IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM

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

C.M.A.No.3294 of 2013 and 801 of 2014
and
M.P.No.1 of 2013 in C.M.A.No.3294 of 2013

The New India Assurance Co. Ltd.,
Coimbatore. ...Appellant in C.M.A.No.3294 of 2013/ 3rd Respondent in C.M.A.No.801 of 2014

Vs.

1 S.Shobadevi
2 S.Shrenikumar Bafna
3 Minor S.Karthik Bafna
(rep by his mother S.Shobadevi)
4 N.Chambalal
5 C.Bidami Bai ...Respondents 1 to 5 in CMA No.3294/2013 Appellants 1 to 5/Claimants in CMA No.801/2014

6 K.Velusamy
7 R.Krishnasamy ...Respondents 6 & 7 in CMA No.3294/2013 Respondents 1 & 2 in CMA No.801/2014

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.10.2012 in M.C.O.P. No.403 of 2009 on the file of the learned Motor Accident Claims Tribunal (Sub Court), Dharapuram.

For Insurance Co. : Mr.S.Manohar
For Claimants : Mr.M.A.P.Thangavel

COMMON JUDGMENT

(The Judgment of the Court was delivered by NOOTY.RAMAMOHANA RAO, J.)

Since these Civil Miscellaneous Appeals are preferred against the same award passed by the learned Motor Accident

Claims Tribunal (Sub Court), Dharapuram in M.C.O.P. No.403 of 2009, they are heard together and are being disposed of by this common judgment.

2 These two Civil Miscellaneous Appeals are preferred by the New India Assurance Co. Ltd. and the claimants respectively, not being satisfied with the award passed by the Motor Accident Claims Tribunal/Sub Court, Dharapuram in M.C.O.P. No.403 of 2009.

3 One Suresh Kumar Bafna, a business man was very actively carrying on the business in the name of Suresh Fabric and Jewellary shop in the name of Mahaveer Jewellary at Coimbatore.

4 On the fateful day, that is on 14th December, 2008 at about 10.30 a.m., Suresh Kumar Bafna was proceeding on his Scooter bearing registration No.TN 37 AC 4700. He was riding the Scooter on Broke Bond main road in Coimbatore City which is a fairly broad and wide road. He was riding the Scooter towards south direction of the road. When he reached near Sirian Church, a truck bearing registration No.TN 37/AT 6336 came and hit him with tremendous force as a result of which Suresh Kumar has been thrown off the Scooter and sustained severe injuries all over the body. Though he was immediately rushed to the Government C.M.C. hospital, Coimbatore, however he died on his way to the hospital itself. Hence, the wife of the deceased, his two sons aged 20 and 15 years and his 69 and 65 years old parents joined together and filed the claim petition seeking a total compensation a sum of Rs.50 lakhs.

5 Before the Claims Tribunal, three witnesses have been examined on behalf of the claimants and Ex.P1 to P23 are got marked. None appeared on behalf of the respondents and no documents were also filed. The second claimant was examined as P.W.1. P.W.2 was an eye witness to the accident. P.W.3 was Income Tax Inspector. Apart from the deposition of P.W.2 who narrated the fateful accident as to how the offending vehicle came at great speed and could not control its speed and dashed against the Scooter driven by the deceased, we have the advantage of perusing Ex.P3 Rough Sketch of the accident. It is prepared by the Inspector of Police, Traffic Investigation Wing, Coimbatore City. The road is 80 feet wide. It has a 10 feet margin on either side. 5 feet of the said space is occupied by drainage and the remaining 5 feet is water bound sand compacted road portion. The Scooter was hit almost very closeby to the left-hand edge of the road adjoining the sand track road. Thus, it is more than clear that the Scooter rider, the deceased, was proceeding correctly towards south side of the road on its extreme left side and he was not at fault. The truck driver

has almost travelled a long distance from the other end and could not negotiate effectively the traffic at 10.30 in the morning and in that process, dashed against the Scooter. Thus, the accident has been caused due to rash and negligent driving of the truck by its driver. The offending vehicle is insured by the appellant Insurance Company and hence it is liable to make good the liability in view of validly existing policy. We are therefore of the opinion that the tribunal was right in recording a finding of fact that accident had been caused wholly due to rash and negligent driving by the truck driver and that the deceased has not contributed in any manner to the accident.

