

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

C.M.A.No.2365 of 2015
M.P.No.1 of 2015

The Oriental Insurance Co. Ltd.,
Coimbatore. ... Appellant/3rd Respondent

vs.

1.Sams ... 1st Respondent/Petitioner
2.Dhamotharan
3.M/s.Lakshmi Machine Works,
Peryanaickenpalayam, Coimbatore. Respondents 2 & 3/
Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 07.02.2015 made in M.C.O.P.No.563 of 2012, on the file of the Motor Accident Claims Tribunal (Ist Additional District Court), Tiruppur.

For Appellant : Mrs.N.Vijayaraghavan

J U D G M E N T

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

Being aggrieved by the finding, fastening liability on the Insurance Company to pay compensation to the legal representatives of the third party victim and the quantum of compensation of Rs.18,24,600/- with interest at the rate of 7.5% per annum, the Oriental Insurance Company Ltd., has preferred this appeal.

2. Facts leading to the appeal are as follows:

That on 03.11.2012, about 07.00 P.M., when the daughter of the first respondent, was travelling in a two-wheeler, bearing Registration No.TN 39 AR 2761, as a pillion rider, driven by one Mr.Anandraj, near Kumaran Kaliyanamandapam,

Housing Unit, Goundampalayam, Coimbatore, on the extreme left side of the road, adhering to traffic rules and regulations, a bus, bearing Registration No.TN 38 AF 9299, owned by the 3rd respondent herein and insured with the appellant-Insurance Company, driven by the 2nd respondent herein, in the same direction and in a rash and negligent manner and dashed against the two-wheeler from behind. She sustained severe head injuries and was taken to CMC Hospital, Coimbatore, where she succumbed to the same. In this regard, a case in Cr.No.751 of 2012, has been registered against the driver of the bus, for the offences under Sections 279, 337 and 304(A) IPC, on the file of Thudiyalur Police Station. Mother of the deceased claimed compensation of Rs.20,00,000/-, stating that at the time of accident, the deceased was aged 22 years, Operator in M/s.Dimexon Diamonds Ltd., Kavundampalayam, Coimbatore and earned Rs.10,000/- per month.

3. The appellant-Insurance Company, while disputing the manner of accident, has submitted that the accident had occurred, due to the carelessness of the motorcyclist, Mr.Anandraj and hence, they are not liable to pay the compensation. Without prejudice to the above, they also disputed the age, avocation and income of the deceased and the compensation claimed under various heads.

4. Before the Tribunal, 1st respondent/claimant, mother of the deceased, examined herself as PW.1 and PW.2, is the occurrence witness. PW.3, is the Project Manager in M/s.Dimexon Diamonds Ltd., Kavundampalayam, Coimbatore. Ex.P1 - FIR, Exs.P2 & P3 - Motor Vehicles Inspectors Report, Ex.P4 - Sketch, Ex.P5 - Charge Sheet, Ex.P6 - Post-Mortem Report, Ex.P7 - Death Certificate, Ex.P8 - Legal Heir Certificate, Ex.P9 - Salary Slip, Ex.P10 - Identity Card, Ex.P11 - Authorisation Letter, Ex.P12 - Appointment Order, Ex.P13 - Application copy, Ex.P14 - Copy of the Identity Card, Ex.P15 - Copy of the Salary Slip, Ex.P16 - Copy of the Order, issuing bonus, and Ex.P17 - Copy of the Attendance Register, have been marked on the side of the respondent/claimant. On behalf of the appellant-Insurance Company, no oral or documentary evidence has been adduced.

