

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2016

CORAM:

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

Civil Miscellaneous Appeal No.842 of 2015

United India Insurance Co. Ltd.,
No.64, Armenian Street,
Parrys, Chennai 600 001. ... Appellant/R2

vs.

1. Nirmala
2. Minor Kanishka
Minor represented by her mother
and N.F. 1st respondent, Nirmala
3. S.Baskar ... Respondents/Claimants 1 & 2
and R1

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 04.09.2014 passed in M.C.O.P.No.3859 of 2011 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents 1 and 2 : Mr.K.Suryanarayanan

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Challenging the judgment and decree dated 04.09.2014 passed by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai in M.C.O.P.No.3859 of 2011, the Insurance Company has come up with this appeal.

2. This is a case of fatal. On 17.07.2011, at 10.45 p.m., when the deceased - B. Raju @ Raji was riding his motor cycle bearing Registration No.TN 05 AD 6934 at Paper Mills Road near Venus, opposite to Theethi Thottam 4th Street, Perambur from east to west direction, a motor cycle bearing Registration No.TN 09

AL 0144 belonging to the 3rd respondent herein came in the opposite direction in a rash and negligent manner and dashed against the deceased, thereby he sustained fatal injuries and died on 21.07.2011 in the hospital. Alleging that the rider of the motor cycle belonging to the 3rd respondent is responsible for the accident, the claimants, who are the wife and minor daughter of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation from the owner and Insurer of the offending vehicle.

3. The owner of the offending vehicle, i.e. the 3rd respondent herein remained *exparte* before the Tribunal. The Insurance Company resisted the claim petition on the ground that on the date of accident, the rider of the offending vehicle, i.e. the motor cycle bearing Registration No.TN 09 AL 0144 had no driving licence to drive the vehicle in question.

4. Before the Tribunal, on the side of the claimants, the wife of the deceased, Mrs.Nirmala was examined as P.W.1; one Mr.Raghavan, an eye-witness to the accident was examined as P.W.2 and Exhibits P1 to P7 were marked in support of the claim. On the side of the Insurance Company, one Mr.Elango, Sub-Inspector of Police, Traffic Investigation Admn, Chindadripet was examined as R.W.1; one Mr.N.Kanagaraj, Motor Vehicle Inspector, R.T.O., Chennai-North was examined as R.W.2; one Mr.P.Murugesan, Senior Assistant of the Insurance Company was examined as R.W.3 and Exhibits R1 to R10 were marked. Details of the Exhibits would run thus:

Exhibits marked on the side of the claimant:	
Ex.P1	Copy of F.I.R. In Crime No.374/AS1/2011 registered at K4-Anna Nagar Traffic Investigation
Ex.P2	Postmortem Certificate
Ex.P3	Death Report
Ex.P4	Death Certificate
Ex.P5	Legal Heir Certificate
Ex.P6	Copy of Doctor of Medicine (Acupuncture) and Registration Certificates
Ex.P7	Copy of Driving Licence of the petitioner
Exhibits marked on the side of the Insurance Company:	
Ex.R1	Copy of Rough Sketch
Ex.R2	Copy of Charge Sheet against the rider

Ex.R3	Copy of Charge Sheet against the owner of the vehicle
Ex.R4	Copy of M.V.I. Report for the 1 st respondent's vehicle
Ex.R5	Copy of M.V.I. Report for deceased vehicle
Ex.R6	Copy of M.V.I. Report for deceased vehicle
Ex.R7	Copy of Check Report for deceased vehicle
Ex.R8	Letter from R.T.O., Chennai - 99
Ex.R9	Copy of M.V.I. Report for deceased vehicle
Ex.R10	Insurance Policy Copy

5. On consideration of the available oral and documentary evidence, the Tribunal, observing that since the driver of the 3rd respondent's motor cycle did not possess valid Driving Licence at the time of accident, the Policy Conditions stands violated, held that the deceased died due to the injuries sustained in the accident. It further held that since the insurer breached specified conditions of Policy, the insurer though not liable so far as third party is concerned, it is initially liable to pay compensation to the claimants and then recover the same from the owner of the offending vehicle, i.e. the 3rd respondent herein. Taking into account, the age and avocation of the deceased, the Tribunal awarded a sum of Rs.30,29,104/- as compensation to the claimants. Details of the award are as follows:

S.No.	Heads	Compensation awarded by the Tribunal
1	Loss of Income (Rs.26,000/- x 1/3 x 12 x 13)	Rs. 27,04,104/-
2	Loss of consortium	Rs. 1,00,000/-
3	Funeral expenses	Rs. 25,000/-
4	Loss of love and affection	Rs. 2,00,000/-
	Total	Rs. 30,29,104/-

