

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

CMA.No.299 of 2015

&

M.P. No. 1 of 2015

IFFCO-TOKIO,

General Insurance Co.Ltd.,

No.28, North Usman Road,

2<sup>nd</sup> Floor, T.Nagar,

Chennai-600 017.

.... Appellant/2nd Respondent

-Versus-

1.K.Elammal

2.V.Kuppusamy

... 1st & 2nd Respondents/1st&2nd  
Petitioners.

3.M.Nagarajan

... 3rd Respondent/1st Respondent

4.The Managing Director,

TNSTC Ltd. (Villupuram Ltd)

Kanchipuram Region,

Kanchipuram District.

... 4th Respondent/3rd Respondent

Prayer: The civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the decree and judgment dated 09.07.2014 made in M.C.O.P. No.4840 of 2011 on the file of the Motor Accidents Claims Tribunal, (V Small Causes Court) Chennai.

For Appellant :: Mr.C.R.Krishnamoorthy

For Respondents :: Mr.M. Selvam for R1 & R2

J U D G E M E N T

The Insurance Company is before this Court challenging the award of Rs.10,74,000/- granted to the parents of one K.Prakash, aged about 18 years, II year B.Com student, who died in the accident, which occurred on 19.09.2011, when the van insured with the appellant-Insurance Company took reverse and hit the bus on the back left side resulting in the said Prakash, who was travelling on the foot board of the Transport Corporation bus, sustaining grievous injuries, leading to his death. Therefore, the claim petition was filed.

2. The Tribunal, on enquiry, found that the accident occurred because of the rash and negligent driving by the driver of the van and fixed 90% negligence on the van driver and 10% negligence on the deceased, as he was travelling on the foot board of the bus. Taking a sum of Rs.6,500/- as monthly income; adding 50% towards future prospects; applying multiplier 18 and deducting 50% towards personal expenses, the loss of income was determined at Rs.10,53,000/-. Including other amounts, totally, a sum of Rs.11,93,000/- was awarded as compensation, out of which, the claimants were entitled to only 90%, namely, a sum of Rs.10,74,000/-, as 10% contributory negligence was fixed on the deceased. The said award is being challenged on the question of quantum as well as negligence.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for respondents 1 and 2.

4. Though the learned counsel for the appellant would argue that the accident occurred because of the rash and negligent driving by the driver of the bus, P.W.2, Rose Ganapathy, who got injured in the same accident and examined as an eye-witness to the occurrence, deposed that it was the van, which was driven rashly and negligently. Considering P.W.2's evidence as well as Ex.P1, FIR and Ex.P6, charge sheet filed against the van driver, the Tribunal rightly came to the conclusion that the van was driven rashly and negligently. Taking note of the evidence of R.W.1, who deposed that the deceased was travelling on the foot board of the bus, the Tribunal rightly fixed 10% negligence on the part of the deceased, as foot board travelling is prohibited. Therefore, fixing of 90% negligence on the part of the van driver and 10% negligence on the part of deceased is based on evidence and the same cannot be interfered with.

5. Further, a close scrutiny of the award would show that the driver of the van was holding driving licence only for driving a light motor vehicle and he had no badge endorsement to drive a transport vehicle like van. The said fact was proved by the appellant-Insurance company by sending a letter to the owner of the vehicle to produce the driving licence. In view of the above position, the Tribunal rightly directed the Insurance Company to pay the amount and recover the same from the owner of the vehicle.

6. Admittedly, the deceased was a 18 year old, II year B.com. student and he would come under the definition of non-earning member. Curiously, the Tribunal determined the monthly income of the deceased, a non-earning member, at Rs.6,500/- following the judgment of the Honourable Supreme Court in Syed Sadiq etc. Vs. Divisional Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459 and added 50% towards "future prospects" as per the judgment of the Honourable Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN

MAC 1 and determined the total monthly income at Rs.9,750/-. But, the said determination is without any basis. In the judgment of the Honourable Supreme Court in Syed Sadiq etc. Vs. Divisional Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, the injured was a vegetable vendor, an earning member and therefore, the Honourable Supreme Court determined the monthly income at Rs.6,500/-. By no stretch of imagination, the said judgment can be made applicable to the present facts of the case. Therefore, the determination of the monthly income at Rs.6,500/- and adding 50% towards "future prospects" is set aside.

