

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.No.3461 of 2014
& M.P.No.1 of 2014

M/s.Royal Sundaram Alliance
Insurance Co. Ltd.,
1st Floor, No.6, L.B. Road,
Adyar, Chennai.

.. Appellant/2nd respondent

Vs.

1. S.Mageshwari
2. Saravanan (Minor)
(2nd respondent Minor Rep. by mother
and next friend 1st respondent)

3. V.Saraswathi
4. Velmail

.. Respondents 1 to 4/petitioners

5. S.Balaji

..5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree, dated 05.09.2014 made in M.C.O.P.No.2236 of 2012 on the file of the Motor Accidents Claims Tribunal (Second Court of Small Causes), Chennai.

For appellant : Mr.N.Vijayaraghavan

For respondents : Mr.F.Terry Chellaraja for RR-1 to 4

JUDGMENT

(The Judgment of the Court was delivered by V.DHANAPALAN,J)

The Civil Miscellaneous Appeal is preferred by the Insurance Company against the Award, dated 05.09.2014 made in M.C.O.P.No.2236 of 2012 on the file of the Motor Accidents Claims Tribunal (Second Court of Small Causes), Chennai.

2. The respondent 1 to 4/claimants have filed the claim petition before the Tribunal stating that the first respondent/first claimant is the wife of the deceased, the second respondent/second claimant is

the minor son of the deceased, the third respondent/third claimant is the mother of the deceased and the fourth respondent/fourth claimant is the father of the deceased. On 10.01.2012 at about 1.00 hours, when the deceased was riding his Hero Honda Passion Motor Cycle bearing Registration No.TN-22-CA-5407 from Otteri to Pallavaram direction in the GST Road, Otteri Bazaar VSP Canteen opposite, the lorry of the fifth respondent herein, bearing Registration No.TN-19-C-3921 came from the same direction and suddenly, the driver of the lorry applied brake, thereby the deceased hit the lorry, sustained fatal injuries and died on the same day in the hospital. It is their case that the driver of the lorry was responsible for the accident and the fifth respondent as the owner and the appellant herein as the insurer of the lorry, are liable to pay compensation. The claimants being the sole surviving heirs and dependants of the deceased, claimed compensation of Rs.20 lakhs from them.

3. The appellant-Insurance Company filed counter statement before the Tribunal stating that the accident occurred solely due to the rash and negligent driving of the motor cycle and the deceased hit the lorry from behind and however, the driver of the lorry is sought to be blamed without any justification. Even assuming that the lorry stopped suddenly, it is very obvious that but for the rash and reckless driving of the deceased at a high speed, there could not have been any serious impact so as to cause his death. The deceased was the tort-feasor and solely responsible for the occurrence. The claim against them is not maintainable. The claimants have to prove that the fifth respondent's vehicle was insured with the appellant and the driver of the vehicle had valid driving licence at the time of the accident. The claimants are put to strict proof of the age, occupation and monthly income of the deceased and also the place, date and time of the accident and the claimants are the only legal heirs and dependants of the deceased by documentary evidence. The amount of compensation claimed is excessive and they prayed for dismissal of the claim petition.

4. Before the Tribunal, the P.W.1, the first claimant-wife of the deceased was examined, besides P.W.2 eye-witness and the P.W.3, the employer of the deceased, were examined. The claimants marked Exs.P-1 to P-9 on their side. On the side of the appellant-Insurance Company, R.W.1, the driver of the fifth respondent's vehicle was examined and they marked Ex.R-1, the copy of the driving licence of R.W.1.

5. The Tribunal, on a consideration of the above oral and documentary evidence, came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the fifth respondent and his vehicle and he is responsible for the same and further held that both the fifth respondent and the appellant are liable to pay compensation to the claimants and as the insurer of the fifth respondent's vehicle, the appellant-Insurance

Company is liable to pay the compensation to the claimants and thereby, awarded a compensation of Rs.20,61,000/-, with interest at 7.5% per annum from the date of numbering the claim petition, i.e. on 05.06.2012 till the date of deposit, under the following heads:

Sl. No.	Head under which the amount was awarded by the Tribunal	Award amount in Rs.
1	Pecuniary loss	18,36,000
2	Loss of consortium to the first claimant-wife	1,00,000
3	Funeral expenses	25,000
4	Love and affection to the second minor claimant-son - Rs.50,000/- and the third and fourth claimants (parents) - each Rs.25,000/-	1,00,000
	Total compensation	20,61,000

