

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2016
DELIVERED ON : 06.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.799 of 2015

M/s.New India Assurance Co. Ltd.,
No.45, Moore Street,
V Floor, Chennai 600 001.

... Appellant

vs.

1. P.Arunachalam
2. Minor N.Meha
3. Minor N.Prithika
(minors 2 & 3 rep. by their
paternal grandfather and N.F. 1st respondent)
4. Tmt. Rajeswari
W/o.P.Arunachalam
5. A.Natarajan
S/o.P.Arunachalam

.... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10.10.2014 passed in M.C.O.P.No.2357 of 2013 on the file of the Motor Accidents Claims Tribunal (Small Causes Court, II Judge), Chennai.

For Appellant : Mr.J.Chandran
For Respondents 1 to 4 : Mr.N.M.Muthurajan
For 5th Respondent : No appearance

J U D G M E N T

S.VAIDYANATHAN, J.

Challenging the judgment and decree dated 10.10.2014 passed by the Motor Accidents Claims Tribunal (Small Causes Court - II Judge) in M.C.O.P.No.2357 of 2013, the appellant Insurance Company has come up with this appeal.

2. In this case, the husband of the deceased is the driver of the offending vehicle. The accident had occurred on

09.11.2012, about 8.45 hours, when the deceased viz. Vijayalakshmi was travelling as a pillion rider in the Motorcycle bearing Registration No.TN 07 BR 1141, driven by her husband/the 5th respondent herein, while on the way from their residence to a Temple, along 7th Main Road, Dhandeswaran Nagar, Velachery, near the junction of 3rd Avenue. It so occurred, when the 5th respondent drove the vehicle in a rash and negligent manner and turned towards his right, without noticing the proper sitting posture of the pillion rider, thereby, the pillion rider fell down, sustained fatal injuries and died on the same day. The claimants 2 and 3 are the minor daughters of the deceased and claimants 1 and 4 are the father-in-law and mother-in-law of the deceased, respectively. Since the husband of the deceased drove the offending vehicle and caused the accident, he has been arrayed as the owner and driver of the vehicle in the claim petition filed under Section 166 and Rule 3 of the Motor Vehicles Act. The claimants have sought a sum of Rs.24,00,000/- as compensation for the death of the deceased.

3. The appellant Insurance Company resisted the claim petition before the Tribunal, vehemently contending that they are not liable to compensate the claimants, as the accident had occurred only due to the rash and negligent driving of the husband of the deceased. Further, according to them, the amount of compensation claimed is highly excessive.

4. Before the Tribunal, on the side of the claimants, two witnesses were examined. The father-in-law of the deceased, viz. Mr.P.Arunachalam was examined as P.W.1 and one Mr.Sivakumar, an eye-witness to the accident, who is none other than the brother of the deceased, was examined as P.W.2. Exhibits P1 to P13 were marked in support of their claim. On behalf of the Insurance Company, one Mr.A.Stephen was examined as R.W.1 and two exhibits vide Exs.R1 and R2 were marked. Details of the Exhibits would run thus:

Ex.P1	Copy of F.I.R. In Cr.No.672/S3/2012 registered at J3-Guindy Police Station
Ex.P2	Postmortem Certificate
Ex.P3	Death Report
Ex.P4	Medical Prescriptions
Ex.P5	Medical Bills
Ex.P6	Death Summary
Ex.P7	Inpatient Bill
Ex.P8	Passport of the deceased
Ex.P9	Legal Heir Certificate

Ex.P1	Copy of F.I.R. In Cr.No.672/S3/2012 registered at J3-Guindy Police Station
Ex.P10	Copy of Income Tax Returns
Ex.P11	Copy of Income Tax Returns
Ex.P12	Copy of Income Tax Returns
Ex.P13	Copy of Income Tax Returns
Ex.R1	Authorisation Letter issued to R.W.1
Ex.R2	Copy of Insurance Policy, amended as per order dated 22.01.2015 of this Court in Memo S.R.No.4020/2015

5. On consideration of the available oral and documentary evidence, the Tribunal, held that the accident had occurred due to the rash and negligent driving of the driver of the two-wheeler, i.e. the husband of the deceased. Further, on the question as to whether the Insurer of the offending vehicle is liable to compensate the claimants since the deceased is not a third party to the vehicle, the Tribunal, placing reliance on a judgment of this Court in the case of New India Assurance Co. Ltd. vs. Nallasivam and others (2014 ACJ 1595) and also relying upon Ex.R2 - Insurance Policy, held that the appellant Insurance Company is liable to compensate the claimants and awarded a sum of Rs.19,01,000/- towards the death of the deceased. The break-up details of the compensation awarded by the Tribunal, are as follows:

S.No.	Heads	Compensation awarded by the Tribunal
1	Loss of income	Rs. 14,40,000/-
2	Funeral expenses	Rs. 25,000/-
3	Loss of Consortium	Rs. 1,00,000/-
4	Loss of Love and Affection	Rs. 2,00,000/-
5	Medical Bills	Rs. 36,000/-
6	Loss of Estate	Rs. 1,00,000/-
Total		Rs. 19,01,000/-

6. Challenging their liability to compensate the claimants as also the quantum of compensation awarded by the Tribunal, the appellant Insurance Company is before this Court.

