IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.1443 of 2002

1.P.Bharathi
2.Pidathalaraja Harshavardhan
3.Bharathavarthan
Minors 2 and 3 rep. by
Ist appellant. ...Appellants

-Versus-

1.Dominic Sebastian
2.Poulose Anthony
3.M/s.New India Assurance Co.Ltd.,
P.B.No.83, Kottayam, Kerala State.
4.The Oriental Insurance Co.,
Sowcarpet Branch,
2nd Floor, Ramanuja Iyer Street,
Chennai-1.
5.S.Srinivasan
6.Murali Prasad .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed in M.C.O.P.No.318 of 1990 on the file of Sub Court, Motor Accidents Claims Tribunal, Thirupur dated 5.10.2001.

For Appellants : Mrs.G.Sasee Dhevi

For Respondents : Mr.K.Padmanabhan for RR 2 & 3
Mr.S.Manohar for R4

Judgement Reserved on: 11.12.2014

Judgment Pronounced on: 11.06.2015

JUDGMENT

It is an unfortunate case, in which the parties were driven pillar to post to get compensation for the death of first appellant's husband, who died on 11.1.1990, when he was travelling in a Maruthi Van from Tirupathi to Sabarimalai, which was hit by a lorry insured with the 3rd respondent insurance company. Therefore, the claim petition.

2. On enquiry, by an award dated 20.10.1992, the Tribunal found that the lorry was driven rashly and negligently and awarded a sum of Rs.2,09,120/-, payable by the 3rd respondent herein.

3. Aggrieved over the same, the 3rd respondent, M/s.New India Assurance Company Limited, Kottayam District, Kerala State and others preferred appeals in CMA.Nos.732 to 734 of 1993. On contest, this Court by order dated 16.12.1999, determined 50% liability on the 3rd

respondent-Insurance Company and remanded the matter back for determination of balance 50% liability. On remand, the insurer, the owner and the driver of the Maruthi van were impleaded as parties namely, R4, R5 and R6. Thereafter, the Tribunal by order dated 5.10.2001 found that the lorry was responsible for the accident as there was no evidence against the driver of the Maruthi Van and confirmed the original award. Further, the Tribunal observed that 50% as fastened by the High Court alone is enough, since it was not possible to fix 50% liability on the driver of the Maruthi Van, as there was no evidence. Aggrieved over the said award, the present appeal has been preferred by the claimants.

4. Heard Mrs.G.Sasee Devi, learned counsel appearing for the appellants, Mr.K.Padmanabhan, learned counsel appearing for the 2nd and 3rd respondents and Mr.S.Manohar, learned counsel appearing for the 4th respondent-Insurance Company.

5. It is disheartening to note that for getting compensation, the claimants have come down to Chennai from Andrapradesh. A perusal of

the records would show that the Tribunal, as per the original award, fastened the liability on the driver of the lorry. However, the same was set aside by this Court by order dated 16.12.1999. The order of this court made it clear in paragraph 4 as follows:

> "4. I have therefore, no alternative other than to modify the award passed by the Tribunal in the respective petitions, by apportioning 50% on the appellants and 50% on the first respondent, who is the owner of the other vehicle which was involved in the accident. Unfortunately, the Insurance Company with which the vehicle belonging to the first respondent was insured was not made a party in the several M.C.O.Ps. The proper course, therefore, will be to confirm the awards passed by the Tribunal, to the extent of 50% as payable by the appellants and to decide about the payment of balance 50%, all these three appeals to remit them back to the tribunal. Accordingly, the awards are confirmed but the liability of the appellant is reduced to 50%. As regards the balnace, the matters are remitted to the Tribunal.

Paragraph-6 of the order of this Court is very much relevant to note the scope of the remand and the same is usefully extracted as follows:

> " The Tribunal will take up the matters afresh with regard to 50% of the liability and decide as to the person or persons, who will have to bear the said liability. It is open to the parties to adduce the necessary evidence before the Tribunal. The Tribunal has to decide the matters within the period of six months. The first respondent or the claimants shall file necessary applications for impleading the other Insurance Company, before the Tribunal."