6. Learned counsel appearing for the appellant-Insurance Company mainly focussed his arguments with regard to the quantum of compensation based on the fixation of the income of the deceased by the Tribunal. He submitted that the Tribunal erred in disbelieving the evidence of R.W.1, the driver of the lorry, who stated that he had parked the vehicle carefully and nothing was elicited in his cross-examination to doubt the evidence. He further stated that P.W.2 was not a genuine eye-witness, but set up for the purpose of the case, while discarding the evidence of the driver of the lorry and that the deceased was solely responsible or substantially contributed to the accident. He further contended that the claimants have claimed only Rs.20 lakhs, but the Tribunal has awarded over and above the claim made by the claimants, i.e. at Rs.20,61,000/- and hence, the compensation awarded is not in consonance with the principles in computing the same. He also stated that the monthly income of the deceased as arrived at by the Tribunal is not in accordance with law and without any material proof and that the Tribunal is not correct in arriving at the calculation as per the settled legal principles for computing the pecuniary loss and that the compensation awarded under the head "funeral expenses" is also excessive.

7. Learned counsel for the respondents 1 to 4/claimants submitted that the Tribunal has awarded the compensation based on oral and documentary evidence and the same is a just and fair compensation and therefore, there is no scope or warranting circumstance to interfere with the impugned award of the Tribunal.

8. Heard the learned counsel appearing on either side and perused the material documents available on record.

9. It is seen that when the deceased was riding his Hero Honda Passion Motor Cycle bearing Registration No.TN-22-CA-5407 from Otteri to Pallavaram direction in the GST Road, Otteri Bazaar VSP Canteen opposite, the lorry of the fifth respondent herein, bearing Registration No.TN-19-C-3921 came from the same direction and suddenly, the driver of the lorry applied brake, thereby the deceased hit the lorry and sustained fatal injuries and died on the same day in the hospital. Therefore, the claimants fixed the liability on the appellant-insurer and the fifth respondent-owner of the lorry and accordingly claimed the compensation of Rs.20 lakhs.

10. Before the Tribunal, the wife of the deceased, namely the first claimant, was examined as P.W.1. The eye-witness to the accident was examined as P.W.2. The employer of the deceased was examined as P.W.3. Besides the above oral evidence, the following documentary evidence was adduced by the claimants before the Tribunal:

Sl.No.	Exhibit	Description of the document
1	Ex.P-1	Copy of the FIR in Cr.No.181 of 2012 registered at D4-Otteri Police Station
2	Ex.P-2	Copy of rough sketch
3	Ex.P-3	Post-mortem Certificate
4	Ex.P-4	Death Certificate
5	Ex.P-5	Legal Heirship Certificate
6	Ex.P-6	Driving licence of the deceased
7	Ex.P-7	Copy of Ration Card of P.W.2
8	Ex.P-8	Copy of R.C. Book for P.W.3's vehicle
9	Ex.P-9	Copy of Talaq Certificate

On the side of the appellant-Insurance Company, R.W.1 who is the driver of the fifth respondent's vehicle, was examined and Ex.R-1 copy of the driving licence of R.W.1 was marked.

11. The Tribunal analysed the occurrence based on the oral evidence of P.W.2, the eye-witness to the accident, which is corroborated by the version of the claimants and concluded that the accident took place due to the rash and negligent driving of the lorry by its driver. The Tribunal gave credence to the version of the said eye-witness and also Ex.P-2 rough sketch and Ex.P-1 copy of the FIR, to conclude the negligence aspect. Though the appellant-Insurance Company made an attempt to prove through the evidence of R.W.1, the driver of the fifth respondent's vehicle, that the motor cycle hit the parked vehicle, the oral and documentary evidence adduced on the side of the claimants gives a clear impression that the accident was due to the rash and negligent driving of the driver

of the lorry and hence, the negligence has rightly been fixed against the lorry driver by fixing the liability on the owner and ultimately, on the insurer to pay the compensation. In the absence of any contra evidence, we are not inclined to interfere with such finding of the Tribunal and therefore, we confirm the negligence and liability fixed by the Tribunal.