7. Though Mr.C.R.Krishnamoorthy, learned counsel appearing for the appellant would submit that the deceased was a non earning member and if at all, only Rs.30,000/- can be taken as notional income as per the judgement in Kishan Gopal & another vs. Lala & others reported in 2013 (2) TN MAC 358 (SC), the Hon'ble Supreme Court, in Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and another reported in 2014 ACJ 2648 in respect of a first year Medical College student, who died in an accident, determined the monthly income at Rs.25,000/-. Similarly, this Court, in United India Insurance Co. Ltd. Vs. Velumyil and others reported in 2013 (2) TN MAC 846, in respect of a first year B.E. student, who died in an accident, determined Rs.15,000/- as monthly income. In this case, the deceased was a II year B.Com student. Though, he cannot be equated to a Medical College student or an Engineering College student, at least Rs.6,000/- per month should be taken as monthly income and adding 50% towards "future prospects", as per the judgment of Hon'ble Supreme Court in Santosh Devi's case reported in (2012) 6 SCC 421, the total monthly income would be,

$$\begin{aligned} &= \text{Rs.6000/-} + 50\% (\text{Rs.6000/-}) \\ &= \text{Rs. 9000/-} \end{aligned}$$

8. Since the deceased was a bachelor, 50% is required to be deducted towards "personal expenses" and after deducting, the monthly contribution of the deceased to the family would be,

$$= (\text{Rs.9000/-}) - (50\% (\text{Rs.9000/-}))$$

Monthly contribution of the deceased

to his family = Rs.4,500/-.

The age of the deceased was fixed by the Tribunal, based on Ex-P4 Death Certificate and Ex-P5, Death Report as 18 years and following the judgment of the Hon'ble Supreme Court in Amit Bhanu Shali and others vs. National Insurance Co.Ltd. And others reported in 2012 ACJ 2002, multiplier 18 was applied, as per the age of the deceased. Applying the said multiplier, "loss of income" is calculated as follows:

$$\begin{aligned} \text{Loss of Income} &= \text{Rs.4500} \times 12 \times 18 \\ &= \text{Rs.9,72,000/-} \end{aligned}$$

A sum of Rs.25,000/- was awarded towards "funeral expenses" as per the judgment of the Honourable Apex Court in Rajesh and others v.

Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC), and the same is confirmed. The sum of Rs.10,000/- awarded towards "loss of expectancy of life" is adjusted towards "transportation expenses". The sum of Rs.1,00,000/- awarded towards "loss of love and affection" is confirmed, as the claimants lost their only son that too, at the age of 18 years. The sum of Rs.5,000/- awarded towards "loss of estate" is deleted. In all, a sum of Rs.11,07,000/- is awarded as compensation, of which, the claimants are entitled to only 90% , namely, a sum of Rs. 9,96,300/-, since contributory negligence at 10% is fixed on the deceased. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

9. It is submitted by the learned counsel for the appellant that they have already deposited the entire amount, as per the award passed by the Tribunal, along with interest and costs, before the Tribunal. In view of the modified award passed by this Court, to the tune of Rs.9,96,300/-, respondents 1 and 2/claimants are permitted to withdraw 50% of their respective shares, from the said amount, as per the ratio fixed by the Tribunal and the remaining 50% is directed to be re-invested in interest bearing Fixed Deposit in Indian Bank, High Court Branch, Chennai, atleast for a period of three years. The excess amount, lying in deposit, shall be refunded to the appellant insurance company within one week from the date of receipt of a copy of this order.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Connected M.P. is closed.

vsm/vk/nv

-s/d-

Assistant Registrar(CS-II)

Dt:20/03/2015

True Copy

Sub-Assistant Registrar

BEING SPOKEN TO

This petition having been posted this day for being spoken to in pursuance of the order of this Court dated 17.2.2015 and made herein in the presence of the above said Advocate for the Appellant the court made the following Order:

The matter has been brought before this Court for "Being Spoken to" at the instance of the appellant contending that direction for pay and recovery has not been included in the judgment dated 17.02.2015, while disposing of the above appeal.

2. However, a perusal of the judgment would reveal that towards the end of paragraph No.5 of the said judgment, this Court has observed as hereunder:

"In view of the above position, the Tribunal rightly directed the Insurance Company to pay the amount and recover the same from the owner of the vehicle."

3. In view of the above observation, no further orders are necessary.

-s/d-

Assistant Registrar (CS-II)

Dt:20/03/2015

True Copy

Sub-Assistant Registrar

To

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

+ 1 cc to Mr.T.Pappaiah Dharmarajan, Advocate SR 12216

+ 1 cc to Mr.C.R.Krishnamoorthy Advocate SR 12032

km(co)  
prk20/3

C.M.A.No.299 of 2015

सत्यमेव जयते

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