

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.772 of 2013
& M.P.No.1 of 2013

The Divisional Manager,
M/s.Iffco Tokio General Insurance Co. Ltd.,
IFGI-Strategic Business Unit: Chennai,
New No.28, 2nd Floor, North Usman Road,
T.Nagar, Chennai-600 017. ... Appellant/R2

Vs.

1. Mani
2. Arunadevi
3. Gayathridevi
4. Lakshmidevi
5. M.Munian

...Respondents/Claimants 1 to 4 & R1

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 07.09.2011 made in M.C.O.P.No.106 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District and Fast Track Court, Tiruppattur at Vellore District.

For appellant : Mr.M.B.Raghavan
For respondents : Mr.V.Parivallal 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 07.09.2011 made in M.C.O.P.No.106 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District and Fast Track Court, Tiruppattur at Vellore District.

2. The first respondent herein is the husband and the respondents 2 to 4 are the daughters of the deceased Amudha. On 01.05.2009 at about 6.45 p.m., the driver of the vehicle TN-23-AB-7327 Piaggio Auto, drove it in a rash and negligent manner towards Tiruppattur-Vaniyambadi Main Road, near Shanmuga Thirumana Mandabam and hit behind TN-23-U-7733 Hero Honda Motor Cycle, driven by the first respondent-husband, which was proceeding on the same direction at Vaniyambadi and due to the above accident, the deceased Amudha (wife), who was the pillion-rider in the said Motor Cycle, sustained grievous head injuries. Immediately, the deceased was taken to nearby Government Hospital and subsequently, she died. Hence, the respondents 1 to 4/claimants have filed the claim petition before the Tribunal claiming compensation of Rs.50,00,000/-.

3. Before the Tribunal, the fifth respondent, who is the owner of the vehicle, remained ex-parte. Upon hearing the learned counsel appearing for the parties and on a perusal of the oral and documentary evidence, the Tribunal awarded a compensation of Rs.27,25,234/- with interest at 7.5% per annum from the date of claim petition till the date of payment. Challenging the same, the Insurance Company has filed the present appeal.

4. Though the learned counsel for the appellant has raised a serious plea on the aspect of liability, looking into the oral and documentary evidence adduced before the Tribunal, he submitted that he is not seriously contesting the liability aspect before this Court. However, he urged before this Court on the quantum of compensation and the multiplier adopted by the Tribunal and submitted that in the absence of any proof before the Tribunal in respect of the age of the deceased, the Tribunal is not right in applying the multiplier "13" and the appropriate multiplier to be adopted in this case is "11".

5. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 4 and perused the records.

6. It is seen that in the fatal accident that took place on 01.05.2009, the Amudha died, leaving behind her husband, the first respondent herein and the daughters, who are the respondents 2 to 4 herein. Before the Tribunal, on behalf of the respondents 1 to 4/claimants, P.W.1 Mani, the husband of the deceased deposed with regard to the accident, employment and the income of the deceased. The official of the organisation where the deceased was employed, was examined as P.W.2. The following documents were marked on the side of the claimants:

(i) Ex.P-1 - Copy of the F.I.R;
(ii) Ex.P-2 - Wound Certificate issued by the Tiruppatur Government Hospital;
(iii) Ex.P-3 - Death report;
(iv) Ex.P-4 - Copy of the Post-mortem report;
(v) Ex.P-5 - Death Certificate;
(vi) Ex.P-6 - Copy of the insurance policy of the vehicle in accident;
(vii) Ex.P-7 - Copy of the Motor Vehicle Inspection Report of the vehicle in accident;
(viii) Ex.P-8 - Registration Certificate of the vehicle in accident;
(ix) Ex.P-9 - Copy of the permit of the vehicle in accident;
(x) Ex.P-10 - Certificate pertaining to the change of ownership of the vehicle in accident;
(xi) Ex.P-11 - Copy of the Motor Vehicle Inspection Report of the vehicle of the first respondent herein;
(xii) Ex.P-12 - Copy of the first respondent's Driving Licence;
(xiii) Ex.P-13 - Copy of the Registration Certificate of the vehicle of the first respondent herein;
(xiv) Ex.P-14 - Salary Certificate of the deceased;
(xv) Ex.P-15 - Medical Bills for Rs.23,550/-;
(xvi) Ex.P-16 - Receipt for rented car and
(xvii) Ex.P-17 - Receipt for service of the two-wheeler of the first respondent herein.

7. On behalf of the appellant-Insurance Company, R.W.1 Packiaraj, who is the Relationship Executive Officer and R.W.2 Kamalakannan, who is the Junior Assistant, were examined. The following documents were marked on their side:

(i) Ex.R-1 - Copy of the Insurance Policy of the vehicle in accident;
(ii) Ex.R-2 - Investigating Report;
(iii) Ex.R-3 - Copy of the Motor Vehicle Inspection Report of the vehicle in accident;
(iv) Ex.R-4 - Copy of the Learner's Licence (LLR) of Auto Driver Sathishkumar;
(v) Ex.R-5 - Letter of the Motor Vehicle Inspector and
(vi) Ex.R-6 - Copy of the Certificate of the Regional Transport Officer.