12. Coming to the aspect of quantum of compensation arrived at by the Tribunal, the Tribunal has taken into account the evidence of the wife of the deceased who was examined as P.W.1 (first claimant), apart from the eye-witness (P.W.2) and the employer of the deceased (P.W.3). With regard to the age of the deceased, it is seen that the wife of the deceased had deposed that her husband was aged about 26 years at the time of accident and Ex.P-6 driving licence of the deceased was marked to prove the same, wherein his date of birth was mentioned as 08.07.1986. The accident took place on 10.01.2012. Further, Ex.P-3 Post-mortem Certificate and Ex.P-4 Death Certificate also proved that he was aged about 26 years at the time of accident. Therefore, the age factor of the deceased has been rightly determined by the Tribunal based on the above oral and documentary evidence and there is no quarrel over the same on either side. As per Ex.P-5 Legal Heirship Certificate, the claimants have been shown as the legal heirs of the deceased, being the wife, minor son and his parents. The father of the deceased is the fourth claimant, the fourth respondent herein and he is not depending on the deceased, and therefore, the Tribunal came to the conclusion that the wife, minor son and the mother of the deceased alone are the dependants to claim the compensation and accordingly awarded the compensation under various heads only to them.

13. While so arriving at the compensation, the Tribunal determined the income of the deceased by noticing that the claimants have claimed that the deceased was working as Driver and earning Rs.15,000/- per month. In this regard, P.W.3, the employer of the deceased was examined to speak about the fact that the deceased Selvakumar was driving his Tata Ace bearing Registration No.TN-22-OB-0285 and was paid a sum of Rs.15,000/- p.m. In that regard, Ex.P-8 copy of the R.C. Book of the said vehicle was marked. As per Ex.P-6 driving licence of the deceased, he was authorised to drive the transport vehicle. Based on the above oral and documentary evidence, the Tribunal came to the conclusion that the deceased would have been earning Rs.12,000/- p.m. and accordingly fixed the income of the deceased at Rs.12,000/- p.m. Since the deceased died at the age of 26 years and considering the age of the deceased and that of the claimants, and also based on the decision of the Supreme Court reported in 2009 (6) SCC 121 = 2009 (2) TNMAC 1 (SC) (Sarala Verma and others Vs. Delhi Transport Corporation and another), the Tribunal adopted the multiplier "17" and after deducting 1/4 towards his personal expenses, the Tribunal fixed the pecuniary loss at Rs.18,36,000/- (Rs.9,000/- x 12 x 17).

14. With regard to the said aspect, the learned counsel for the appellant-Insurance Company seriously contested that the income of the deceased as arrived at by the Tribunal at Rs.12,000/- p.m. is not proper on the facts and circumstances of the case and he contended that except the evidence of P.W.3, the employer of the deceased, no other documentary evidence is adduced before the Tribunal to prove his income. He further stated that P.W.3 is not the fit and proper person to speak about the income of the deceased and hence, the income of the deceased has to be reduced to some extent. Hence, he submitted that the compensation awarded under the head "pecuniary loss" is actually not based on the principles laid down by the Supreme Court in the said decision in Sarala Verma's case (cited supra), as relied by the Tribunal and the same needs to be interfered with.

15. Looking into the occupation of the deceased and the claim made by the claimants and the oral evidence of P.W.3, though not reliable in entirety, it is appropriate to reduce the income of the deceased from Rs.12,000/- to Rs.11,000/- p.m and after deducting 1/4 towards personal expenses, the income of the deceased is now fixed at Rs.8,250/- p.m. Accordingly, the pecuniary loss is calculated at Rs.16,83,000/- (Rs.8,250/- x 12 x 17) by adopting the same multiplier "17".

16. Coming to the aspect of loss of consortium to the wife of the deceased, the Tribunal has rightly awarded Rs.1,00,000/-, which is hereby confirmed. Coming to the award of compensation under the head 'loss of love and affection' to the minor son and the parents of the deceased, the Tribunal awarded Rs.25,000/- each to the parents and Rs.50,000/- to the minor son, which is just and proper and there is no scope for interference on the award of Rs.1,00,000/- towards loss of love and affection, which is hereby confirmed. With regard to the award of compensation at Rs.25,000/- under the head "funeral expenses", it is seen that the same is huge given the facts and circumstances of the case and as suggested by the learned counsel for the appellant-Insurance Company, the same is reduced to Rs.17,000/-.

