IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM

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

C.M.A.No.2564 of 2014
and Cross Objection No.50 of 2015

M/s New India Assurance Co. Ltd.,
V Floor, Nos.45 and 46, Moore Street
T.P.Cell, Chennai 600 001 ... Appellant/2nd Respondent in M.C.O.P.No.1135/13 & 1st Respondent in Cross objection No.50/15

vs.

1. S.Chitra
2. A.Subbaiah
3. S.Vijay
4. Mohan
5. S.Jagan ..Respondents 1 to 5 Claimants 1 to 5 in MCOP.No.1135/13 Cross Objectors in Cross obj.50/15

6. M/s Cargo and Container Carrier
No.14, Jaffer Syrang Street,
Chennai 600 001 6th respondent/ 1st Respondent in MCOP.No.1135/13 2nd respondent in Cross objection No.50/15

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.02.2014 passed in M.C.O.P.No.1135 of 2013 on the file of the Motor Accidents Claims Tribunal (II Judge) Small Causes Court, Chennai.

Cross Objection filed under Order 41 Rule 22 of CPC against the award and decree dated 28.02.2014 passed in M.C.O.P.No.1135 of 2013 on the file of the Motor Accidents Claims Tribunal (II Judge) Small Causes Court, Chennai.

For Appellant in CMA.

1st Respondent in Cross objection : Mr.J.Chandran

For Respondents : Mr.R.Thirugnanam
1 to 5 in CMA R6-not ready notice
for Cross objector

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

While the Insurance Company has filed the Civil Miscellaneous Appeal, the claimants have preferred Cross Objection, both challenging the award dated 28.02.2014 passed in M.C.O.P.No.1135 of 2013 on the file of the Motor Accidents Claims Tribunal (II Judge) Small Causes Court, Chennai.

2. It is a case of fatal accident. On 18.11.2012 at 00.30 hours, when the deceased was riding the Motorcycle bearing Registration No.TN-05-U-5749 on the GNT Road and Madavaram Tirukudumba Thiruthalam Church, the 6th respondent's Container Lorry bearing Registration No.TN-04-C-4299 abruptly came from behind in a rash and negligent manner and hit the motorcycle, thereby the deceased died on the spot. The deceased S.Karthikeyan, B.Sc., (Computer Science) graduate, was working as Manager (Accounts) in DELL International India (P) Limited. He stated to be earning a sum of Rs.23,000/- per month as per Ex.P9. The claimants, who are the parents and brothers of the deceased have filed a claim for compensation for a sum of Rs.50,00,000/-.

3. In support of the claim, S.Chitra, mother of the deceased was examined as P.W.1; One K.J.Hariharan, S.Vijay @ Vijayakumar, who were eye witnesses were examined as P.Ws.2 and 3 and Vivian Richard, the employer of the deceased was examined as P.W.4 and Ex.P-1 to Ex.P.14 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of FIR in Cr.No.688/GNT3/2012 registered at GNT Traffic Investigation
P2	Copy of rough sketch
P3	Copy of M.V.I. Report for 1st respondent's vehicle
P4	Copy of charge sheet
P5	Postmortem certificate
P6	Death certificate
P7	Legal heirs certificate
P8	Appointment order dated 8.3.2010

Ex.No.	Details
P9	Pay slip for the month of March 2012
P10	Provisional certificate (B.Sc.Computer science) original
P11	Copy of Voter identity card of 2nd petitioner
P12	Copy of voter identity card of 1st petitioner
P13	Copy of driving licence of the deceased
P14	Copy of driving licence of P.W.2

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 6th respondent herein remained exparte. Court exhibits Exs.X1 to X4 were marked, the details of which are as follows:-

Ex.No.	Details
X1	Authorisation letter issued to P.W.4
X2	Salary particulars of the deceased
X3	Copy of Attendance register
X4	Copy of Identity card of P.W.4

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to conclusion that due to the rash and negligent driving of the driver of the 6th respondent herein, the accident had occurred and he alone was responsible for the accident and consequently liability was fixed on the appellant, as insurer to compensate the claimants.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income 15,600 x 12 x 17	Rs.31,82,400/-
2	Funeral expenses	Rs. 25,000/-
3	Loss of love and affection	Rs.1,00,000/-
4	Transportation expenses	Rs. 10,000/-
5	Loss of expectation of life	Rs. 1,00,000/-
	Total	Rs.34,17,400/-

