

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3255 of 2013
and
Cross Obj. No.15 of 2014
and
M.P.No.1 of 2013

CMA.No.3255 of 2013

United India Insurance Co. Limited
Coimbatore. ... Appellant

.Vs.

1.S.Premavathi

2.S.Rajalakshmi

3.K.Arunadevi
(R3 represented by her natural
mother and Power Agent S.Premavathi, 1st respondent)

4.G.Jagadeesan

5.S.Sridhar Minor Andrew Paul

6.D.Varadharaj
(R4, R5 and R6 set exparte before the Tribunal)

7.National Insurance Co. Limited
Coimbatore. ... Respondents

Cross Objection No.15 of 2014:

1.S.Premavathi

2.S.Rajalakshmi

3.K.Arunadevi

(R3 rep. by her natural mother and
Power Agent S.Premavathi, 1strespondent herein)

... Cross Objectors

.Vs.

1.United India Insurance Co. Limited
Coimbatore.

2.G.Jagadeesan

3.S.Sridhar

4.D.Varadharaj

5.National Insurance Co. Limited
Coimbatore.

... Respondents

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 and the Cross Objection filed under Order 41 Rule 22 C.P.C against the judgment and decree dated 21.09.2011 passed by the Motor Accident Claims Tribunal/ Sub Court, Dharapuram in M.C.O.P.No.521 of 2007.

CMA.No.3255 of 2013

For Appellant : Mr.T.Ravichandran

For R1 to R3 : Mr.Ma.P.Thangavel

Cross Obj.No.15 of 2014

For Cross Objectors : Mr.Ma.P.Thangavel

For R1 & R5 : Mr.T.Ravichandran

COMMON JUDGMENT

NOOTY.RAMAMOHANA RAO, J.

This appeal is preferred by the Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal-cum- Sub Court, Dharapuram in MCOP.No.521 of 2007.

2.On behalf of the appellant/Insurance Company, Mr.T.Ravichandran was heard and on behalf of the respondents/ claimants, who have also preferred Cross Objection No.15 of 2014 in this appeal, Mr.Ma.P.Thangavel was heard.

3.The facts lie in a very narrow compass:

One Dr.D.V.Subramanian, a 66 year old Physician, residing at R.S.Puram area, Coimbatore, was killed in a motor accident that occurred around 8.30pm on 23rd February 2005. The doctor was travelling in a car bearing Registration No.TN37-P-4951 after attending to a condolence meeting of his relative at Dharapuram. It was driven from South to North on the Dharapuram to Tiruppur Road. An Ambassador car bearing Registration No.TN38-S-7687, which was driven by the fourth respondent in this appeal, from North to South on the said Road has caused the accident, resulting in head injury and other grievous injuries to the doctor. The injured was initially treated at a local hospital at Dharapuram and was

later on, admitted in Kovai Medical Center Hospital at Coimbatore. After battling for about 18 days in the hospital, he ultimately succumbed to the injuries and died. Hence, the claim petition has been lodged by his wife and two daughters, who are his heirs to succeed to his estate. They sought for an amount of Rs.35,00,000/- as compensation. The Tribunal, by its award dated 21.09.2011, has granted a total compensation amount of Rs.18,16,200/-. Towards loss of estate, Rs.16,00,000/- has been awarded, by taking the monthly income of the deceased doctor as Rs.40,000/- per month. His widow has been granted a sum of Rs.10,000/- towards loss of consortium. Towards loss of love and affection, a sum of Rs.30,000/- has been awarded, while awarding Rs.5,000/- towards funeral expenses. A sum of Rs.3,000/- has been awarded towards transportation charges, apart from clearing the entire medical bills drawn for Rs.1,68,200/-.