5. On evaluation of pleadings and evidence, the Claims Tribunal has held that the driver of the bus, insured with the appellant-Insurance Company, was negligent in causing the accident and quantified the compensation at Rs.18,24,600/-, at the rate of 7.5% per annum, from the date of claim, till deposit. While computing the quantum of compensation, the Claims Tribunal has fixed the monthly income of the deceased at Rs.10,800/- and added 50% under the head, future prospects, deducted 50% towards the personal and living expenses of the

deceased, applied 18 multiplier to the age of the deceased and computed the dependency compensation at Rs.17,49,600/-. That apart, the Claims Tribunal has awarded Rs.25,000/- towards funeral expenses and Rs.50,000/- for loss of love and affection. Altogether, the Claims Tribunal has awarded Rs.18,24,600/-, as compensation, with interest at the rate of 7.5% per annum.

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

6. Though the appellant-Insurance Company has blamed Mr.Anandraj, rider of the Motorcycle, the Tribunal, having considered the fact that the registration of the criminal case, is against the driver of the offending vehicle, viz., bus, insured with the appellant-Insurance Company and the documents, Ex.P1 - FIR, Exs.P2 & P3 - Motor Vehicles Inspectors' Reports, Ex.P4 - Sketch, Ex.P5 - Charge Sheet filed against the driver and in the absence of any contrary evidence, adduced by the appellant-Insurance Company and applying the test of preponderance of probability, has rightly concluded that the driver of the bus, insured with the appellant, was solely responsible for the accident. It is also to be noted that the case of the respondent/claimant is that the bus hit the motorcycle from behind. At this juncture, reference can be made to few decisions on the aspect of preponderance of probability,

(i) In N.K.V.Brother's Private Limited v. Kurmai reported in AIR 1980 SC 1354, while dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

(ii) 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."

(iii) In *Bimla Devi & Ors. Vs. Himachal RTC* reported in 2009 (13) SCC 530, the 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."

7. Perusal of the award further shows that the appellant-Insurance Company has not taken any steps to examine the driver of the bus. In the case on hand, where the vehicle or a person is hit from behind, the doctrine of *res ipso liquitor* can also be applied. In these circumstances, the finding of the Tribunal, regarding negligence on the driver of the bus, cannot be said without any basis nor it could be termed as perverse, warranting interference.

8. Insofar as the quantum of compensation, is concerned, P.W.1 mother of the deceased has adduced evidence that the deceased was an Operator in M/s.Dimexon Diamonds Ltd., Kavundampalayam, Coimbatore and earned Rs.10,000/- per month. Income of the deceased has been determined, on the basis of the evidence of PW.3, Project Manager, M/s.Dimexon Diamonds Ltd., Kavundampalayam, Coimbatore and the documents, Ex.P15 - Salary Slip, dated 07.11.2012 and Ex.P16 - Order, issuing bonus for the year 2011-12. Though the income fixed by the Tribunal is argued to be on the higher side, having regard to the avocation, a sum of Rs.10,800/-, as monthly income, taken into consideration by the Claims Tribunal, for computing the loss of contribution to the family, cannot be said to be higher or erroneous. Addition of 50% of the income, towards future prospects, is in terms of the decision of the Apex Court in *Rajesh v. Rajbir Singh* reported in 2013 (2) TNMAC 55 (SC). Application of '18'

multiplier and deduction of 50% towards the personal and living expenses of the deceased, are also in terms of a decision of the Apex Court in Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 (SC). Even taking it for granted that after some time, had the deceased been alive, he would have got married, still the contribution to the family, would have continued for a longer time. Quantum of compensation of Rs.17,49,600/-, awarded to the mother of the deceased, cannot be said to be on the higher side, warranting interference.

9. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the award amount, with accrued interest and costs, to the credit of M.C.O.P.No.563 of 2012, on the file of the Motor Accident Claims Tribunal (Ist Additional District Court), Tiruppur, within a period of four weeks from the date of receipt of a 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 III)

//True Copy//

Sub Assistant Registrar

skm

To

The Motor Accidents Claims Tribunal
(Ist Additional District Court), Tiruppur.

+1 cc to Mr.N.VijayaRaghavan, Advocate, sr.58517

C.M.A.No.2365 of 2015

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