8. The Tribunal, on a consideration of the above oral and documentary evidence of either side, fixed the liability against the driver of the vehicle in question, which was owned by the fifth respondent herein and thereby, awarded a compensation of Rs.27,25,234/- under the following heads:

Sl. No.	Head under which the amount was awarded	Award amount in Rs.
1	Loss of dependency	26,73,684
2	Medical expenses	23,550
3	Loss of consortium	20,000
4	Funeral expenses	5,000
5	Transport expenses	3,000
	Total amount awarded by the Tribunal	27,25,234

9. Mr.M.B.Raghavan, learned counsel appearing for the appellant-Insurance Company focussed his arguments mainly with regard to the proof of the age of the deceased, which the Tribunal has failed to take into consideration.

10. It is seen that in respect of the deceased-employee (Amudha) , who was working in an organisation, the Salary Certificate and other employment particulars which are the material documents, would be the factor showing the proof of her age, but the Tribunal has taken into consideration only Ex.P-4 Post-mortem Certificate and fixed the age of the deceased as 50 years and determined the compensation. It may be for a layman to come to such a conclusion, in the absence of any material to prove the age of the deceased. The deceased-employee was drawing salary and the claimants are having necessary material documents in support thereof, but they failed to produce the same before the Tribunal. Hence, the Tribunal is not correct in determining the age of the deceased only based on Ex.P-4 Post-mortem Certificate. However, the learned counsel for the appellant-Insurance Company submitted that the Tribunal calculated the age of the deceased as 50 years and wrongly adopted the multiplier "13", but the appropriate multiplier to be adopted in this case is "11". Learned counsel for the appellant suggested that instead of 1/3 deduction towards personal expenses, it could be $\frac{1}{4}$ in this case. Therefore, the loss of dependency is arrived at by reducing the amount awarded by the Tribunal from Rs.26,73,684/- to Rs.25,45,136/- { (Rs.3,08,501 - $\frac{1}{4}$) x 11}, by adopting the multiplier "11", based on the income of the deceased fixed by the Tribunal at Rs.3,08,501/- per annum.

11. Insofar as the amount awarded by the Tribunal at Rs.23,550/- towards the medical expenses, the same is hereby confirmed. It is seen that the Tribunal has awarded a sum of Rs.20,000/- towards loss of consortium to the husband and no amount was awarded by the

Tribunal for loss of love and affection to the daughters. Taking into consideration the age of the husband and the daughters of the deceased, who are the respondents 1 to 4 herein respectively and as the date of accident was 01.05.2009 and also taking into account the inflation and cost-factor, the loss of consortium awarded by the Tribunal is hereby enhanced from Rs.20,000/- to Rs.50,000/- and for loss of love and affection, a sum of Rs.50,000/- is hereby awarded. The amount awarded by the Tribunal towards funeral expenses at Rs.5,000/- is hereby enhanced to Rs.10,000/- and the amount awarded by the Tribunal towards transport expenses at Rs.3,000/- is hereby confirmed. Thus, the total amount of compensation awarded by the Tribunal is reduced from Rs.27,25,234/- to Rs.26,81,686/-, which is rounded off to Rs.26,81,700/-. The interest at 7.5% awarded by the Tribunal is hereby confirmed.

12. 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	Loss of dependency	26,73,684	25,45,136
2	Medical expenses	23,550	23,550
3	Loss of consortium	20,000	50,000
4	Loss of love and affection	-	50,000
5	Funeral expenses	5,000	10,000
6	Transport expenses	3,000	3000
	Total amount awarded by the Tribunal	27,25,234	26,81,686 rounded off to 26,81,700

13. Accordingly, the appeal is allowed in part. The award of the Tribunal is hereby reduced from Rs.27,25,234/- to Rs.26,81,700/- (Rupees twenty six lakhs eighty one thousand and seven hundred only) with 7.5% interest per annum from the date of claim petition till the date of payment by the appellant-Insurance Company to the claimants (respondents 1 to 4 herein). The said amount with interest accrued as on date, shall be shared by the claimants equally. The said amount

shall be paid by the appellant-Insurance Company to the claimants directly and the same shall be recovered by the appellant-Insurance Company separately from the fifth respondent (owner of the vehicle) without filing any application. The amount(s), if any lying in Bank Deposit / Court Deposit shall be disbursed to the claimants directly by the Tribunal, without insisting on any formal application and the same shall be adjusted from the total amount now awarded as above and the remaining amount shall be paid directly by the appellant-Insurance Company to the claimants. The amount, if any already withdrawn by the claimants during the pendency of this appeal, shall also be adjusted from the total amount now awarded. No costs. The Miscellaneous Petition is closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

Copy to

- 1.The Motor Accidents Claims Tribunal
(Addl. District-cum-Fast Track Court),
Tiruppattur, Vellore District.
 - 2.Record Keeper, V.R. Section, High Court, Madras.
- +1cc to Mr.M.B.Raghavan, Advocate, S.R.No.1760
+2cc to Mr.V.Parivallal, Advocate, S.R.No.1167

C.M.A.No.772 of 2013

KSJ(co)
EU 25.2.15

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