

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 39 of 2016
and

C.M.P. No. 262 of 2016
C.M.P. No. 9868 of 2017

The Manager
TATA AIG General Insurance Company Limited
Registered Office
15th Floor, Tower,
A. Peninsula Business Park
Ganpatrao Kadam Marg
Office Senapati Bapat Marg
Lower Parel
Mumbai - 400 013 ... Appellant/2nd Respondent

Versus

1. Nagamma
2. M. Gopi
3. Minor. M. Geetha
4. Minor. M. Girija
(Minors 3 & 4 are represented by their
next friend and mother 1st respondent) ... Respondent 1to4/
Petitioners

5. D. Suresh ..5th Respondent/1st Respondent

Appeal filed under Section 173 of The Motor Vehicle Act,
1988 against the order and Decree dated 30.04.2015 passed in
M.C.O.P. No. 999 of 2013 on the file of Motor Accident Claims
Tribunal, Special District Judge, Krishnagiri.

For Appellant : Mr. N. Vijayaraghavan
For Respondents : Mr. Mr. Mukund R. Pandiyan for RR1 to 4
Mr. M. Madhu Prakash for R5

JUDGMENT

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

The appellant/Insurance Company has filed this appeal
questioning the correctness of the Judgment and Decree dated
30.04.2015 passed in M.C.O.P. No. 999 of 2013 on the file of
Motor Accident Claims Tribunal, Special District Judge,
Krishnagiri in so far as it imposes the liability on their part
to pay the compensation as well as the quantum of compensation
awarded in favour of the claimants.

2. The respondents 1 to 4 herein are the legal heirs of the deceased Madhu. The first respondent is the wife, second respondent is the son and the respondents 3 and 4 are the daughters of the deceased Madhu. According to the claimants/respondents 1 to 4 herein, on 20.10.2013 at about 04.15 p.m. when the deceased Madhu was riding his Yamaha Crux Motor Cycle bearing Registration No. TN 24 M 9725 from Krishnagiri towards Kurryanapalli, near Saravana Bhavan Hotel at Sikkari Medu in Krishnagiri to Hosur National Highway, the driver of the Ford Car bearing Registration No. KA 02 MA 3622 owned by the fifth respondent in this appeal, had driven it in a rash and negligent manner and at an uncontrollable speed. It was further stated in the claim petition that due to such reckless and negligent driving of the driver of the car, the driver applied sudden brake without observing the traffic rules and attempted to take a reverse without giving any signal or indication to go to the hotel. In that process, the deceased, who was riding his two wheeler behind the car, hit the car and sustained grievous injuries. Due to the multiple injuries sustained, the deceased died on the spot. According to the claimants/respondents 1 to 4, the deceased was aged 39 years at the time of accident and he was earning a sum of Rs.20,000/- per month as a building mason worker. On the death of the deceased, the family of the claimants/respondents 1 to 4 herein have lost their only bread winner. Therefore, the claimants/respondents 1 to 4 herein have filed MCOP No. 999 of 2013 before the Tribunal claiming a compensation of Rs.20,00,000/- for the death of the deceased.

3. The claim petition was resisted by the appellant insurance company by contending that the driver of the Car was driving the car slowly and cautiously. It is the deceased who was riding the two wheeler at an uncontrollable speed, with the result, he had hit the car which was moving in the reverse direction. Therefore, according to the appellant/Insurance Company, it is the deceased who had contributed to the accident and therefore, the Insurance Company cannot be fastened with any liability. It was further contended that the particulars furnished by the claimants with regard to the age, occupation and income of the deceased are incorrect. It was further contended that the amount of compensation claimed by the claimants at Rs.20,00,000/- is excessive and therefore, the Insurance Company prayed for dismissal of the claim petition.

4. Before the Tribunal, in order to prove the averments made in the claim petition, the first claimant examined herself as PW1, two other witnesses as PW2 and PW3 and Exs. P1 to P9 were marked. On behalf of the respondents in the claim petition, Mr. D. Suresh, owner of the offending Car and Mr. M.G. Vijay, Automobile Engineer/Surveyor were examined as Rws 1 and 2 and Exs. R1 was marked. The Tribunal, upon consideration of the oral and documentary evidence, particularly Ex.P1, First Information Report registered against the driver of the Car, Ex.R1, Surveyor Report and the evidence of PW2, an eye witness of the accident, concluded that the accident was a result of the rash and negligent driving of the driver of the Car and

therefore, the respondents in the claim petition namely the owner of the Car and the Insurance Company are jointly and severally liable to pay the compensation amount.

