

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.11.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2471 of 2016 and  
CMP.No.17520 of 2016

The Branch Manager  
United India Insurance Co. Ltd.  
Aurovindo Road  
Block-19, Neyveli-3. ..Appellant/2nd  
Respondent

Versus

1.Selvaraj ..Respondents/Petitioners  
2.Rukumani ..Respondents/Ist Respondent  
3.Rubesh ..Respondents/3rd Respondent  
4.Veeramani

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.03.2010 made in M.C.O.P.No.11 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Neyveli.

For Appellant : Mr.S.Arunkumar

For R2 : Mr.S.Kadarkarai

J U D G M E N T

The United India Insurance Company Limited has filed the present Civil Miscellaneous Appeal, challenging the correctness of the impugned award dated 29.03.2010 made in M.C.O.P.No.11 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Neyveli.

2.It is the case of death of the bread winner of the claimants family. Learned Tribunal accepting the claim petition, has awarded a sum of Rs.4,37,000/- as against the claim of Rs.10,00,000/- with interest at the rate of 7.5% per annum from 15.03.2006 to 29.03.2010.

3.Learned counsel appearing for the Insurance Company/appellant assailing the impugned order, has made his

contentions on two grounds. Firstly, the issue on the point of negligence, raised by the Insurance Company, was not properly dealt with by the learned Tribunal. He would submit that in the F.I.R., lodged by Roopesh/owner of another vehicle, it was clearly mentioned that the deceased Ravi was the tortfeasor. Even as per the FIR, the learned Tribunal ought not to have found that the negligence in causing the accident was due to the rash driving of the said Roopesh. Secondly, challenging the quantum of compensation, learned counsel for the appellant-Insurance Company would submit that the deceased was aged about 28 years on the date of accident namely, 05.06.2003 and he was a bachelor. While so, the learned Tribunal, as per the law then existed, ought to have fixed the multiplier on the basis of the age of the father of the deceased. In the present case, father of the deceased namely, Selvaraj was aged about 67 years. While so, the multiplier would be '5'. Even if the age of the mother of the deceased namely, Rukamani, is taken, the multiplier would be '8'. But in the present case, when the learned Tribunal has chosen the age of the deceased, has wrongly adopted the multiplier '18'. Therefore, the quantum of compensation has been enormously fixed and on this score, impugned order is liable to be interfered with.

4. Heard the learned counsel for the Appellant-Insurance Company and also perused the materials available on record.

5. This Court hardly finds any justification on these points. The reason is that the accident took place on 05.06.2003. The deceased Ravi was working as a rigger (driller) for digging bore well at Babu Engineering Corporation, Neyveli. On the date of accident, while he was proceeding at about 11.00 p.m. from Mandarakuppam to Town ship along with one Sathish as a pillion rider in a Kawasaki Bajaj motor cycle bearing Registration No.TN-31-Y-1345, behind the said vehicle, one Rajdoot motor cycle, which was driven by Roopesh with one Jayakumar as a pillion rider, bearing Registration No.TN-31-8707, came and dashed against the deceased vehicle. Due to the sudden hit to the Bajaj motor cycle, both the deceased Ravi and Satish were thrown out of the motor cycle and fell down and consequently, deceased Ravi sustained severe head injury. Although, the deceased Ravi was taken to NLC Government Hospital by the said Jayakumar, the pillion rider, who came in the Rajdoot motor cycle, unfortunately, in the hospital, when the Doctor checked, he found that the deceased Ravi succumbed to his injuries on the way to hospital. Even if the contention of the appellant-Insurance Company is taken that the FIR registered on the basis of the complaint given by Roopesh alleging rash and negligent driving caused by the deceased while driving his vehicle, invited the accident by dashing against the electrical post erected on the road side, it has not been properly canvassed by the Insurance Company before the learned Tribunal

by examining the said Roopesh. Further, the learned Tribunal has also rightly come to the conclusion that as per the F.I.R., the deceased Ravi was driving his vehicle at about 11.00 p.m. on 05.06.2003 from Mandarakuppam to Township in a rash and negligent manner and dashed against the electrical post and fell down. But it is not known as to why Roopesh vehicle also fell down. When there is no reason or justification shown in the F.I.R., the learned Tribunal has rightly come to the conclusion that the deceased vehicle was dashed by Rajdhoot motor cycle driven by Roopesh. Therefore, when the Insurance Company has miserably failed to examine the author of the F.I.R., the complainant/Roopesh, with regard to negligence, the findings made by the learned Tribunal, in my considered opinion, is unassailable.

6. Secondly, learned counsel for the appellant-Insurance Company contended that the learned Tribunal has wrongly applied the multiplier. It is seen that at the time of accident namely, on 05.06.2003, the deceased Ravi was aged about 28 years and the claimants have lost their bread winner. The learned Tribunal, in the absence of any documentary evidence to prove the monthly income of the deceased, while fixing a meagre sum of Rs.3,000/- per month as notional income, has deducted 1/3<sup>rd</sup> of the income towards his personal expenses. Even Rs.3,000/- as fixed by the learned Tribunal is taken as a notional monthly income of the deceased, as per the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma V. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), the deceased being a bachelor, 50% has to be deducted towards his personal expenses. In the claim petition, the claimants have stated that the age of the deceased was 26 years at the time of accident and the learned Tribunal has fixed the age of deceased at 28 years and adopted the multiplier '18'. Therefore, the Tribunal arrived at Rs.4,32,000/- as loss of dependency. Even as per the claim petition, the deceased comes under the age group 25-30, the learned Tribunal ought to have adopted the right multiplier '17' instead of '18', as per the above said case. Therefore, the learned Tribunal has committed an error in adopting the multiplier. In addition to this, the learned Tribunal had awarded a sum of Rs.5,000/- towards funeral expenses, which is also meagre in the considered view of this Court. Further, the Tribunal has not awarded any amount under the head of loss of love and affection. Since the claimants lost their bread winner, the learned Tribunal ought to have awarded some amount under the head of loss of love and affection. In total, the Tribunal has awarded a sum of Rs.4,37,000/- as just and reasonable compensation to the claimants, which does not warrant inference in the considered opinion of this Court. Therefore, the appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed.

7.It is stated by the learned counsel for the appellant-Insurance Company that the entire award amount has been deposited. Therefore, the second respondent/mother of the deceased Ravi is permitted to withdraw the entire award amount with accrued interest thereon, by filing appropriate petition before the Tribunal, since the first respondent/husband of the second respondent, Selvaraj died during the pendency of the appeal. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,  
Sub-Court, Neyveli.

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

+1 cc to Mr.S.Arunkumar Advocate sr 64062/16

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C.M.A. No.2471 of 2016

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