6 In so far as the quantification of pecuniary loss suffered by the claimants, the Income Tax returns Ex.P15 to P18 have been got marked through P.W.3. Ex.P15 is the Income Tax return filed for the assessment year 2006 - 2007 on 13.10.2006. The deceased has declared a total income of Rs.2,88,244/- from his business for the said year. The return for the next assessment year was filed on 28.10.2007. The deceased has shown a total income of Rs.2,56,289/- from his business for the said year. For the next assessment year, Income Tax returns has been filed on 26.9.2008. The Assessee has declared a total income of Rs.2,71,781/-. The hard copy of the returns also submitted to the office of the ITO, Ward III on 7.10.2008. The accident took place on 14.12.2008. Hence, for the next assessment year, wife of the deceased, first claimant herein has filed the return on 30.9.2009 and hence, the tribunal has not taken the income reflected therein into account though the said Income tax return is marked as Ex.P18.

7 The tribunal placed reliance upon Ex.P17 Income tax returns for the assessment year 2008-2009 which was lodged on 26.9.2008, hard copy of which also has been filed before the ITO on 7.10.2008 wherein the business income of the deceased was shown as Rs.2,71,781/-. The learned counsel for the claimants/appellants in C.M.A.No.801 of 2014 has raised two-fold objections for the approach of the tribunal. He would submit that accident having been taken place on 14.12.2008. Ex.P18 should have relied upon. He would submit that placing reliance instead upon Ex.P17 is completely erroneous. Alternatively, the learned counsel would submit that to work out the average income of the Assessee, Ex.P16, 17 and 18 should have been taken into account by the tribunal.

8 We do not see any merit in this contention. Admittedly, Ex.P18 is lodged after the accident had taken place on 14.12.2008 by the first claimant on behalf of the lifetime of the deceased. The assessment of income tax returns for the assessment year 2008-2009 filed on 7.10.2008 which is just about two months prior to the date of accident is therefore most

appropriate. Therefore, placing reliance upon Ex.P17 by the tribunal is not completely erroneous.

9 The average income of the three assessment years cannot be looked into for determining the monthly contribution of the deceased at the time of the accident. Therefore, we do not see any merit in the contention canvassed by the learned counsel for the appellants/claimants and we also come to the conclusion that placing reliance on Ex.P17 for computing the loss of dependency is reasonable.

10 In this context, we would also like to consider the contention of the learned counsel for the appellant/Insurance company. The learned counsel for the appellant/Insurance company would urge that the deceased was not a fixed salaried employee, but he is a business man. Therefore, his business Enterprise will continue and the only loss the dependents would have suffered would be the contribution the deceased would have made independently. The service of another person can be engaged to carry on the said business so that the family will continue to receive the same amount of contribution which the deceased would have otherwise made. We have no difficulty to reject this contention in principle. If a person who establishes business and is carrying on the same directly under his personal supervision, he is bound to take all the care and show the accute concern and exhibit the necessary patience and put in extra efforts to ensure that business income does not get depleted but get increased and unnecessary expenditure is never incurred, whereas the same commitment cannot be expected from an agent employed to run the business. The approach of the tribunal in recording monthly contribution of the deceased to the family as Rs.16,000/- may not be an appropriate one. In terms of the principle enunciated by the Hon'ble Supreme Court in Reshma Kumari and others vs. Madan Mohan and another (2013 ACJ 1253), New India Assurance Co. Ltd. vs. Yogesh Devi and others (2012 ACJ 702) and Rani Gupta and others vs. United India Insurance Co. Ltd. and others (2009 ACJ 1605), the tribunal was required to take actual income at the time of death in cases where the deceased was self-employed or fixed salary as the case may be, without any provision for annual increment and without any addition to income for future prospects. Departure from the above principle can only be justified in extraordinary circumstances and in very exceptional cases. In this view of the matter the tribunal ought to have gone by Ex.P17 Income tax return for the assessment year 2008-2009 filed online on 26.9.2008 and the hard copy also submitted to the I.T.O. on 7.10.2008 where the total income of the deceased/Assessee was declared as Rs.1,74,390/-.