5. As regards the quantum of compensation, the Tribunal considered the evidence of PW3, Superintendent of Tamil Nadu Construction Employees Welfare Association and concluded that the deceased was a Member of the said Association and he was engaged as a Mason in the building construction and earned his livelihood. Further, on the basis of evidence of PW3 that in Krishnagiri, a Head Mason is paid wages of Rs.550 per day, the Tribunal concluded that the deceased could have at least earned a sum of Rs.500 per day and accordingly, the monthly income of the deceased was fixed as Rs.15,000/-. Taking into account that the claimants are 4 in number, the Tribunal after deducting 1/4th amount towards personal expenses had arrived at a sum of Rs.11,250/- (Rs.15,000/- - Rs.3,750/-) per month for the purpose of calculating the loss of income of the deceased. By applying multiplier '15' the Tribunal awarded a total sum of (Rs.11,250/- X 12 X 15) Rs.20,25,000/- towards loss of earning capacity of the deceased. That apart, a sum of Rs.50,000/- was awarded towards loss of consortium to the first claimant/wife, Rs.1,00,000/- each to the respondents 2 to 4, totalling a sum of Rs.3,00,000/- towards loss of love and affection, Rs.10,000/- towards transportation and Rs.20,000/- for funeral expenses. Thus, in all, a sum of Rs.24,05,000/- was awarded by the Tribunal as compensation to the claimants/respondents 1 to 4 herein.

6. The learned counsel appearing for the Insurance Company would contend that admittedly, the driver of the Car, which was insured with the appellant company, was driving the car in the reverse to reach the Hotel. When such being the case, it cannot be gainsaid that the driver of the car was driving the car in a rash and negligent manner. While so, the Tribunal ought to have held that the deceased has contributed to the accident and no liability could be fastened on the Insurance Company. The first information report was registered for the death of the deceased against the owner of the Car because it could not be registered against the deceased. Therefore, merely because the first information report was registered against the driver of the Car, it cannot be concluded that the Car was driven by the Driver in a rash and negligent manner. Further, the owner cum driver of the Car was examined as RW1 along with the Surveyor as RW2, however, their evidence were discarded by the Tribunal only on the ground that they are interested witness.

7. As regards the quantum of compensation, the learned counsel for the appellant/Insurance Company would contend that there was no documentary evidence marked on behalf of the claimants to prove the income of the deceased. The Tribunal has taken the monthly income of the deceased at Rs.15,000/- per month only on the basis of the oral evidence of PW3. In the absence of any documentary evidence to prove the income of the deceased, the Tribunal is not justified in fixing the monthly

income of the deceased at Rs.15,000/- per month and therefore, the learned counsel for the appellant prayed for setting aside the Judgment of the Court below.

8. On the other hand, the learned counsel for the claimants/respondents 1 to 4 would contend that it is the driver of the Car who is wholly responsible for the accident in which the deceased died. According to the learned counsel for the respondents 1 to 4, PW2, an eye witness, was examined before the Tribunal on behalf of the claimants. Pw2 is the one who has given the complaint with respect to the accident based on which the first information report was registered. According to PW2, the car was driven in the reverse position without any indicator and without noticing the vehicle coming behind the car. Therefore, the Tribunal is wholly justified in fixing the entire liability on the driver of the car as well as the insurance company. As regards the quantum of compensation, it was contended that the first claimant/wife has lost her husband at the age of 37 years and therefore, the Tribunal ought to have atleast awarded a sum of Rs.2,00,000/- towards loss of consortium instead of awarding a meager sum of Rs.50,000/-. In any event, according to the counsel for the respondents/claimants, the Tribunal has awarded a just and fair compensation which does not call for any interference by this Court.

9. We have heard the rival submissions and perused the materials on record. Admittedly, the accident had occurred when the Car was driven in the reverse direction by the Driver. As per the evidence adduced by RW2, Surveyor, in the impact of the accident, damage was caused to the right side bumper of the Car, which would go to show that the two wheeler driven by the deceased had hit the right side of the Car. Even assuming that the car was driven by the Driver in the reverse direction without any indicator or other signal, the fact remains that while taking the Car in the reverse direction, the possibility to drive it at a high speed is very remote. Further, the deceased, while driving the two wheeler, could have very well noticed the Car when it was driven in the reverse direction, however, it appears that he could not avoid hitting the car, probably, due to the speed with which he was driving the two wheeler. Therefore, we are of the opinion that the deceased also had contributed to the accident to a certain extent and consequently, the entire liability cannot be fastened on the Insurance Company. In that view of the matter, we are of the view that the deceased also had contributed to the accident and accordingly, we fix the contributory negligence on the part of the deceased at 25% and the balance 75% on the driver of the Car. Resultantly, the liability fixed by the Tribunal on the appellant insurance company is reduced from 100% to 75%.

