The next issue considered by the Tribunal was, who was the owner of Scorpio car on 15.10.2009.

8. According to the appellant, that on 26.10.2007, the abovesaid car, involved in the accident, was sold to one R.Kamaraj of

Palakkarai Village, Trichy District, and that he has also obtained a Delivery Note; but, the said Kamaraj has used the vehicle without any alteration in registration certificate. However, to substantiate the sale, the appellant has not produced any document before the Tribunal.

9. Upon perusal of Ex.R-3, Investigation Report, submitted by the United India Insurance Company, through R.W.1, official of the said company, and Ex.P-3-Motor Vehicle Inspector's Report, wherein the name of the appellant alone was mentioned as the owner of the Scorpio car; Ex.P-9-Registration Certificate, which stood in the name of the appellant, the Claims Tribunal, by observing that in all the abovesaid documents, as on 15.10.2009, i.e., the date of accident, the appellant continued to be the owner of the vehicle, and further observing that the averments of sale have not been substantiated by documentary evidence, held that the defence of the appellant cannot be accepted. The Claims Tribunal has also observed that the appellant had not taken any steps to implead the said Kamaraj, as one of the parties. In view of the above, the Tribunal held that on the date of accident, the appellant was the owner of the Scorpio car.

10. As the offending vehicle did not have insurance coverage on the date of accident, the Tribunal held that the appellant, owner of the vehicle, alone was liable to pay compensation. Thus, the Claims Tribunal absolved the sixth respondent Insurance Company, from payment of compensation.

11. On the quantum of compensation, respondents/claimants have claimed that the deceased, as a teacher in Government School, earned Rs.18,046/- per month. To support employment and income of the deceased, they have marked Ex.P-6-Salary Certificate. On the basis of Ex.P-7-Date of Birth Certificate of the deceased, the Claims Tribunal determined the age of the deceased as 29 years. As the deceased was aged about 30 years and employed in a Government School, the Claims Tribunal, by observing that 50% of the income drawn, as on the date of accident, should be added up, for the purpose of computing the loss of dependency, applied '18' multiplier. While arriving at the total sum, the Claims Tribunal deducted 1/3 from the last drawn income towards the personal and living expenses of the deceased (Rs.18,000/- - 6,000/- = 12,000/-). Thereafter, the Claims Tribunal added up 50% towards future prospects and fixed the annual income of the deceased as Rs.18,000/-, for the purpose of computing loss of contribution to the family. The method adopted by the Claims Tribunal, in our view, is not correct. The Claims Tribunal should have first added up 50% to the income drawn as on the date of death of the deceased, which comes to Rs.27,000/- {18,000+9,000 (50% towards future prospects)}. Thereafter, the Tribunal should have deducted a definite percentage of income towards personal and living expenses of the deceased. If the number of dependants is 3 and less, the Claims Tribunal should have deducted 1/3rd. In the case on hand, there are five dependants. At the time of claim, wife was stated to be aged 27 years; minor children were aged six years and two years respectively and parents were aged 61 and 50 years respectively. As per Sarala Varma's case, the deduction should be 1/4th, but the Claims Tribunal has deducted 1/3rd, towards personal and living expenses of the deceased. Thus, confining only to the loss of dependency, the Tribunal has awarded compensation of Rs.35,00,000/-, the amount claimed, with interest, at the rate of 7.5% per annum.

12. Though Mr.M.Aravind Kumar, learned counsel for the appellant, assailed the correctness of finding, fixing negligence on the driver of Scorpio car; the liability fastened on the appellant to pay compenation and the quantum of compenation as excessive, the same cannot be accepted, in the absence of any substantive evidence, adduced before the Tribunal, to prove the sale of vehicle to Kamaraj, and the steps taken by the appellant to effect necessary changes in the office of Transport Deprtment and in Ex.P-9-Registration Certificate. Had the appellant sold the vehicle on 26.12.2007 to the said Kamaraj, nothing prevented him from producing the Delivery Note, before the Claims Tribunal. Equally, he could have taken steps to implead the said Kamaraj as a party/respondent and examined him, for that matter. Chargesheet has been filed against Senthil Kumar, driver of Scorpio car. R.W.1, official of the insurance company, has deposed that the offending vehicle was insured in the office of the sixth respondent insurance company between 20.12.2007 and 19.12.2008, and, thereafter, insurance was not renewed. His specific evidence was that on 15.10.2009, i.e., the date on which the accident occurred, the vehicle was not covered with insurance.

13. Going through the entire judgment impugned herein, we do not find that the Tribunal has committed any material irregularity or illegality, in assessing the evidence adduced by the parties in recording a finding as to who was at fault or negligent in causing the accident, or for that matter fastening liability. The errors committed by the Claims Tribunal are in deducting 1/3rd towards personal and living expenses of the deceased when the dependants are five, the other being, that when the annual income of the deceased as on 15.10.2009 was Rs.2,16,000/- (Rs.18,000/- x 12), there should have been 10% deduction in the taxable income of Rs.66,000/- (Rs.2,16,000 - 1,50,000), which comes to Rs.6,600/-. If tax payable is calculated for 17 years, it works out to Rs.1,12,200/-. However, reading of the award shows that the Claims Tribunal has not awarded any compensation under the heads 'consortium' to the wife, aged about 27 years at the time of accident; 'loss of love and affection' to the minor children aged about 6 and 2 years respectively, and to the parents, aged about 61 and 50 years respectively. There is also no award under the heads 'funeral expenses', 'transportation' and 'conventional damages', to clothes and articles.

14. It is well settled that while awarding compensation to the injured or the legal representaties of the deceased, the principle to be applied by the Tribunals/Courts is "just compensation", based on many imponderables, and loss to the family members. The Claims Tribunal could have awarded a reasonable compensation under the above said heads, following the principle of ''just compensation'', and directed the respondents/claimants to pay adequate Court Fee from the award or otherwise. Therefore, even if the sum of Rs.1,12,200/- had not been deducted from the award towards income-tax, this Court is of the view that the said amount could be adjusted against compensation, for consortium and loss of love and affection, as stated supra. Award is confirmed. Apportionment made by the Claims Tribunal is not disturbed.

15. Civil Miscellaneous Appeal is dismissed. Appellant is directed to deposit the quantum of compensation awarded in the claim petition, with interest at the rate of 7.5% per annum to the credit of M.C.O.P.Nos.63 of 2010, on the file of the Motor Accident Claims

Tribunal (District Judge), Thiruvarur, less the statutory deposit, within a period of four weeks from the date of receipt of a copy of this 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 the Claim Petition, viz.,M.C.O.P.No.63 of 2010, the Claims Tribunal shall deposit their shares in a Nationalised Bank, until they attain majority. Interest accrued on the minor shares is permitted to be withdrawn by the guardians of minors, once in three months. Major claimants are permitted to withdraw the amount approtioned to them, by making necesary application, before the Tribunal. Miscellaneous Petition No.1 of 2015 is closed.

-Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dixit

To

The Motor Accident Claims Tribunal,
The District Judge
Thiruvarur.

+2 CC to Mr. M.Aravind Kumar Advocate. Sr.No.49309
+1 CC to Mr. R.Muruga Bharathi Advocate. Sr.No.49408

C.M.A.No.2044 OF 2015

CO-KU
JD 09/10/2015