6. It is evident from the above, 50% liability was already decided by this Court and fixed on the 3rd respondent herein. The remand was made not to fix liability on the 4th respondent but it was kept open to decide as to whether the 3rd respondent is liable or the 4th respondent is liable to pay. After remand, the Tribunal found that there was no evidence available to fix liability on the Maruthi Van insured with the 4th respondent-Insurance Company. Therefore, when there was no negligence on the part of the Maruthi Van, it has to be decided that the accident occurred due to the negligent driving of the lorry, thus fixing 100% liability on the 3rd respondent Insurance Company. That apart, a perusal of the records would show, particularly Ex.P5, FIR and Ex.P6,

Charge sheet, that they were only filed against the driver of the lorry. Therefore, the entire liability has to be fastened on the 3rd respondent with whom the lorry was insured and the 3rd respondent alone is liable to pay the award amount.

7. Mr.K.Padmanabhan, learned counsel appearing for respondents 2 and 3 would rely upon a judgement of this Court in ***Konappa Mudaliar vs. Kusalaru alias Munuswami Pillai and others reported in 1970 AIR (Madras) 328*** to show that the issue which was decided by the Court earlier cannot be reopened and it will be a resjudicata. There is no quarrel with regard to the above dictum. However in this case, rejudicata cannot be applied, as this Court kept open the issue of fixation of 50% liability by the Tribunal. Only 50% liability was confirmed by this Court and after remand, the balance 50% was to be decided and there has been no order as to against whom it has to be fastened. Though the Tribunal taking into consideration, the absence of any evidence against the driver of the Maruthi Van, absolved the Maruthi Van driver, but failed to fix the entire liability on the 3rd respondent. If the accident was found to be due to 50% negligence on

the part of the lorry driver and there was no evidence against Maruthi Van driver, the Tribunal ought to have fixed the entire liability (100%) on on the lorry insured with the 3rd respondent. The Tribunal erroneously restricted the award fixed by this Court by the earlier order. Therefore, based on the earlier finding and also based on Ex.P5 FIR and Ex.P6 Charge sheet filed against the driver of the lorry, the Tribunal should have fixed the liability on the 3rd respondent. Therefore, this Court, by re-appreciating the facts and evidence on record in toto, re-determines the balance 50% negligence on the driver of the lorry apart from 50% negligence already determined against the lorry driver.

8. Learned counsel for respondents 2 and 3 would further argue that he wrote to the 3rd respondent on 30.04.2015 with regard to the additional document filed before this Court stating that the deceased would have drawn a sum of Rs. 13,023.02 if he had been alive as per the letter given by APCO citing similarly placed persons, as that of the deceased, who are, at present, working in the said Corporation. However, the 3rd respondent Insurance Company did not reply or give instructions with regard to the additional document. As the document

has been issued by the appropriate Government Corporation, stating that a Technical Assistant in the said Corporation, who is similarly placed like the deceased, is at present, drawing a sum of Rs.13,023.02, there is no scope for suspecting the said document. Therefore, the said document is received and accepted as Ex-P26. This Court has got power under Order 41 Rule 27 to receive additional documents. The reason to receive the said document at the appellate stage is that the accident occurred in the year 1990;the award was passed in 1992; appeals were filed before this Court in 1993 and the said appeals were disposed of remanding the matters on 16.12.1999 and thereafter, on remand, the award was passed on 05.10.2001. Till date, the parties are unable to enjoy the fruits of the award and therefore, for that reason only, the above document is received.

9. The other point, which Mr.Padmanabhan stresses is that when the original award was passed in 1992, the appeals were filed only by the 3rd respondent herein and there was no appeal with regard to the quantum by the claimants. Therefore, no amount can be enhanced by the Tribunal or by this Court, pursuant to the order of remand passed by

this Court in the appeals filed by the 3rd respondent questioning the liability. Therefore, he would submit that the claimants are precluded from seeking enhancement.