4.Learned counsel for the appellant / Insurance company has not raised any serious objection with regard to the other counts of awarding compensation, as those amounts are not unreasonable. Insofar as the clearing medical bills are concerned, there is practically no objection raised for the authenticity and genuineness to the claim raised thereon. However, learned counsel for the appellant / Insurance company would urge before us that the accident had taken place not entirely due to the fault of the driver of the Ambassador car, but there is also contributory negligence of the driver of the car bearing Registration No.TN37-P-4951, in which, the doctor was travelling. That part of the contributory negligence has not been adverted to or referred to by the Tribunal. According to the learned counsel for the appellant / Insurance Company, the contributory negligence of the driver of the car, in which the deceased doctor was travelling, should have been determined at 50% and consequently, liability to be fastened on the present appellant, should have been assessed at 50% of the total amount of compensation payable. Therefore, the principal objection on behalf of the appellant / Insurance company is, not recognising the contribution made to the accident concerned by the driver of the car, in which the deceased doctor was travelling and that, the Tribunal has erroneously fastened the entire negligence on the driver of the Ambassador car bearing Regn.No.TN38-S-7687, which was insured with the appellant / Insurance company. It is also urged before us that failure to implead the owner of the car, in which the deceased was travelling and its insurance company is equally fatal to the proceedings. At any rate, out of total compensation determined to the extent of negligence held established against the driver of the Ambassador car, should have been confined to 50%.

5.Whereas, learned counsel for the respondents/claimants would submit that there is no contribution whatsoever on the part of the driver of the vehicle, in which the deceased doctor was travelling. In fact, it was due to the fourth

respondent / driver of the opposite vehicle, the accident occurred. Therefore, the question of determining contribution of the driver of the vehicle, in which the deceased doctor was travelling, particularly, in the absence of any acceptable evidence, has to be ruled out.

6.Learned counsel for the respondents/claimants who preferred the cross objection, would urge that the compensation amount determined by the Tribunal is grossly inadequate. The deceased doctor was a reputed doctor in the locality. He was running a clinic, apart from rendering charitable work. He was also managing an Investigating Laboratory. Therefore, the quantum of compensation ought to have been determined based upon such factors.

7.On behalf of the respondents/ claimants, three witnesses were examined and Exs.P1 to P22 documents were got marked. However, on behalf of the seventh respondent / Insurance company, one witness was examined and the insurance policy issued by the seventh respondent covering the vehicle in which the deceased doctor was travelling, bearing Regn.No.TN37-P-4951, was got marked. Learned counsel for the respondents/claimants would therefore submit that without letting in any evidence by the appellant/ Insurance company, the question of determining the contributory negligence would not arise. When an opportunity was provided by the Motor Accident Claims Tribunal to lead any such evidence, the appellant has not utilised the same and hence, such question, which required collection of evidence, should not be entertained.

8.Learned counsel for the respondents/claimants, who also preferred cross objection, would submit that the quantum of compensation determined by taking the monthly earning of the doctor as Rs.40,000/- per month is grossly erroneous. The doctor was 66 years old. He was considered to be a very good doctor and he was reporting much income in the earlier years. However, since he has completed 60 years of age, he was rendering a lot of charitable work and hence, his income may have come down as reflected in the Income Tax returns, but that alone should not be a determining factor for working out the loss of estate.

9.In the above backdrop, we have carefully perused Ex.P5 rough sketch prepared by the Sub Inspector of Police, Kundadam Police Station in Cr.No.64 of 2005. It is clearly marked therein that the car bearing Regn.No.TN37-P-4951 was driven from South to North on the left half of the road, while the Ambassador car bearing Regn.No.TN38 S 7687, which was travelling from North to South, has obviously cut across the road space available for its journey and moved on to the western side of the road. Thus, creating the zone of conflict with the vehicles moving from South to North, which are required to confine to the western half of the road, while the

vehicles moving from North to South, are required to be driven in the eastern half of the road and hence, it is clear that the conflict creating the collision between the two moving vehicles, has been caused more nearer to the western half of the road rather than the eastern half of the road. Therefore, there is hardly any doubt that the accident has been largely caused by the negligent manner, in which the Ambassador car bearing Regn.No.TN38 S 7687 has been driven. The said car drifted from its course of travel from Eastern half of the road on to the western half of the road. Perhaps, the 'conflicting zone' could have been avoided, at the same time, if only the driver of the vehicle bearing Regn.No.TN37-P-4951 had also noticed the drifting of course of travel by the other vehicle. Thus, instead of entering into the conflicting zone, the driver of the vehicle bearing Regn.No.TN37-P-4951, in which the deceased doctor was travelling ought to have taken measures to prevent any such collision, by moving on to the left side of the road portion available on the western half of the road. While driving a vehicle on the Highways, which is fairly broad and wide, care ought to have been taken to avoid any possibility of conflict with the vehicles moving in the opposite direction, which can be avoided by firstly regulating the speed of his vehicle. Secondly, the zone of conflict, which can be gauged by noticing the drifting of the course of the opposite vehicle or traffic to a certain extent, could have been anticipated and measures should have been employed to avoid it. Therefore, there was failure of anticipation to a certain extent on the part of the driver of the vehicle bearing Regn.No.TN37-P-4951. He has not moved his vehicle quickly to the left hand side after a proper mental calculation of the conflict developing zone in the course of his travel. Obviously, he has not taken any measures to avoid the said conflicting zone. To this extent only, there was contributory negligence on the part of the driver of the vehicle bearing Registration No.TN37 P-4951.

