

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. No.735 of 2017
C.M.P.No.4083 of 2017

M/s.Reliance General
Insurance Co. Ltd.,
Chennai 600 031. ... Appellant/2nd Respondent

vs

1. E.Uma Rani
(P.Elumalai - Died) ...1st Respondent/Petitioner
2. Academy of Management and Studies,
Nanda-K-Chowki,
Prem Nagar, Dehra Dun,
Uttarakhand 248 001. ...2nd Respondent/1st Respondent

Appeal against the fair and decretal order dated 11.02.2016 passed in M.C.O.P.No.2055 of 2010, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.1 to deal with MCOP cases, Chennai.

For Appellant .. Mr.N.Vijayaraghavan

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

Challenge in this appeal, filed by M/s.Reliance General Insurance Co. Ltd., Chennai, is to the quantum of compensation of Rs.27,17,016/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of deposit and costs, awarded to the parents, legal representatives of the deceased. At the time of accident, the deceased was stated to be an Assistant Professor in M/s.Dolphin (PG) Institute of Biomedical & Natural Science, Manduwala, and aged 33 years.

2. Material on record discloses that on 18.03.2010, when the deceased, E.Cowdhaman, was riding a Motorcycle, bearing Registration No.UA 07 Z 0984, a bus, bearing Registration No.UA 07 T 3694, driven in a rash and negligent

manner and insured with the Company, dashed against the two-wheeler and due to the impact, the rider sustained severe head injuries and died on the spot. In this regard, a case in Cr.No.10 of 2010, has been registered, against the driver of the bus, on the file of Pream Nagar Police Station, Dehradun.

3. Before the Claims Tribunal, mother of the deceased examined herself as PW.1, and she has adduced evidence, about the manner of accident. PW.2, is the eye-witness to the accident. Mother has marked Ex.P1 - FIR, Ex.P2 - Driving Licence, Ex.P3 - Post-Mortem Certificate, Ex.P4 - Inquest Report, Ex.P5 - Death Certificate, Ex.P6 - Legal Heirship Certificate, Ex.P7 - Bachelor of Physiotherapy Certificate, Ex.P8 - Degree Certificate of Master of Physiotherapy, Ex.P9 - Certificate issued by the Indian Association of Physiotherapists, Ex.P10 - Volunteer certificate issued by the Indian Association of Physiotherapists, Ex.P11 - Certificate of participation in the physio fest, Ex.P12 - Certificate of participation, Ex.P13 - Clinical training certificate issued by the Institute of Obstetrics and Gynaecology, Ex.P14 - Certificate of life membership issued by the Indian Association of Physiotherapists, Ex.P15 - Certificate of Participation in Lumbo Sacral Spine - Infancy to old age issued by G.B. Pant Hospital, Ex.P16 - Certificate of participation issued by M/s.National symposium on stroke, Ex.P17 - Certificate of basic concepts and musculoskeletal manipulation issued by MAANIPS, Ex.P18 - Practical Training in "Workshop on the basic concepts of musculoskeletal manipulation issued by MAANIPS, Chennai", Ex.P19 - Certificate in follow-up Mulligan's Concept course issued by Central Institute of Manual Therapy, Ex.P20 - Certificate in Upper and Lower quarter mulligan's concept course issued by Central Institute of Manual Therapy, Ex.P21 - Certificate in Intercomat 2006 (Instant Restoration of Comfort & Capabilities) issued by Capri Institute of Manual Therapy, Ex.P22 - Certificate in Basic Taping issued by Australian Physiotherapy, Ex.P23 - Certificate in advanced Taping issued by Australian Physiotherapy Association, Ex.P24 - Certificate of Appreciation issued by 1st International Conference on Orthopaedics and Sports Physiotherapy, Ex.P25 - Certificate of participation on International Seminar on Corporate Health issues and Therapeutic Management issued by the Department of Therapies and Health Science, Faridabad, Ex.P26 - Certificate in Stroke-recent advances in medical treatment and Rehabilitation, Ex.P27 - Certificate of Participation in Annual National Conference & Workshop, Ex.P28 - Appointment letter issued by M/s.Dolphin (PG) Institute of Bio-Medical & Natural Science, Dehradun, Ex.P29 - Salary Certificate issued by M/s.Dolphin Institute of Bio-Medical & Natural Sciences, Ex.P30 - Bank Pass Book, Ex.P31 - Pan Card, Ex.P32 - Income-Tax returns for the year 2007-08 and Ex.P33 - Income-Tax returns for the year 2008-09. Rebutting the same, there is no oral or documentary evidence, on the side of appellant-Insurance Company. Evaluating the evidence, adduced by the

parties, the Claims Tribunal fixed negligence on the driver of the bus, insured with the appellant-Insurance Company.