7. Learned counsel appearing for the appellant/Insurance Company would vehemently contend that when the alleged accident is only due to the accidental fall of the deceased from the two-wheeler even as per the FIR vide Ex.P1 and the evidence of

P.W.2, the claim petition filed under Section 166 of the Motor Vehicles Act is not maintainable and it ought to have been dismissed by the Tribunal. He would further contend that the Tribunal ought to have reduced the compensation under Section 140 of the Motor Vehicles Act, as the accident occurred only due to the negligence of the deceased. Questioning the fixation of monthly income of the deceased, learned counsel would submit that the Tribunal has arrived compensation purely on its discretion, rather than relying on the oral and documentary evidence.

8. On the other hand, learned counsel appearing for respondents 1 to 4/claimants would submit that the compensation awarded by the Tribunal is not on the higher side. To substantiate his stand, he has relied upon the following :

(i) a Supreme Court decision in the case of Arun Kumar Agrawal and another vs. National Insurance Co. Ltd. And others (2010 ACJ 2161)

"8. Learned counsel appearing for the respondents supported the award of the Tribunal and the judgment of the High Court and argued that criteria laid down in Section 163A of the Act cannot be invoked for awarding higher compensation to the appellants because they had filed petition under Section 166 of the Act. Learned counsel then submitted that no tangible evidence was produced before the Tribunal to show that the deceased used to earn Rs.50,000/- per annum from paintings and handicrafts and argued that the said amount was rightly not taken into consideration for the purpose of determination of the compensation payable to the appellants.

32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of

compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others (supra), U.P. S.R.T.C. v. Trilok Chandra, Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another and also take guidance from the judgment in Lata Wadhwa's case. The approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker."

(ii) yet another Supreme Court decision in the case of Puttamma and others vs. K.L.Narayana Reddy and another (2014 ACJ 526)

"53. In view of finding recorded above, we hold that Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.

56. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs.1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher.

Such amount is to be paid if any application is filed under Section 163A of the Act, 1988.

(iii) a decision of this Court in the case of New India Assurance Co. Ltd. vs. K.Jothilingam and others (2011 ACJ 333)

"23. Now we come to the question of quantum. We now extract the following paragraphs from the judgment of the Supreme Court in Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. (Manu/SC/0606/2009) which enlightens us in this regard.

"8. The lack of uniformity and consistency in awarding compensation has been a matter of grave concern. Every district has one or more Motor Accident Claims Tribunal/s. If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system. We may refer to the following observations in Trilok Chandra:

We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the awards made by Tribunals and Courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realized that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused."

9. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the decisions relied on by them and the material documents available on record.

10. Admittedly, the 5th respondent herein, who was set exparte before the Tribunal, is responsible for the accident, as corroborated by the eye-witness, P.W.2, who is none other than the brother of the deceased. Though the 5th respondent is the immediate legal heir of the deceased, since he is the tortfeasor, he has not made any claim for compensation. Now, the issues for consideration before us are (i) whether the Tribunal is right in fixing the liability to compensate the claimants on the appellant/Insurance Company and (ii) to what extent the minor claimants are liable to be compensated.

11. As regards the first issue before us, a perusal of Ex.R2 - Insurance Policy would show that a sum of Rs.357/- was collected towards Third Party Premium. Hence, we hold that the Tribunal is right in fixing the liability on the appellant Insurance Company to compensate the claimants.

12. Coming to the issue of quantum of compensation payable to the claimants, it is seen that the Tribunal has calculated compensation by invoking Section 163-A of the Motor Vehicles Act. Since the deceased is a housewife, one-third of the income of her husband is applied to calculate compensation towards loss of income. Though Section 163-A does not, in terms apply to cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependants of a non-earning member, i.e. housewife in the case on hand, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier. Moreover, the claimants have admitted in clause 23 of the claim petition that the deceased, at the time of accident, was not properly sitting in the motorcycle. There is no doubt that the accident in question resulting in the death of the deceased is only due to an "accidental fall". Also taking note of the contention raised by the appellant/Insurance Company that accidental fall will not attract Section 166 of the Motor Vehicles Act, this Court has no other option but to invoke Section 163-A to calculate compensation to the claimants.

