IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM:

The Hon'ble Mr.Justice Nooty Ramamohana Rao
and
The Hon'ble Mr.Justice S.M.Subramaniam

C.M.A.No.2765 of 2014
and
M.P.No.1 of 2014

M/s.Cholamandalam Ms General Ins. Co. Ltd
1st & 2nd Floor,
Kalaikathir Building,
Avinashi Road, Coimbatore.
...Appellant/2nd Respondent

-vs-

1. R.Padmavathi
2. Mr.Sivasankar ..Respondents 1 & 2/Petitioner

3. Mr.Arumugam ...3rd Respondent/1st Respondent

Prayer:-

Civil Miscellaneous Petition filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P No.708 of 2010, dated 31.10.2013 on the file of the Motor Accidents Claims Tribunal cum II Additional District Court, Salem.

For Appellant	:	M/s.S.Harini for Mr.N.Vijayaraghavan
For Respondents 1 & 2	:	Mr.A.Kumar
For Respondent 3	:	No Appearance

JUDGMENT

(Judgment of the Court was delivered by Nooty Ramamohana Rao J.)

This Civil Miscellaneous Appeal is preferred by the Insurance Company, aggrieved by the award passed by the Motor Accident Claims Tribunal cum II Additional District Court, Salem, in M.C.O.P No.708 of 2010 (hereinafter, referred to as 'the Tribunal').

2. Heard the submissions of Ms.Harini, the learned counsel representing Shri.N.Vijaya Raghavan, learned counsel appearing on behalf of the appellant/Insurance Company, and Mr.A.Kumar, the learned counsel for the respondents 1 & 2/claimants.

3. On 28th December, 2009, a motor accident had taken place around 22 hours, in which, a motor cyclist, viz., R.Senthil Raja, died on the spot. Unfortunately, there was a traffic jam near a Marriage Hall named, "Deva Kalyana Mandapam", where, some civil construction work was going on, and consequently, the local Police (as a safety measure to safeguard the public) made arrangements for diverting the traffic, and hence, the traffic from Salem to Namakkal main road was diverted on to the left side half of Namakkal to Salem main road. That is how, the deceased was driving his motorcycle on the left hand side of Namakkal to Salem main road. The offending Vehicle, viz., Scorpio Car, bearing Registration No.TN-45-AB-1661, which was driven in a rash and negligent manner, by its driver, hit the motor cyclist head on, due to the failure of noticing the traffic flow on the opposite direction in that road.

3.1) The deceased R.Senthilraja, was a young person of 24 years of age. He was a self-employed individual (driver cum owner of the Lorry) and his mother and brother have instituted the aforesaid Original Petition, claiming compensation, in a sum of Rs.25,00,000/-.

3.2) The first respondent, in the Original Petition, was the owner of the Scorpio Car, and he was set ex parte, and did not contest the Claim Petition. The second respondent, in the Original Petition, viz., appellant herein, was the insurer of the Scorpio Car. On behalf of the claimants, two witnesses were examined, and eleven documents were got marked as Ex.P.1 to P.11. None was examined on behalf of the Insurance Company, and no documents were exhibited either.

3.3) P.W.2, the Sub Inspector of Police of Veeranam Police Station has clearly brought out, as to how, the accident was caused by the negligent driving of the Scorpio driver, who failed to reckon the traffic flow coming in the opposite direction from Namakkal to Salem main road. Normally, the main road between Namakkal and Salem will not encounter flow of traffic in the opposite direction, as the traffic flows in unidirection, since the road was divided into two separate lanes, but, however, since there was a traffic jam created by the ongoing construction work, traffic was diverted from Salem to Namakkal to travel in the opposite direction on Namakkal to Salem half of the road.

4. Thus, it is a clear case, where, all due to rash and negligent driving of the driver of the Scorpio Vehicle, the accident occurred, and a 24 years old motor cyclists, died on the spot.

5. The finding of the Tribunal that the accident was caused all due to the negligent driving of the Scorpio Vehicle, is well founded, and does not warrant or call for our interference.

6. As stated supra, the deceased was a self employed individual. He purchased a truck, by availing financial assistance from a Finance Company, called "M/s.Sriram Transport Finance Company", and he was generating income by running the said Truck for transportation of commercial freight from one destination to the other. A bunch of receipts came to be marked as Ex.P.7. These receipts, commencing from 28th February 2008 to 31st May 2009 very clearly bring out, as to how, the deceased Senthil Raja was promptly repaying the monthly installment amount of Rs.16,700/- to the said M/s.Sriram Transport Finance Company Limited. A perusal of Ex.P.7, also brings out one more aspect, that is, the sense of discipline possessed by the deceased, as reflected by his prompt payment of EMI, being a self employed individual. Ex.P.3 was the driving license of the deceased, while Ex.P.4 was the Registration Certificate of the two wheeler, driven by the deceased. The First Information Report (F.I.R.) booked by the Police against the driver of the offending Vehicle is marked as Ex.P.1. Ex.P.6 is the Insurance Policy of the Scorpio Vehicle, while Ex.P.9 is the driving license of the driver of the Scorpio Vehicle.