6. Learned counsel for the appellant/Insurance Company vehemently contended that the award of the Tribunal is contrary to law and is liable to be set aside on the ground that though in the claim petition, a sum of Rs.10 lakhs was claimed as compensation, the Tribunal has awarded an exorbitant award of Rs.30,29,104/-, which is triple the amount of claim. It is his

further contention that the Tribunal erred in taking the monthly income of the deceased as Rs.20,000/-, by just relying on Ex.P6. As regards the avocation of the deceased, he submitted that while ascertaining the validity of the Certificate marked vide Ex.P6, they got to know from the written reply dated 22.07.2015 from the Tamil Nadu Board of Indian Medicine, Arumbakkam, Chennai 600 106, clarifying that the deceased B.Raju's Certificate said to be issued by Indian Institute of Alternative Medicines, Kolkata is not a recognised one. Further, the Board registers only those who study 5 ½ years Bachelor of Naturopathy and Yogic Sciences (BNYS) Course. Hence, it is his contention that the claimants, with an ulterior motive to make unlawful gain, have wilfully suppressed the truth.

7. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

8. In this case, the deceased has left behind his wife and minor daughter as his legal heirs. As per the averments of his wife, who is the 1st claimant, the deceased was a Acupuncture Doctor. To support his avocation, she has marked a copy of the Doctor of Medicine (Acupuncture) and Registration Certificates as Ex.P6. A copy of the Driving Licence of the deceased marked as Ex.P7 goes to show that he was 48 years old at the time of accident. Though, there is proof in support of the avocation of the deceased, there is no proof in support of his income. In the absence of any proof to support his income, the Tribunal ought not to have fixed his monthly income at Rs.20,000/-.

9. Normally, in the absence of sufficient proof to support the income of the deceased or the claimant, placing reliance on the Apex Court decision in the case of Syed Sadiq vs. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735, this Court fixes the notional monthly income at Rs.6,500/- and increases the same taking note of the date of accident and the escalating price index. In the case on hand, though it is claimed that the deceased was a Acupuncture Doctor, the same cannot be accepted by this Court, as the Certificate marked vide Ex.P6 is not a valid one. Moreover, as there is no proof to support his income, this Court, placing reliance on the decision in Syed Sadiq's case and also taking note of the escalating prices, fixes a sum of Rs.7,500/- as the monthly income of the deceased. Adding 30% of the said income towards future prospects, then deducting one-third towards the personal expenses of the deceased and adopting the multiplier of '13', the revised compensation towards "loss of income" is arrived at a sum of Rs.10,14,000/- (Rs.7500/- + Rs.2250/- (30% of Rs.7500/-) - $\frac{1}{3} \times 12 \times '13'$).

10. As regards the compensation of a sum of Rs.2,00,000/- awarded under the head 'loss of love and affection', this Court modifies the same to a sum of Rs.1,00,000/-. Compensation granted under the heads 'Loss of Consortium' and 'Funeral expenses', in view of this Court, are just and reasonable and the same are confirmed.

11. Therefore, the sum of Rs.30,29,104/- awarded by the Tribunal as compensation is modified and respondents 1 and 2/claimants are entitled to a sum of Rs.12,39,000/- (Rupees Twelve Lakhs Thirty Nine Thousand only) as revised compensation, as per the ratio fixed by the Tribunal. Interest awarded by the Tribunal at 7.5% per annum from the date of filing the petition till the date of deposit along with proportionate costs is confirmed. Break-up details of the revised award are tabulated below:

S.No.	Heads	Compensation awarded by the Tribunal	Revised award of this Court
1	Loss of Income	Rs. 27,04,104/-	Rs.10,14,000/-
2	Loss of consortium	Rs. 1,00,000/-	Rs. 1,00,000/-
3	Funeral expenses	Rs. 25,000/-	Rs. 25,000/-
4	Loss of love and affection	Rs. 2,00,000/-	Rs. 1,00,000/-
	Total	Rs. 30,29,104/-	Rs.12,39,000/-

12. The revised compensation awarded by this Court along with interest and proportionate costs shall be deposited by the appellant/Insurance Company to the credit of M.C.O.P.No.3859 of 2011, less the amount already deposited within a period of six (6) weeks from the date of receipt of a copy of this order. It is also made clear that the amount awarded by this Court shall be paid to the major claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. The proportionate share of the minor claimant shall be deposited in any one of the Nationalised Banks under reinvestment scheme initially for a period of three years, renewable thereafter periodically and the interest accrued thereon shall be withdrawn by her natural guardian, once in three months, till the minor attains majority.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

The II Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate sr.18520
+1cc to Mr.K.Suryanarayanan, Advocate sr.18837

C.M.A.No.842 of 2015

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