13. Accordingly, relying upon the criteria specified in clause (6) of the Second Schedule, this Court fixes the annual income of the deceased at Rs.40,000/- and deducting one-third towards personal expenses, a sum of Rs.26,667/- is arrived as the annual contribution to her family. At the time of accident, the deceased was aged 36 years as could be seen from her Passport marked vide Ex.P8. Hence, applying the multiplier of '16' to the annual contribution of Rs.26,667/-, the compensation towards "loss of income" is arrived at a sum of Rs.4,26,672/- (Rs.26,667/- x '16'). Compensation under other heads viz.

"Funeral expenses", "Medical Bills" and "Loss of estate" are modified by this Court as tabulated below, as per the Second Schedule. In all, the compensation of Rs.19,01,000/- awarded by the Tribunal is modified and a sum of Rs.4,46,500/- (Rupees Four Lakhs Forty Six Thousand and Five Hundred only) is payable as compensation to the minor claimants. Interest awarded by the Tribunal at 7.5% per annum from the date of numbering the petition till the date of deposit, is confirmed.

S.No.	Heads	Compensation awarded by the Tribunal	Modified Compensation by this Court
1	Loss of income	Rs. 14,40,000/-	Rs. 4,26,672/-
2	Funeral expenses	Rs. 25,000/-	Rs. 2,000/-
3	Loss of Consortium	Rs. 1,00,000/-	---
4	Loss of Love and Affection	Rs. 2,00,000/-	---
5	Medical Bills	Rs. 36,000/-	Rs. 15,000/-
6	Loss of Estate	Rs. 1,00,000/-	Rs. 2,500/-
Total		Rs. 19,01,000/-	Rs. 4,46,172/- r/off to Rs.4,46,500/-

14. As held by the Tribunal, since the claimants 1 and 4 are the father-in-law and mother-in-law of the deceased, they are not entitled to compensation. The minor claimants 2 and 3 are entitled to equal share in the compensation awarded by this Court. If the appellant/Insurance Company has not deposited the entire amount, it is directed to deposit the compensation awarded by this Court, less the amount already deposited within a period of six (6) weeks from the date of receipt of a copy of this order.

सत्यमेव जयते

15. The proportionate share of the minor claimants 2 and 3 shall be deposited in any one of the Nationalised Banks initially under reinvestment scheme for a period of three years, renewable thereafter periodically and the interest accrued thereon shall be withdrawn by their natural guardian, once in three months, till they attain majority.

The Civil Miscellaneous Appeal is partly allowed with the above direction and observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
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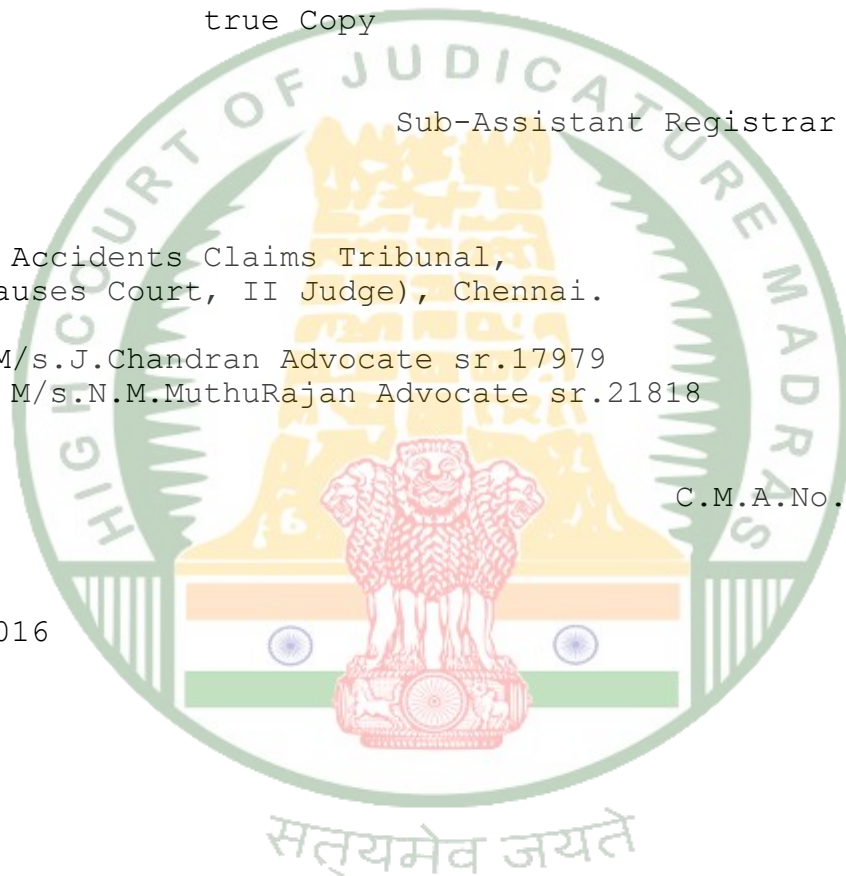
The Motor Accidents Claims Tribunal,
(Small Causes Court, II Judge), Chennai.

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