



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2016

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)No.3 of 2014
and
M.P(MD)Nos.1 and 2 of 2014

United India Insurance Co. Ltd.,
Represented by its Divisional Manager,
Xavier Building, II Floor, PWD Road,
Nagercoil and Post,
Agasteeswaram Taluk,
Kanyakumari District.

... Appellant/3rd Respondent

Vs.

K.Ramaswamy (Died)

- 1.Muthammal, W/o.Ramaswamy
- 2.Thangamariappan S/o. Late Ramaswamy
- 3.Tamilarasi, D/o.Ramaswamy ... Respondents 1 to 3/Petitioners
- 4.M.Palanivel Murugan, S/o.Madasamy Chettiar
- 5.M.BalaKrishnan ...4th & 5th Respondents/1st & 2nd Respondents

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.07.2013 passed in M.C.O.P.No.108 of 2007 on the file of the Motor Accidents Claims Tribunal (Principal Sub-Judge), Nagercoil.

For Appellant ... Mr.G.Prabhu Rajadurai
For R1 to R3 ... Mr.A.Gowrishankar
For R4 & R5 ... No Appearance

JUDGMENT

(Judgment of the Court was made by M.SATHYANARAYANAN, J.)

The appellant/Insurance Company is the third respondent in M.C.O.P.No.108 of 2007 on the file of the Court of Motor Accident Claims Tribunal (Principal Subordinate Judge), Nagercoil and ~~negligence as well as quantum of compensation,~~ vide impugned award and decree, dated 24.07.2013, had preferred this Civil Miscellaneous Appeal.



2. The facts in brief leading to the filing of this Civil Miscellaneous Appeal, are as follows:

(i) It is a case of injury and according to the claimant - K.Ramaswamy (since died) on 19.07.2006 about 09.30 p.m., he along with his son viz., Thangamariappan, the second respondent herein came out from Vasantham Health Care Hospital and the fourth respondent, who was riding his motorcycle bearing Registration No.TN-74-F-9360 came from east to west in a rash and negligent manner and dashed against the said K.Ramaswamy and consequently, he sustained serious head injury and admitted in the Hospital and at various intervals, he took treatment in a private hospital as inpatient and in spite of best treatment, he succumbed to injuries on 29.06.2010, after four years from the date of accident i.e., on 19.07.2006.

(ii) Originally, the claim petition was filed by K.Ramaswamy and on his demise, his wife, son and daughter came on record, vide order dated 09.02.2011 and 27.02.2012, made in I.A.Nos.5 of 2011 and 4 of 2012 respectively.

(iii) The claimant claimed a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) towards compensation under the following heads:

(a) Loss of Earnings	- Rs. 10,00,000.00
(b) Transport to Hospital	- Rs. 27,000.00
(c) Extra nourishment	- Rs. 50,000.00
(d) Damages to clothing & articles	- Rs. 3,000.00
(e) Other expenses	
Medical expenses	- Rs. 4,10,000.00
(f) Funeral expenses	- Rs. 10,000.00

Total	- Rs. 15,00,000.00
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(iv) The fourth respondent has filed counter denying the manner of accident and would submit that the F.I.R. came to be filed two days after the accident and it is an afterthought and genuineness of the same is nothing but concocted and the injured himself had contributed to the said accident and he is not liable to pay compensation.

(v) The fifth respondent has filed counter stating that the vehicle in question does not belong to him and F.I.R. is a false and concocted one and since it came to be filed two days after the accident. It is clearly an afterthought and also denied his liability to pay compensation.

(vi) The appellant/Insurance Company with whom the policy pertains to offending vehicle was taken, has filed counter affidavit stating that the two-wheeler has no connection with the accident and in connivance with the Sub-Inspector of Police, a false F.I.R. came to be lodged two days after the accident and using the same, the petition for compensation has

been filed. The appellant has also denied his liability to pay the compensation and also questioning the quantum of compensation claimed under various heads and prays for dismissing the claim petition.

(vii) During the course of enquiry, the sole petitioner, viz., K.Ramaswamy alone was examined as P.W.1 and his son viz., Thangamariappan, one of the claimants, who came on record after his demise, was examined as P.W.2 and two Doctors were examined as P.Ws.3 and 4 and Exs.P.1 to P.27 were marked.