11 The learned counsel has also pointed out that the entirel income generated from and out of the business may not have been contributed to the family by the Assessee. It is therefore reasonable to assume that the contribution of the Assessee at the time of his death may not be less than Rs.10,000/- per month considering the fact that he has two grown up children and aged parents apart from the necessity to take care of his wife. To this extent, direct pecuniary loss has been sustained by the family due to the death of the deceased.

12 Since we have noticed that one of the two sons of the deceased, the second claimant was 20 years old, he may have been forced to look after the business of his father. He may be an inexperienced hand since his father may not have imparted all the finer aspects relating to carrying on business profitably. Therefore, even if we assume that the second claimant, son of the deceased could have possibly stepped into the shoes of his father but nonethless we have to consider that he needs to be assisted and some kind of help even on part-time basis someway or the other and unless the services of someone are hired in that regard it may not be possible to carry on with the business. In a small time business establishment going by the contemporary record, assistance will not be available unless a minimum of Rs.5000/- or Rs.6000/- per month is paid. Hence, we deem it appropriate that for securing assistance to run and supervise the business effectively, even on a part-time basis a sum of Rs.5000/- per month has to be spent. This also requires to be computed for the purpose of providing compensation. Thus, apart from the loss of estate to the tune of Rs.1,20,000/- per annum, we need to add an additional sum of Rs.60,000/- per annum, as is required to be spent for effectively carrying on the business in the absence of the deceased. Thus, possible loss of estate per annum works out to be Rs.1,80,000/-. On that basis, the decree has to be drawn afresh, in as much as the other components for which compensation provided by the tribunal is otherwise sound and reasonable.

13 In New India Assurance Co. Ltd. vs. Yogesh Devi and others (2012 ACJ 702) the Hon'ble Supreme Court held as under:

> "11 Coming to the case on hand, the claim is based on the assertion that the deceased owned agricultural land apart from the above mentioned three minibuses. The High Court rejected the claim in so far as it is based on the income from the land, on the ground that the income would still continue to accrue to the benefit of the family. Unfortunately, the High Court failed to see that the same logic would be applicable even to the income from the above mentioned three

> buses. The asset (three minibuses_ would still continue with the family and fetch income. The only difference, perhaps, would be that during his lifetime the deceased was managing the buses, but now, the claimants may have to engage some competent person to manage the asset, which, in turn, would require some payment to be made to such a Manager. To the extent of such payment, there would be a depletion in the net income accruing to the claimants out of the asset. Therefore, the amount required for engaging the service of a Manager and the salary payable to a driver - as it is asserted that the deceased himself used to drive one of the three buses - would be the loss to the claimants.

In the decision cited supra, the Hon'ble Supreme Court pointed out that the amount required for engaging the service of a Manager and the salary payable in that regard perhaps would be loss to the claimants.

14 Towards loss of future prospects, we do recognise that if only the deceased was alive, he would have carried on the business effectively and the prospects are such that he may have improved it. Though in Reshma Kumari and others vs. Madan Mohan and another (supra) in para 11, the principle that has been settled, we however, feel that providing for improvement of 25% towards future prospects would be reasonable and fair taking into account the age of the deceased as 45 years, Rs.12,000/- per annum with 25% as future prospects. As per Ex.P14, it reveals that main business viz., Bafna Fabrics has been closed. Thus, undoubtedly, the death of the deceased has caused a grave pecuniary loss to the family.

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15 Following the above principle, both Civil Miscellaneous appeals are disposed of on the above terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

vaan

To

The Motor Accident Claims Tribunal (Sub Court),
Dharapuram.

+1cc to Mr.M.A.P.Thangavel, Advocate Sr. 24321
+1cc to Mr.S.Manohar, Advocate Sr. 24101
+1cc to M/S.Ma.P.Thangavel, Advocate Sr. 24320 (27.07.2017)

C.M.A.No.3294 of 2013 and
801 of 2014 and
M.P.No.1 of 2013 in
C.M.A.No.3294 of 2013

SKS(CO)
VR(11/07/2017)