4. Having regard to the age of the deceased and the documents, stated supra, the Claims Tribunal has fixed the monthly income of the deceased as Rs.19,627/-. Following the decision made in Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55 (SC), the Claims Tribunal added 50% towards future prospects. The Tribunal has fixed the monthly income of the deceased at Rs.29,440.50, for the purpose of computing the loss of contribution.

5. Applying the decision in Sarla Verma v. Delhi Transport Corporation reported in 2009 (5) LW 561, the Claims Tribunal applied '16' multiplier, for computing the compensation. After deducting 1/3rd towards the personal and living expenses of the deceased, the Claims Tribunal has awarded Rs.26,67,016/- (Rs.29,440.50 x 12 x 16 x 1/3), towards loss of dependency. Besides, the Claims Tribunal has awarded Rs.25,000/- towards Funeral Expenses and Rs.25,000/- for loss of love and affection. Altogether, the Claims Tribunal has awarded Rs.27,17,016/-, as total compensation.

6. Though Mr.N.Vijayaraghavan, learned counsel for the appellant-Insurance Company, assailed the correctness of the finding, fixing negligence on the driver of the bus, as erroneous, this Court is not inclined to reverse the same, as testimony of PW.1, mother of the deceased, is duly supported by an eye-witness, PW.2 and corroborated by Ex.P1 - FIR. The appellant-Insurance Company has not adduced any oral or documentary evidence, to rebut the evidence of the respondents/claimants.

7. While dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court in N.K.V.Brother's Private Limited v. Kurmai [AIR 1980 SC 1354], has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

8. In a decision in Union of India v. Saraswathi Debnath [1995 ACJ 980], High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim

<https://hcservices.ecourts.gov.in/hcservices/> under the Motor Vehicles Act, the evidence

should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

9. It is well settled that in Motor Accident Claims cases, preponderance of probability is the test. Applying the same to the facts of this case, no concrete material has been placed before this Court to discard the evidence of the respondent/claimant. Hence, this Court is of the considered view that the manner of accident and the negligence on the part of the driver of the bus, has been substantiated by the claimant and therefore, there is no perversity in the findings regarding negligence, warranting interference.

10. As regards the quantum of compensation, PW.1, mother of the deceased, has deposed that at the time of accident, the deceased was aged about 33 years and working as Assistant Professor in M/s.Dolphin (PG) Institute of Biomedical & Natural Science, Manduwala. In support of the same, she has produced the documents, stated supra. There is no contra evidence. There is no reason, as to why, the Tribunal should not accept the documentary evidence adduced.

11. Addition of 50% of the income, towards future prospects, has been made, based on the decision of the Hon'ble Apex Court in Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55 (SC). Application of '16' multiplier has been done, taking note of the decisions of the Hon'ble Apex Court in Sarla Verma v. Delhi Transport Corporation reported in 2009 (5) LW 561.

12. Accident has occurred on 18.03.2010. Claims Tribunal has taken note of the decisions of the Hon'ble Apex Court, while arriving at the quantum of compensation. Though quantum of compensation is stated to be on the higher side, having regard to the educational qualification, which the deceased, would have acquired and employment opportunities of a medical graduate, a sum of Rs.19,627/- has been taken into consideration by the Claims Tribunal, for computing the loss of contribution to the family, which in our considered opinion, cannot be said to be erroneous.

13. Computation of loss of contribution to the family, has been done, only for 16 years. Even taking it for granted that the deceased would have remained unmarried for some time,

contribution to the family, would have continued for a longer time. Quantum of compensation of Rs.27,17,016/-, awarded to the legal representatives of the deceased, cannot be said to be on the higher side, warranting interference.

14. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the award amount, with accrued interest and costs, to the credit of M.C.O.P.No.2055 of 2010, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.1 to deal with MCOP cases, Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the same, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

skm

To

The Motor Accidents Claims Tribunal,
Special Subordinate Court No.1
to deal with MCOP cases, Chennai.

+ 1 cc to Mr.N.Vijayaraghavan, Advocate Sr.14949

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C.M.A.No.735 of 2017

SVI (CO)

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