

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.03.2017

Pronounced on : 21.03.2017

C O R A M

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.M.A.No.1937 of 2016

and

CMP.No.17350 of 2016

New India Assurance Company Limited,
III Party Claim Cell, Moore Street,
Chennai-600 001. Appellant/2nd Respondent

Vs.

1. P.Usha Rani

2. R.Sahayam Respondents/Petitioner/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 20th day of January, 2016 made in M.C.O.P.No.4189 of 2011, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Madras.

For Appellant : Mr.S.Manohar

For 1st Respondent : Mr.K.P.M.Shankar

J U D G M E N T

The Insurance Company has come up with the present Civil Miscellaneous Appeal, challenging the quantum as well as the negligence of the award dated 20.01.2016, granted by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, in MCOP.No.4189 of 2011.

2. The wife of the deceased has filed a Claim Petition, who had died in the accident on 25.06.2009. While the deceased was riding a motor cycle bearing Registration No.TN-04-AB-1120 along with his friend, a Tanker Lorry bearing Registration No.TN-22-1782 hit the motor cycle, thereby causing fatal injuries to the deceased. For the death of her husband, the 1st

respondent herein has made a claim for Rs.15,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimant, two witnesses have been examined as P.Ws.1 and 2 and as many as six documents have been marked as Ex.P.1 to Ex.P.6, namely Ex.P.1 Copy of FIR, Ex.P.2 Postmortem Certificate, Ex.P.3 Death Certificate, Ex.P.4 Legal heir Certificate, Ex.P.5 IT Returns for the assessment years 2006-2007 and 2007-2008 and Ex.P.6 Transfer Certificate-all pertain to the deceased.

4. The 2nd respondent Insurance Company had filed a counter denying the fact that the accident was caused by the rash and negligent driving of the driver of the Tanker Lorry bearing Registration No. TN-22-1782 and therefore, the Insurance Company is not liable for the compensation.

5. The Tribunal, on the question of the rash and negligent driving issue, found that the accident was due to the rash and negligent driving of the driver of the tanker lorry and as stated above, Ex.P.1 First Information Report was filed in this regard and there was also a case in Crime No.78/2009 on the file of Thirupalaikudi Police Station, Ramanathapuram District was filed against the driver of the Tanker Lorry.

6. The Counsel for the appellant pointed out that in the Claim Petition, it is stated that the deceased was a pillion rider in the motor cycle whereas in the First Information Report, it is stated that the deceased himself was riding the vehicle and the pillion rider was one Chowdry. As there was a contravention with respect to the rider of the motor cycle, it was pointed out by the learned Counsel for the Insurance Company that he was not liable for the compensation.

7. On the other hand, the learned Counsel for the claimant/1st respondent contended that merely because, the FIR is marked, it does not automatically get proved. The factum of the accident could be proved normally only through the FIR. Once the fact of the contents of the document is admitted in evident, the party bringing the same on record cannot be permitted to turn around and contend that the other contents of the same are not admissible in evidence. In Motor Accident cases, normally, both the parties rely on the F.I.R. When both the parties rely on the same document, the Tribunal cannot be said to have committed any illegality in relying upon the part of the document.

8. Secondly, if the Insurance Company wanted to object the admissibility of the document, the same must have been raised in the counter regarding its objections. Without any objection,

the document was allowed to be marked and without even raising the said contention before the Tribunal, for the first time, the Insurance Company is taking such a plea, is not permissible. In fact, the Tribunal also has found that there was no evidence on the side of the Insurance Company to disprove the factum of negligence on the part of the driver of the offending vehicle. The driver of the offending vehicle also has not come into the witness box to speak about the accident or plead about the contributory negligence of the deceased. In the absence of any such rebuttal evidence, based on the preponderance of probabilities, the Tribunal has held that the driver of the tanker lorry was rash and negligent in driving the vehicle and causing the accident resulting in the death of the claimant's husband. There is no reason to interfere with the same.

9. So far as the quantum, which is under challenge, is concerned, the claimant had sought for a compensation of Rs.15,00,000/-. The Tribunal had awarded Rs.9,88,000/- which is under challenge by the Insurance Company. Admittedly, the age of the deceased was 53 years on the date of accident. To evidence the same, Ex.P.2 Postmortem Certificate and Ex.P.3 Death Certificate were marked. In addition, in Ex.P.6, which is the College Transfer Certificate, the date of birth of the deceased is shown as 10.03.1956 which would go to show that the age of the deceased was only 53. The deceased is said to be a contractor, earning about Rs.20,000/- p.m. and to substantiate the same, Ex.P.5 Income Tax Returns for the Assessment Years 2006-2007 and 2007-2008 were filed. Though no other document is filed in support of the Income earned by the deceased, equally, there is no rebuttal evidence also filed by the Insurance Company or the owner of the vehicle. In the absence of the same, the Tribunal has fixed the monthly income at Rs.7,000/- p.m. Applying the principles laid down in Sarala Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, a multiplier of 11 is adopted as the age of the deceased was 53 and considering the future prospectus, the monthly income is fixed at Rs.8050/-. As the claimant is a widow and there is no other legal heir or dependent for the deceased, 1/3rd of the amount is deducted. Hence, the salary of the deceased is fixed at Rs.5367/- which is rounded to Rs.5400/-. Accordingly, the Tribunal had calculated the pecuniary loss of the deceased at Rs.5400 x 12 x 11 = Rs.7,12,800/-. As the same is based on the norms laid down in Sarala Verma Case, this Court is not inclined to interfere with the same.

10. In so far as the other heads are concerned, for loss of Consortium, a sum of Rs.1,00,000/- was awarded which is more than reasonable. However, having awarded loss of Consortium, the Tribunal has also awarded, in addition Rs.1,00,000/- for

love and affection. Normally, any compensation awarded under the said head of Love and Affection is only for the children or parents. Therefore, the award of said sum may be reduced and the award on the other heads, namely, for loss of estate Rs.50,000/- and for funeral expenses Rs.20,000/- are confirmed. Excepting the award of Rs.1,00,000/- under the head of loss of love and affection, this Court is not inclined to reduce the amount of compensation awarded by the Tribunal.

11. Accordingly, the following would be the revised award:

1. Loss of Pecuniary Benefits	:	Rs.7,12,800.00
2. Loss of Consortium	:	Rs.1,00,000.00
3. Loss of Estate	:	Rs. 50,000.00
4. Funeral Expenses	:	Rs. 25,000.00

Total Compensation : Rs.8,87,800.00

Thus, the claimant is entitled for the revised award of Rs.8,88,000/- with interest at 7.5% p.a. from the date of petition till the date of deposit and the Insurance Company is directed to deposit the same within four weeks from the date of receipt of a copy of this Order and in the event of such deposit, the claimant is permitted to withdraw the same.

12. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.S.Manohar, Advocate, S.R.No.17418
+1cc to Mr.K.P.M.Shankar, Advocate, S.R.No.17428

C.M.A.No.1937 of 2016

RJ(CO)
CA(03/04/2017)