7. The Tribunal has calculated the income of the deceased as Rs.20,000/- per month. It took into account, the prompt repayment of loan amount by the deceased on monthly installment basis, and held that he could be possibly earning Rs.20,000/-per month, while operating the said Truck. In cases of self employed persons, certain elements of guess work or adjustment of calculations are required to be made. But, however, we should take note of the contemporaneous factors. While, it is true that the deceased was promptly repaying the monthly installment of Rs.16,700/- to the Finance Company, which had extended financial assistance for the deceased to acquire the truck, we must also calculate the income, which, he must be generating from the said business on a moderate scale.

8. We can except an average income of not more than Rs.40,000/- to Rs.50,000/- per month from such a business enterprise. From and out of that amount, expenses towards maintenance of the vehicle, towards fuel and lubricants can be safely deduced to the extent of Rs.10,000/- to Rs.12,000/-. From out of the balance amount, one can except 50% thereof to be paid towards equated monthly installments.

9. Thus, in the given facts and circumstances, it would be reasonable to hold that the deceased must be earning a minimum of Rs.15,000/- per month to be used by him, exclusively, after repaying the equated monthly installments of Rs.16,700/- per month. Since the deceased was a young person, and is not married, and also going by the factor of maintaining himself through out the time he undertakes the operation of the truck, it would be appropriate to deduct 50% of his earnings, towards his personal expenditure, and consequently, the amount, he would be contributing to the family members can be safely worked out as Rs.7,500/- per month. Since the deceased was a young person of 24 years of age, and there being no dispute on this aspect, the Tribunal has rightly chosen the multiplier of '18' while computing the component towards loss of dependency. Thus, Rs.7500 x 12 works out of Rs.90,000/- per annum and multiplied by 18, it comes to Rs.16,20,000/- (Rupees Sixteen Lakhs Twenty Thousand only). Since the deceased has shown considerable financial discipline in promptly repaying the monthly installments, we can safely infer that his future prospects would be in the order of 40% to 50%. But, since the cost of maintenance of vehicle also increases with its age, and its running mileage, necessitating the replacement of worn out parts with new ones, we can consider it as reasonable to assume that, towards future prospects, it would be in the order of 33%. The Hon'ble Supreme Court, in its judgment rendered in re (Santhosh Devi vs. National Insurance Co.Ltd.) reported in 2012 (6) SCC 421, held that, it would be reasonable to expect increase in wages, in future, by 30% hike at least. In fact, the said principle has been reiterated by a Three-Judge Bench of the Hon'ble Supreme Court, in re (Rajesh and others vs. Rajbir Singh) reported in [2013 (9) SCC 54]., and it would be worthwhile to refer to relevant para from the said judgment, which reads as follows:

> "Since the Court in Santosh Devi Vs. National Insurance Company Limited and Others [2012 (6) SCC 421] actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma and others Vs. Delhi Transport Corporation [2009 (6) SCC 121] and to make it applicable also to the self- employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always;

> it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

10. Hence, we consider it more appropriate that, to a self employed truck driver cum owner, and that too, going by his young age, his future prospects would be in the order of 33% of his present earnings at the time of accident. Accordingly, the just compensation payable to the claimants has to be worked out.

11. The learned counsel appearing for the appellant/Insurance Company would vehemently contend that the self employed driver could not have been earning more than Rs.10,000/- per month, and therefore, she strongly objected to the Tribunal's calculating the monthly income of the deceased as Rs.20,000/- per month.

12. Though the criticism of the learned counsel for the appellant/Insurance Company cannot be brushed aside lightly, but however, a truck driver, in all, earns monthly wages of Rs.10,000/-. His fixed salary could be around Rs.6,000/- per month, but, whenever, he is assigned the task of transportation of the commercial freight, he has to be paid a daily batta as well, which may be in the order of Rs.150/- per day, and it would not be unreasonable for us to assume that such duty days would be not less than 20 to 25 days in a month. Therefore, the person employed as a driver would be earning Rs.10,000/- per month, and when it comes to owner cum driver, he tends to earn more, and that is the reason why, we are of the view that the earnings of the deceased Senthil Raja could be taken as Rs.15000/- per month.

13. The Appeal is otherwise merit less, and accordingly dismissed, subject to the modification made by us. As the appellant/Insurance Company has already deposited the entire award amount, in compliance of the conditional stay order, dated 20.10.2014, granted by the Bench, in M.P.No.1 of 2014, and also permitted the respondents 1and 2/claimants to withdraw 50%, as could be seen from the order passed in M.P.No.1 of 2015, dated 24.04.2015, the claimants are permitted to withdraw the balance amount along with interest accrued thereon, by filing necessary cheque petition. Two

months' time is granted for depositing the balance money, if any. There shall be no order, as to costs. Consequently, connected Miscellaneous Petition is closed.

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s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

sd/rna

To

The II Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

Copy to
The Section Officer
V.R. Section, High Court, Madras

+1 CC to Mr.M.B. Gopalan, Advocate sr 21968
+2 CCs to Mr.A. Kumar, advocate sr 21408

C.M.A.No.2765 of 2014

BR(CO)
sp(26/07/2017)