IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1705 OF 2017

AND CMP NO.9186 OF 2017

The New India Assurance Co. Ltd.,
Dharapuram,
Erode District. ... Appellant/3rd Respondent

Versus

1.M.R.Premalatha ... 1st Respondent/Petitioner

2.M.M.Rajadurai ... 2nd Respondent/1st Respondent

3.M.R.Kumarasamy ... 3rd Respondent/2nd Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.11.2016 passed in MCOP No.248 of 2015 by the Motor Accidents Claims Tribunal (Third Additional District Judge) Gobichettipalayam, Erode District.

For Appellant : Mr.J.Chandran

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY S.MANIKUMAR, J.)

In the accident, which occurred on 30.06.2014, involving a Car, bearing Registration No.TN36-AA-6777, owned by the third respondent, insured with the New India Assurance Company Limited, Dharapuram, Erode District, a passenger, aged about 25 years, a Research Scholar in Nano Technology, sustained grievous injuries and succumbed to the same. In this regard, a case in Crime No.261 of 2014, under Sections 279 and 304 (A) IPC, has been registered against the driver of the Car, on the file of Avinashi Police Station. Mother of the deceased filed M.C.O.P.No.474 of 2014 on the file of learned

Subordinate Judge, Gobichettipalayam, claiming compensation of Rs.50,00,000/-, under various heads. Lateron, the claim petition has been transferred and renumbered as M.C.O.P.No.248 of 2015, on the file of Third Additional District and Sessions Judge, Gobichettipalayam. The third respondent herein, is the owner of the vehicle and incidentally, father of the deceased.

2. The New India Assurance Company Limited, Dharapuram, Erode District, opposed the claim on the grounds inter alia that since the third respondent / owner of the vehicle, and also the father of the deceased, has not paid any extra premium, to cover the risk of the passengers, travelled in the vehicle, the insurance company, is not liable to pay compensation to the claimant / mother. Without prejudice to the above, insurance company has disputed the age, monthly income of the deceased and quantum of compensation claimed under various heads.

3. Before the Claims Tribunal, mother / claimant examined herself as P.W.1, and deposed that, on 30.06.2014 at 11.15 a.m., she was travelling along with her daughter Priyadharshini, in a Car, bearing Registration No.TN36-AA-6777, from Coimbatore to Gobichettipalayam. Her daughter Priyadharshini was seated in the front seat. On Coimbatore - Salem bypass road, near Thekkalur SMB Flour Mill, driver of the said Car, attempted to overtake an Eicher van. Due to high speed, he lost control and dashed against a pole, and the vehicle fell into a channel. In the result, Priyadharshini sustained head injuries. She was taken to PSG Hospital, Coimbatore and in spite of intensive treatment, died at 09.30 p.m. According to P.W.1 - mother / claimant, the accident has occurred due to the rash and negligent driving of the Car, by M.M.Rajadurai. P.W.2 has adduced supporting evidence.

4. To prove that at the time of death, deceased Priyadharshini was a Master of Technology, in Nano Technology and Ph.D., holder, P.W.1 - mother / claimant has adduced evidence. That apart, she has marked Ex.P1 - dated 30.06.2014, First Information Report; Ex.P2 - dated 30.06.2014, Observation Mahazar; Ex.P3 - dated 30.06.2014, rough sketch; Ex.P4 - dated 01.07.2014, post-mortem report; Ex.P5 - dated 03.07.2014, Motor Vehicle Inspector's report; Ex.P-6 charge sheet; Ex.P7 - legal heir certificate; Ex.P8 - medical bills and receipt; Ex.P9 - B.E., Degree certificate; Ex.P10 - Master of Technology in Medical Nano Technology certificate issued by Sastha University, Thanjavur; Ex.P11 - dated 10.04.2010, award given by Guruvayurappan; Ex.P12 - dated 22.03.2014, letter of internship given by Bannari Amman Educational Institutions; Ex.P13 - Ph.D., degree issued by Sastha University, Thanjavur; Ex.P14 - dated 26.09.2011, permission letter issued by the Central Government; Ex.P15 - Bank passbook closed; Ex.P16 - Aadhaar card of the claimant / mother; and Ex.P17 - PAN card of the claimant, have been marked. No oral or documentary evidence has been adduced by New India Assurance Company

Limited, Dharapuram, Erode, the appellant herein.