10. In the given facts and circumstances, such contributory negligence could be in the range of 15% to 25%. However, we can take it that the contribution of the driver of the vehicle bearing Regn.No.TN37-P-4951 could not be more than 25%, as the accident had taken place on the western half of the road and the vehicle bearing Regn.No.TN37-P-4951 was, in fact, travelling in the right direction from South to North, except that it could have moved to its left hand side as there was road space available. Hence, the amount of contributory negligence on the part of the driver of the vehicle bearing Regn.No.TN37-P-4951 could not have exceeded 25% at all. It is rather unfortunate that no attempt was made by the Tribunal to conceive the idea that there could possibly be contributory negligence on the part of the driver of the vehicle bearing Regn.No.TN37 P 4951. In the normal circumstances, we would have remanded the matter for consideration afresh including collection of necessary evidence. However, taking into account and considering the fact that the accident had taken place

more than a decade i.e., way back on 23.02.2005 and also taking into account and considering the fact that the witnesses may not be able to recall clearly and precisely the manner in which the accident had taken place then and also taking into account and considering the fact that the first claimant/wife of the deceased doctor is fairly in her advanced age, now we do not consider it proper to remand the matter back, which will prolong the agony and suffering of the claimants.

11.Insofar as the contention canvassed by the learned counsel for the cross objectors with regard to the compensation amount towards 'loss of estate' as determined by the Tribunal is concerned, though there is some force in the submission made by the learned counsel, however, we take into account and considering the fact that the deceased doctor was aged about 66 years at the time of accident, obviously, he was reporting reduced income in his Income Tax returns lately. That reflects the current trend in the society, as more and more patients are running after corporate hospitals to become their patrons and only loyal patients are still visiting the old time clinics and town hospitals. Above all, in a city like Coimbatore, there are more than two medical colleges and also several corporate hospitals have come up in the last 10 to 15 years period. That could also be one of the factors for dwindling income of the deceased doctor. As rightly argued by the learned counsel for the cross objectors, the deceased doctor was obviously sparing lot of his time and enjoying rendering charitable work. He was obviously visiting several charitable institutions to render services free of cost. That can be easily understood from the point of view that he had already crossed 60 years of age and he played his innings well in his youthful and energetic days. Though the services of the deceased doctor are to be appreciated and laudable, however, for rendering his charitable work, we cannot convert or determine the compensation payable for such work in monetary terms going by the very nature of charity involved in such work. The determination of quantum of compensation for such kind of services is perhaps, not proper. In the given circumstances, the quantum of compensation determined by the Tribunal, going by the Income Tax returns and then arriving at the conclusion that the monthly income of the doctor as Rs.40,000/-, is fair, reasonable and sound and therefore, we do not wish to enhance the same any further.

12.Without disturbing the quantum of compensation awarded in all other aspects, we will hold that on count of loss of estate, at least 25% of the amount, which works out to Rs.4,00,000/-, should have been deducted towards the component of contributory negligence on the part of the driver of the car, in which the deceased was travelling. Hence, we determine the 'loss of estate' at Rs.12,00,000/- [Rs.16,00,000/- (-) Rs.4,00,000/-] and retain the rest of the compensation awarded as it is.

13.With the above modification, the Civil Miscellaneous Appeal and the cross objection stand disposed of. If the appellant / Insurance company has deposited any amount, the same is liable to be refunded to them, after adjusting the quantum of compensation awarded to the cross objectors, at the earliest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Sub Court, Dharapuram.
2. The Section Officer
V.R.Section,
Madras High Court.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.47384

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.47484

C.M.A.No.3255 of 2013
and
Cross Obj. No.15 of 2014

SVI (CO)
CA(21/08/2017)

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