17. Accordingly, the award of the Tribunal is modified in the above heads and the total compensation is reduced from Rs.20,61,000/- to Rs.19,00,000/- and the interest awarded by the Tribunal at 7.5% per annum is hereby confirmed. The amounts awarded by the Tribunal and this Court, as noted above, are shown below:

Sl. No.	Heads under which the amounts were/are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court in this Appeal (in Rs.)
1	Pecuniary loss	18,36,000	16,83,000

Sl. No.	Heads under which the amounts were/are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court in this Appeal (in Rs.)
2	Loss of consortium to the wife	1,00,000	1,00,000
3	Funeral expenses	25,000	17,000
4	Loss of love and affection to the minor son at Rs.50,000/- and to the parents of the deceased at Rs.25,000/- each	1,00,000	1,00,000
	Total amount	20,61,000	19,00,000

18. In the result, the appeal is partly allowed and the total award of the Tribunal is reduced from Rs.20,61,000/- to Rs.19,00,000/-, with 7.5% interest per annum from the date of numbering the claim petition, i.e. from 05.06.2012 till the date of deposit by the appellant-Insurance Company. The said amount shall be deposited before the Tribunal by the appellant/Insurance Company within a period of eight weeks from the date of receipt of a copy of this judgment, after adjusting the amount(s) already deposited by them. The first respondent/claimant being the wife of the deceased is entitled to get Rs.13,00,000/-, the second respondent/claimant being the minor son of the deceased, is entitled to get Rs.5,50,000/- and the third petitioner/claimant being the mother of the deceased, is entitled to get Rs.50,000/-. The amount of compensation shall be paid by the Tribunal to the respondents 1 to 3/claimants, expeditiously, after the entire deposit is made by the appellant-Insurance Company, without insisting on any formal application from them. The amount, if any, lying in Bank Deposit / Court Deposit shall also be disbursed to the respondents 1 to 3/claimants directly by the Tribunal, expeditiously, without insisting on any formal application from them. The share amount of the second respondent-minor claimant shall be deposited in any nationalised Bank in an interest bearing fixed deposit scheme till he attains majority and the mother of the minor claimant-son, i.e. the first claimant (first respondent herein) is entitled to withdraw the accrued interest once in three months directly from the Bank. No costs. The Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

CS

Copy to

1. The Motor Accidents Claims Tribunal
(Second Court of Small Causes Court), Chennai.

2. The Section Officer,
V.R. Section, High Court, Madras.

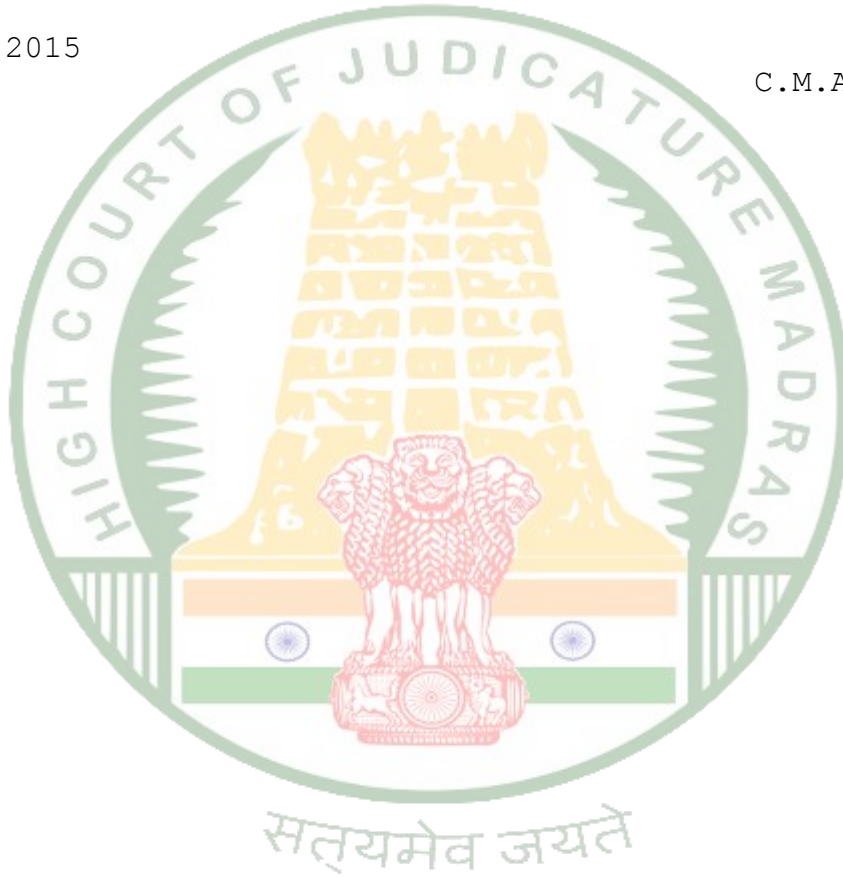
+ 1 cc to Mr.M.B. Gopalan, Advocate SR.12770

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KM(CO)

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