5. Evaluating the oral and documentary evidence, the Claims Tribunal came to the conclusion that driver of the Car, bearing Registration No.TN36-AA-6777, insured with the New India Assurance Company Limited, appellant herein, was negligent, in causing the accident. Consequently fastened liability, to pay compensation of Rs.32,30,550/-, with interest, at the rate of 7.5% per annum, from the date of claim petition, till deposit, as hereunder:

Loss of income	-	Rs.30,60,000.00
Loss of love and affection	-	Rs. 1,00,000.00
Medical expenses	-	Rs. 55,550.00
Transportation charges	-	Rs. 5,000.00
Funeral expenses	-	Rs. 10,000.00
Total	-	Rs.32,30,550.00

6. Assailing the finding, fixing negligence on the driver of the Car, bearing Registration No.TN36-AA-6777, and owned by the third respondent / father of the deceased, New India Assurance Company Ltd., / appellant has filed the instant appeal, seeking reversal.

7. Mr.J.Chandran, learned counsel for the appellant submitted that since the accident has occurred, due to the negligence of the driver of the vehicle, owned by the third respondent / father of the deceased, the claim petition under Section 166 of the Motor Vehicles Act, 1988 is not maintainable, and that the same can be entertained only under Section 163-A of the Motor Vehicles Act, 1988.

8. Learned counsel for the appellant / insurance company further submitted that though the eyewitness P.W.1 / mother has deposed that, while overtaking an Eicher Van, the accident occurred, there is no whisper about the same, in the averments made in the claim petition, and that, the said aspect, has not been considered by the Tribunal. According to him, legal representatives of the deceased, cannot maintain a claim, against her own husband, who is the owner of the vehicle.

9. On the quantum of compensation, Mr.J.Chandran, learned counsel for the insurance company submitted that, the claimant / mother herself, has stated that at the time of accident, the deceased earned stipend of Rs.20,000/- only per month, the Tribunal erred in fixing the notional income, as Rs.30,000/-, for the purpose of computing the loss of contribution to the family. It is also his contention that no document has been filed, to prove that she was paid stipend of Rs.20,000/- per month. Except the above, no other grounds is urged.

10. We have heard Mr.J.Chandran, learned counsel for the appellant herein and perused the materials available on

record.

11. The contention of the claimant / mother that on 30.06.2014 at 11.15 a.m., when Priyadharshini, her daughter was travelling in a Car, bearing Registration No.TN36-AA-6777, owned by the third respondent / father of the deceased, the vehicle was driven in a rash and negligent manner, by its driver, lost control and dashed against a pole, is duly corroborated by Ex.P1 - First Information Report. The said fact is also corroborated by Ex.P2 - observation mahazar, Ex.P3 - rough sketch and ultimately, Police on investigation laid Ex.P6 - charge sheet, against the driver of the Car.

12. It is settled law that in claim petitions, preponderance of probability, is the basis to record finding of negligence and strict proof of evidence, is not required. Added further, though the manner of accident, has been disputed, no oral or documentary evidence has been adduced, by the New India Assurance Company Limited, the appellant herein. Testing the finding of the Tribunal, on the principles of preponderance of probability, this Court does not find any infirmity or perversity, warranting reversal of the above said finding.

13. On the contention as to whether New India Assurance Company Limited, appellant herein, is liable to pay compensation, from the materials on record, it could be seen that the Car was insured between 2014 and 2015 with New India Assurance Company Limited.

14. Father is not the tort-feasor. Due to the negligence on the part of the Driver of the Car, accident has occurred. Disputing liability, the only defense is that mother of the victim, is not entitled to claim compensation, as the father, who is the insured, has not paid any extra premium, to cover the risk of passengers travelling in the Car. Though New India Assurance Company Limited has taken the above said defense, no oral or documentary evidence, has been adduced.

15. In the absence of producing any documentary evidence, contention of Mr.J.Chandran, learned counsel for the appellant herein that claim under Section 166-A of Motor Vehicles Act, by mother of the deceased, ought not to have been entertained, is not acceptable. Inasmuch as respondent No.3 / owner of the Car is not a tort-feasor, a claim under Section 166 of the Motor Vehicles Act, is maintainable and in view of the above, contentions to the contra, are rejected.