10. As regards the quantum of compensation, admittedly, there was no documentary evidence filed to prove the income of the deceased. Therefore, in the absence of any documentary evidence, the Tribunal ought not to have taken a sum of Rs.15,000/- as monthly income of the deceased on the basis of

the oral testimony of PW3. At the same time, the fact remains that with the income earned by the deceased, he was maintaining the family consisting of the claimants, who are 4 in number, till his death. Therefore, it can be reasonably presumed that the deceased could have earned atleast a sum of Rs.12,000/- per month. From the records made available, we find that the deceased was 39 years and had he been alive, he could have contributed to his family substantially through his employment. While so, the Tribunal ought to have awarded 30% of the income of the appellant towards his future prospects, but no such amount was awarded. Therefore, we are inclined to award 30% of the amount of Rs.12,000/- being Rs.3,600/- towards future prospectus. Thus, for the purpose of calculation of loss of income, the monthly income of the deceased is taken as Rs.15,600/- and the annual income of the deceased could be arrived at Rs.1,87,200/-. Out of this amount, if 1/4th is deducted towards personal expenses, the net loss of income could be arrived at Rs.1,40,400/-. By applying the multiplier '15' the loss of income of the deceased could be calculated at (Rs.1,40,400/- X 15) Rs. 21,06,000/-, which could be awarded towards the loss of income of the deceased.

11. As regards the non-pecuniary compensation awarded by the Tribunal under other heads, we feel that the sum of Rs.50,000/- awarded by the Tribunal towards loss of consortium to the first respondent/wife needs enhancement taking note of the young age at which she lost her husband. Therefore, we are of the view that a sum of Rs.1,00,000/- shall be awarded towards loss of consortium to the first claimant/wife as against the sum of Rs.50,000/- awarded by the Tribunal.

12. On perusal of the award, we find that the Tribunal has awarded compensation under the head of Loss of Love and Affection at Rs.3,00,000/- to the claimants 2 to 4, which requires modification. Accordingly, as against the sum of Rs.3,00,000/-, a sum of Rs.1,50,000/- is awarded towards loss of love and affection to the claimants 2 to 4. For transportation, a sum of Rs.10,000/- was awarded which is fair and reasonable. For funeral, only a sum of Rs.20,000/- was awarded by the Tribunal. Having regard to the facts and circumstance of the case, we are inclined to enhance the compensation under the head of funeral expenses to Rs.25,000/- as against the sum of Rs.20,000/- awarded by the Tribunal. In the result, we re-calculate the award passed by the Tribunal as follows:-

Loss of income	Rs.21,06,000.00
Loss of Consortium to 1 st claimant	Rs. 1,00,000.00
Loss of Love and Affection	Rs. 1,50,000.00
Transportation to hospital	Rs. 10,000.00
Funeral Expenses	Rs. 25,000.00

Rs.23,91,000.00

13. Out of the sum of Rs.23,91,000/- arrived at as compensation, if 25% of the amount is deducted towards contributory negligence of the deceased, then the claimants are entitled to Rs.17,93,250/-.

14. Accordingly, the Civil Miscellaneous Appeal filed by the appellant Insurance Company is partly allowed reducing the compensation amount awarded by the Tribunal from Rs.24,05,000/- to Rs.17,93,250/- as indicated above. No costs. The appellant insurance company is directed to deposit the amount determined by us in this appeal, less the amount already deposited, if any, to the credit of M.C.O.P. No. 999 of 2013 on the file of Motor Accident Claims Tribunal, Special District Judge, Krishnagiri, within a period of six weeks from the date of receipt of a copy of this Judgment. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Special District Judge
Motor Accident Claims Tribunal
Krishnagiri.

2. The Section Officer, VR Section,
High Court, Chennai.

+ 1 cc to M/s. N. Vijayaraghavan, Advocate SR.56123

+ 1 cc to M/s. Mukund R. Pandiyan, Advocate sR.56929

CMA No. 39 of 2016

CNR(CO)
EU(23/11/2017)

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