6. The learned counsel for the appellant would submit that the awarding a compensation of a sum of Rs.34,17,400/- towards

the death of a 27 year old Bachelor, in favour of his parents and brothers is highly excessive and unsustainable. The Tribunal has erred in taking the income of the deceased at Rs.23,096/-, in the absence of any specialist graduation in accountancy or managerial qualification like chartered accountant or MBA against the offer of appointment Ex.P.8. Further, the Tribunal has erred in deducting 1/4th for personal expenses instead of 50% when the deceased was a bachelor. The learned counsel further pleaded that the Tribunal ought to have rejected the pay slip for the month of March 2012 for Rs.23,096/- not upto the time of accident on 18.11.2012, in the absence of Form 16 A TDS Certificate, income tax returns, any statement of account from the bank reflecting the income. Further, according to him, the Tribunal ought to have deducted 30% towards income tax, considering the one time lumpsum payment of compensation for the relevant assessment year. Hence, the learned counsel for the appellant has sought for allowing of the Civil Miscellaneous Appeal.

7. On the other hand, the learned counsel for the cross objectors would submit that the compensation awarded by the Tribunal is not adequate and too low considering the age and occupation of the deceased. The Tribunal ought to have awarded a sum of Rs.1,00,000/- each to the claimants 1 and 2 and a sum of Rs.20,000/- each to the claimants 3 to 5 towards loss of love and affection. The Tribunal has erred in adopting the multiplier since it had failed to take into consideration that the age of the deceased was 27 years at the time of accident and hence the proper multiplier would be 18. Thus, the learned counsel for the claimants has sought for enhancement of compensation.

8. This Court heard the submissions of the learned counsel on either side and perused the materials available on record.

9. A preliminary plea was taken by Mr.J.Chandran, learned counsel for the Insurance Company stating that as per FIR- Ex.P.1 and the rough sketch Ex.P.2, there is an element of contributory negligence by the brother who drove the two wheeler and that was the cause for the accident. But on a perusal of the FIR, it reveals that the accident was happened when the two wheeler in which the deceased was a pillion rider, hit on the right side of the lorry. It is also not in dispute that the two wheeler was overtaking the lorry. The place of accident is GNT Road, which is a multi lane highway. From the reading of the FIR, it may appear that the driver of the two wheeler was on fault, by dashing against the front side of the lorry. But, on going through the sketch, we are able to conclude that the lorry was at fault as it had deviated from its lane and moved over to the right side and the two wheeler which was going far end of the road, had no other option except to hit the right side of the lorry. In the sketch it has been clearly stated that the lorry had come in a rash and negligent manner. Therefore, from the sketch it is very evident that the driver who

drove the two wheeler was not at fault and the Tribunal was justified in holding that the negligence was on the part of the lorry driver and therefore the appellant is liable to compensate the claimants and hence the reasoning given by the Tribunal stands confirmed.

10. Insofar as the quantum of compensation is concerned, we find that Ex.P.9 cannot be disputed. It is an income statement based on the company's salary particulars. The deceased was a Manager in DELL International India (P) Limited, which is a very reputed international company. The Tribunal, taking note of the future prospects, based on the Sarla Verma's case, after deducting towards personal expenses, adopted correct multiplier 17 and determined the quantum of compensation. Further, a perusal of the Judgment of the Tribunal reveals that the compensation granted under the other heads also appear to be reasonable. Hence, we find no reason to modify or enhance the compensation as claimed by the claimants in Cross Objection.

11. There is no serious objection with respect the interest granted at 7.5% per annum.

12. In the above circumstances, finding no merit, both the Civil Miscellaneous Appeal and the Cross Objection filed by the claimants are dismissed. Since this Court has already directed to deposit the entire award amount and permitted the claimants to withdraw a sum of Rs.15,00,000/-, the claimants are now permitted to withdraw the balance of their respective shares by filing appropriate application before the Tribunal. There will be no order as to costs in this appeal.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

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To

Motor Accidents Claims Tribunal (II Judge)
Small Causes Court, Chennai.

1 cc to Mr.J. Chandran, Advocate, Sr. 16206
1 cc to Mr.R. Thirugnanam, Advocate, Sr. 15775

C.M.A.No.2564 of 2014 &
Cross Objection No.50 of 2015

VD (CO)
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