16. Now, on the aspect of quantum of compensation, the claimant / mother, in her claim petition before the Tribunal, has stated that, at the time of accident, her daughter Priyadharshini, aged about 25 years, was a Research Scholar in Nano Technology and paid Rs.20,000/- per month, as stipend. To prove that Priydharshini was highly educated, she has marked Exs.P9 - B.E. Degree certificate; Ex.P10 - Master's

Degree in Medical Nano Technology issued by Sastha University; Ex.P11 - award issued by Guruvayurappan; Ex.P12 - letter of internship issued by Bannari Amman Educational Institutions; Ex.P13 - Ph.D., Degree Certificate issued by Sastha University, Thanjavur; Ex.P14 - permission letter issued by the Central Government; and Ex.P15 - Bank passbook closed. Though mother / claimant has adduced evidence that at the time of accident, Priyadharshini was doing any work, considering the academic excellence of the deceased, salary at the time of accident in 2014, the Tribunal has fixed a notional income as Rs.30,000/-. Deceased, was a Spinster, and taking note of the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] the Tribunal deducted 50%, towards personal and living expenses of the deceased.

17. Though Mr.J.Chandran, learned counsel for the appellant / insurance company submitted that when the claimant / mother herself, has deposed that, at the time of accident, the deceased was not employed and earned only a stipend of Rs.20,000/-, but the Tribunal has erred, in fixing a higher notional income as Rs.30,000/- and therefore, sought for re-determination of income, this Court is not inclined to accept the same. Deceased had acquired a Degree in Medical Nano Technology, which is a specialized subject, in the field of medicine. She has acquired Ph.D., degree. Academic excellence has been substantiated. Though no documentary evidence was produced to prove that the deceased was paid stipend of Rs.20,000/-, having with regard to the Ex.P14, permission letter of the Central Government and Ex.P15 - bank pass book closed, it could easily be presumed that the deceased would have been paid stipend, at the rate of Rs.20,000/- per month. As rightly observed by the Tribunal, income prevailing at the time of accident, excellence in education, future prospects and earning should be considered, while determining the loss of contribution to the family. Compensation should not be determined, only on the basis of the income part, but also taking into consideration, the future prospects.

18. Further, a perusal of the judgment also shows that Bannariamman Institute of Technology, has selected the deceased, for the post of Assistant Professor in faculty of Bio-Technology and accordingly, Ex.P12 dated 22.03.2014 has been issued. Having regard to the above, we are not inclined to accept the contention of Mr.J.Chandran, learned counsel for the appellant / insurance company that the Tribunal has erred in fixing higher income. Perusal of the award shows that despite the specialization in the field of Medical Nano Technology and conferment of Doctorate of Philosophy, the Tribunal has erred in not considering future prospects, while computing the loss of contribution to the family. The Tribunal has merely applied the notional income, multiplied the same by 17, for computing the loss of contribution to the family. If future prospects is taken into account, then, computation of

compensation to the family, would be on the higher side. Quantum of compensation awarded under other heads cannot be said to be excess. The overall quantum of compensation of Rs.32,30,550/-, with interest at the rate of 7.5% per annum, from the date of claim, till deposit, is not excessive warranting interference.

19. In the light of the above discussion and decisions, finding of negligence, liability fastened on the New India Assurance Company Limited / appellant herein, and the quantum of compensation awarded by the Tribunal, are confirmed.

20. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

21. Consequent to the dismissal of the Civil Miscellaneous Appeal, the appellant / insurance company is directed to deposit the entire award amount, less the amount already deposited, if any, to the credit of MCOP No.248 of 2015, on the file of Motor Accidents Claims Tribunal (Third Additional District and Sessions Judge) Gobichettipalayam, Erode District, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent / claimant is permitted to withdraw the same, on filing proper applications before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Motor Accidents Claims Tribunal
(Third Additional District and Sessions Judge)
Gobichettipalayam,
Erode District.

2.The Section Officer, VR Section, High Court, Madras-104.

+1cc to MR.J.Chandran, Advocate SR.No.44600

C.M.A.NO.1705 OF 2017

RSK(CO)
GN(09/08/2017)