(viii) On behalf of the respondents, the fourth respondent examined himself as R.W.1 and the fifth respondent examined himself as R.W.2 and one P.Balasekhar was examined as R.W.3 and Exs.R.1 to R.8 were marked.

(ix) The Tribunal on consideration of oral and documentary evidence, found that the vehicle driven by the fourth respondent, owned by the fifth respondent, has caused the accident and after taking into consideration the expenses, the Tribunal had awarded Rs.15,11,709/- towards compensation with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization with costs.

3. The appellant/Insurance Company challenging the findings of the Tribunal on negligence as well as quantum, had filed this appeal.

4. Mr.G.Prabhu Rajadurai, learned counsel appearing for the appellant/Insurance Company made the following submissions:

(a) Admittedly the F.I.R. came to be lodged after two days from the date of accident and it was an afterthought and it came into being with the collusion of Sub-Inspector of Police attached to the jurisdictional Police Station.

(b) The alleged proposition of P.W.2 with regard to the manner of accident was entirely false and concocted and since the deceased person was none other than his father, he supported his case.

(c) Admittedly, the original claimant died nearly four years from the date of accident and for establishing cause of death, not even the post-mortem certificate was marked.

(d) Insofar as the quantum of compensation is concerned, it is submitted by the learned counsel for the appellant that the correct multiplier is '13' and instead of, the Tribunal has chosen to adopt the multiplier of '14' and he would further submit that the claimants have miserably failed to prove that on account of physical infirmity suffered by K.Ramaswamy, he was not in a position to carry on his avocation as Railway Trolleyman and even otherwise, any one of the claimants sought compassionate appointment and for the reasons best known to them, they have not

(e) The compensation awarded under various heads are very much on the higher side and therefore, prays for exoneration on



their liability to indemnify the insured and in the alternative, prays for reduction of the compensation.

5. Per contra, Mr.A.Gowrishankar, learned counsel for the respondents 1 to 3/claimants would contend that the Tribunal on thorough consideration of oral and documentary evidence and on correct application of law to the well settled legal principles, has rightly fastened the negligence aspect on the part of the rider as well as the owner of the motorcycle and thereby, directed the appellant/Insurance Company to indemnify the insured and the compensation awarded under various heads are in consonance with the well settled legal principles and therefore, prays for dismissal of the Civil Miscellaneous Appeal with costs.

6. This Court paid it's best attention to the rival submissions and also perused the impugned award passed by the Tribunal and also the original records.

7. The primordial questions arise for determination in this Civil Miscellaneous Appeal are,

(i) Whether the findings of the Tribunal in holding that the appellant/Insurance Company is liable to indemnify the insured is correct or not?

(ii) Whether the quantum of compensation awarded by the Tribunal is in accordance with the factual aspect and legal position?

Question No.(i):

8. The Tribunal on going through the evidence of P.Ws.1 and 2 and R.Ws.1 and 2, had found that with regard to belated registration of the F.I.R., a conclusion cannot be straightaway drawn that on account of the belated registration, the manner of accident was doubtful.

9. The learned Principal Subordinate Judge, Nagercoil, has also taken note of the judgment reported in **2011 (3) LW 231 (SC) : 2011 (3) SCC 646 [Kusum Lata and others Vs. Satbir and others** and **2009 (13) SCC 530 [Bimla Devi and others Vs. Himachal Road Transport Corporation and others]** held that the strict proof of evidence to prove the accident caused by a particular vehicle in a particular manner, may not be possible to be done by the claimants and the claimants were merely to establish their case on the touchstone of the principles of preponderance of probability and in the light of the evidence of P.Ws.1 and 2, the Tribunal has reached the conclusion that the accident had happened only due to rash and negligent driving on the part of the fourth respondent and though the fifth respondent has doubted the veracity of the F.I.R., did not go for investigation by the authorities.



10. In our considered opinion, the said findings came to be recorded on correct and proper appreciation of the evidence made available before the Tribunal and also on correct principles of law. Therefore, we hold that the appellant/Insurance Company is liable to pay the compensation to the claimants.