10. The next point argued by Mr. Padmanabhan is with regard to the quantum pointing out that in 1992, when there was no appeal with regard to the quantum by the claimants, they cannot now seek enhancement.

11. However, the additional document, which has been received by this Court would show that the deceased would have drawn more amount and therefore, this Court is duty bound to look into the matter and determine the compensation payable to the claimants afresh. The future prospects of a young person has to be taken into consideration while deciding the compensation based on the dictum of the Honourable Apex Court in ***Sarla Verma's case (2009 (2) TN MAC 1), Santosh Devi 's case (2012 6 SCC 421) and Rajesh's case (2013 (3) CTC 883).*** In the light of the judgment of the Honourable Supreme Court, if the additional document is taken into consideration, the compenstion is liable to be enhanced and

accordingly enhanced.

12. To determine the monthly income of the first appellant's husband, the salary drawn by the first respondent's husband, namely in the year 1990, namely, Rs.1890/- should be added with the present amount which is being drawn by a Technical Officer, who was working with the first appellant's husband. His present salary is Rs.13023.02 as on 2007. Both the figures have to be added together and divided by two and the average is to be taken as monthly income of the deceased. Accordingly, the monthly income of the deceased is calculated as follows:

Monthly Income	::	Rs.1890/- + Rs.13,023.02/-
	::	Rs.14,913 /2
	::	Rs.7,456.5/-

13. The size of the family is three. Therefore, 1/3rd is required to be deducted towards "personal expenses" of the deceased namely Rs.7456.5/- (-) Rs.2485.5/- = Rs.4971 (Monthly contribution of the deceased to his family). Taking into consideration, the judgement of the

Hon'ble Apex Court in Smt. ***Sarla verma and others vs. Delhi Transport Corporation and another*** reported in ***2009 6 SCC 121***, this Court adopts multiplier-16, as per the age of the deceased and the “loss of income” is calculated as follows:

Loss of Income = Rs.4971 X 12 X 16= Rs.9,54,432/-

14. The age of the first appellant, at the time of accident, was 24 years. For the reasons best known to the Tribunal, no amount was awarded towards “Loss of Consortium”. As per the judgement of the Hon'ble Supreme Court in ***Rajesh & others vs. Rajbir Singh & others*** reported in ***2013 (3) CTC 883***, Rs.1,00,000/- has to be awarded towards “Loss of Consortium”. Accordingly Rs.1,00,000/- is awarded towards “Loss of Consortium”. The age of the 2nd and 3rd appellants were 5years and 3years at the time of accident. Therefore, appellants 2 and 3 are awarded Rs.75,000/- each towards “Loss of love and affection and guidance” of their father through out their lives. Since no amount was awarded towards “Transportation Charges” and “Funeral Expenses”, Rs.25,000/- is awarded under each head. The sum of Rs.5000/- awarded towards “Loss of Expectation of Life” is confirmed. A sum of Rs.5000/- is

awarded towards “Damages to clothes”. Totally, a sum of Rs.12,64,432/- rounded off to Rs.12,50,000/- is payable as compensation. The rate of interest awarded by the Tribunal at 15% per annum is confirmed only in respect of the award passed by the Tribunal. The enhanced amount shall carry interest at 7.5% per annum. The 3rd respondent is directed to deposit the entire amount, as per the modified award passed by this Court, along with interest and costs, after deducting the amount if any already deposited, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, as appellants 2 and 3 would have attained majority by now, the appellants are permitted to withdraw their respective shares, as per the apportionment of the Tribunal, within a period of two weeks thereafter. The appellants shall pay additional court-fee for the enhanced amount. No costs.

11.06.2015

Internet :Yes/No
Index :Yes/No
vk/nv

To
The MACT (Sub Court),Thirupur

N.KIRUBAKARAN,J.
vk/nv

Pre-Delivery Judgment in
C.M.A.No.1443 of 2002

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