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Question No.(ii):

11. The injured/claimant at the time of accident was employed as Railway Trolleyman in the services of Southern Railway and he has filed Ex.P.8 - Salary Certificate. A perusal of the medical records, in the form of Exs.P.15 and 16 and series of medical bills would disclose that on account of head injury suffered by the claimant/deceased, he was under different spells of treatment in a private hospital as inpatient for a quite long time and the Doctors P.Ws.3 and 4, who assessed the disability, had also given the Disability Certificate Ex.P.17 stating that K.Ramaswamy/deceased suffered disability of 50% and P.W.3, in his evidence had also deposed that the deceased has suffered fracture on his head and there was a blood clot on his brain and a surgery was performed and thereafter, he lost his strength on his right hand and right leg and was not in a position to speak properly and also developed fits and paralysis also.

12. Insofar as the income is concerned, the learned Principal Subordinate Judge has applied the principles of the judgment of the Hon'ble Apex Court in **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another** reported in **2009 (6) SCC 121** and fixed the multiplier of 14 and taking into consideration the fact that there are three dependants, has deducted 1/3rd towards personal and living expenditure and fixed loss of income for the dependants as Rs.10,42,272/-.

13. In the considered opinion of this Court insofar as the fixation of multiplier '14' is concerned, the correct multiplier would be '13' and if it is applied, the loss of income for the dependants is Rs.9,67,824/- . Insofar as a sum of Rs.5,000/- towards transportation is concerned, admittedly, the deceased took treatment as inpatient under different spells in a private hospital for a quite long time and the claimants were along with the injured and spent considerable sum towards transportation charges and therefore, a sum of Rs.15,000/- is awarded towards transportation charges. The deceased, during his ailment, would have been advised to take nutritious food and therefore, a sum of Rs.20,000/- under that head is awarded. The deceased admittedly suffered disability on account of the head injury and even as per the evidence of P.W.4 Dr.T.Muthuretnam, the deceased has suffered fits and paralysis and he would have required the service of the attendant, for which, a sum of Rs.20,000/- is awarded. Insofar as a sum of Rs.10,000/- towards loss of estate is concerned, this Court is of the view that it is unjustifiable in the light of

the award passed towards loss of income and therefore, the award towards loss of estate is set aside. Therefore, this Court on reappraisal of the materials in the form of oral and documentary evidence, is inclined to award the following amounts as compensation.

Sl. No.	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court	Award confirmed/ reduced/ granted/ deleted
1	Loss of Income	10,42,272	9,67,824	Reduced by Rs.74,448/-
2	Loss of consortium	1,00,000	1,00,000	Confirmed
3	Loss of love and affection	30,000	30,000	Confirmed
4	Medical expenses	2,99,437	2,99,437	Confirmed
5	Funeral expenses	25,000	25,000	Confirmed
6	Transportation Charges	5,000	15,000	Enhanced by Rs.10,000/-
7	Loss of estate	10,000	-	Deleted
8	Nutritious Food	-	20,000	Granted
9	Attendant charges	-	20,000	Granted
	Total	15,11,709	14,77,261	Reduced by Rs.34,448/-

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the award and decree insofar as compensation is reduced to Rs.14,77,261/- with interest at 7.5% p.a. from the date of petition till the date of realisation. It is brought to the notice of this Court that during the pendency of the appeal, 50% of the compensation awarded by the Tribunal was directed to be deposited and it is yet to be withdrawn. The appellant/Insurance Company is granted six weeks time to deposit the compensation amount, less the amount already deposited and on such deposit, the respondents 1 to 3/claimants are entitled to withdraw their share of compensation as per the apportionment determined by the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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To

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The Principal Subordinate Judge,
The Motor Accidents Claims Tribunal,
Nagercoil.

COPY TO:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No. 53529

+1cc to Mr.A.Gowrishankar Advocate Sr.No. 55539

JAM/15.12.16/SK-SKN/ 7p-5c

C.M.A (MD) No.3 of 2014
and
M.P (MD) Nos.1 and 2 of 2014

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