IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.12.2016

Judgment Pronounced on :24.02.2017

CORAM :

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.3192 of 2006
and MP.No.3 of 2006

The New India Assurance Co. Ltd.,
No.66C, North Car Street,
Tiruchengode. .. Appellant

Vs

1.Chitra
2.Jayapriya (Minor)
3.Jayabharathi (Minor)
4.Nilash (Minor)
5. Ponnusamy (Died)
6.Jayalakshmi
7.S.Murugesan
8.R.Nagarajan
9.Nagarajan
10.G.K.Selvaraj

11.United India Insurance Co. Ltd.,
Rep by its Branch Manager
No.3, Main Road,
Veerapandi Village,
Gobi Taluk.

12.L.R.N. Finance Co. Ltd.,
No.152, K.P.C. Complex,
Mettur Road, Erode - 11.

13.Sanjay Gandhi
14.Thangadurai .. Respondents

(Respondents 13 & 14 are brought on record as legal heris of the deceased 5th respondent vide order dated 7.11.2016 in CMP.No.17258 of 2016 in CMA.No.3192 of 2006)

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.2.2005 made in MACT.OP.No.135 of 2003 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court),Gobichettipalayam.

For Appellant : Mr.K.C.Krishnamurthy
for Mr.P.Sukumar
For Respondents: Mr.Ma.Pa.Thangavel
[for RR1 to 4, 6, 13 & 14]
R5 - Died
R11 - No appearance

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the insurer of one of the two vehicles involved in a road accident that took place on 24.08.2002, challenging the award passed in MCOP.OP.No.135 of 2003 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Gobichettipalayam.

2. On 24.08.2002 at about 10.30 p.m. one Venkatachalam was travelling in the cabin of a mini door auto, a goods vehicle, along the Salem - Sankagiri Highway, and it collided with a stationary lorry bearing registration No.TN-L-7441 insured with the appellant. In the said accident Venkatachalam died leaving him surviving his young wife aged 25 years with three little children and also his parents. They approached the Claims Tribunal seeking a total claim of Rs.7,19,000/-, as against which the Tribunal granted an award of Rs.5,61,000/-. The accident has taken place at night on a highway. As the evidence on record indicated that the stationary lorry was without parking lamps, the Tribunal apportioned the negligence equally on the drivers of both the vehicles and accordingly it directed the owners of both the vehicles and their respective Insurance Companies which includes the insurer of the lorry, the appellant herein to meet the liability equally.

3. The learned counsel for the appellant vehemently argued that the Tribunal has egregiously erred in apportioning the negligence equally on both the drivers. Admittedly, the accident had taken place on the highway and but for the negligence of the driver of the auto in which the deceased had travelled, the accident would not have taken place. In other words, the driver of the auto had the best opportunity to avoid a potential collision if only he had taken necessary precaution. To sum up, the learned counsel would argue that the percentage of the negligence of the auto driver should be increased by a reasonble extent and the liability of the insurer to pay the compensation should be reduced to that extent.

4. As to the quantum, the learned counsel brought to the notice of the Court that out of the total compensation of Rs.5,61,000/-, the Tribunal has awarded Rs.5,40,000/- towards loss of contribution for the deceased to his family. The deceased was stated to be 27 years and was said to be a flower merchant and the Tribunal has notionally fixed the income at Rs.2,500/- per month, as against the contention of the

claimant that he was making about Rs.4,500/- per month. The learned counsel added that in fitness of things the Tribunal ought to have deducted 1/3rd of the notional income that the Tribunal had fixed towards the personal expenditure of the deceased at instant. In other words, the learned counsel would submit that the total compensation awarded on the head of loss of contribution to the family be reduced by 1/3rd.

5. Relying on the judgment of the Hon'ble Supreme Court in Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Limited in [2011(2) TNMAC 190 (SC)] and on the judgment of this Court in The Managing Director, Metropolitan Transport Corporation Ltd., Vs. Kanna in [2016 ACJ 1572], the learned counsel for the claimants/respondents would contend that even in an accident that had taken place in the year 1988, the Hon'ble Supreme Court has notionally fixed the income of the claimant in that case at Rs.4,500/- and hence this Court may also take that into acount. He also added that no compensation was provided for loss of consortium and even on the heads of loss of love and affection, shock and stress either no compensation was paid or very meagerly awarded. He further added that the march of law triggered by the decisions of Sarala Varma & Other Vs. Delhi Transport Coporation & another [2009(2) TNMAC 1]: [2009 ACJ 1298] and Santosh Devi Vs National Insurance Co., Ltd., [2012(2) TNMAC 1 (SC)], necessitates that future loss of income must also be reckoned and suitable multiplier must be determined. He added that even though no Cross Objection was preferred by the claimants/respondents, the Court has ample power to determine the just and fair compensation by invoking its power under Order 41 Rule 33 CPC.

6. In the eventuality of the claimants' prayer for enhancement of compensation is being considered, this Court felt the need to hear the United India Insurance Company, the eleventh respondent herein on the same. When the case was listed on 07.12.2016, there was no representation for the 11th respondent-Insurance Company and hence the case was again posted on 09.12.2016 for the specific purpose of hearing somebody on behalf of the United India Insurance Company Co.Ltd., It is seen that notice is served, but till date the 11th respondent has not chosen to enter appearance.

On negligence:

7. A highway in darkness and a lorry is parked there without parking lamps to alert the passing vehicle. This is in gross violation of Rule 109 of the Central Motor Vehicles Rules, 1989. It mandates that "... The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road". A violation thereof would amount to leaving a vehicle in dangerous position within the meaning of Sec.122 of the MV Act. Sec 122 reads:

"No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned

> or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers."

A vehicle without parking lights remaining stationary on a dark highway has actually proved dangerous, when an auto rammed on to it as its driver could hardly have expected an obstruction such as that on its line of motion. Rather than debating on who could have avoided the accident, or probing if the driver of the auto had the last opportunity to avoid the accident, it will be pertinent to contemplate if the accident at all had happened if the stationary lorry had its parking lamps are lit. The blame that is required to be assigned to the auto driver is directly proportionate to the failure of responsibility of the lorry driver, for but for the latter's negligence the former in all possibility could have avoided the accident. Viewed thus, I find the finding of the Tribunal in fixing equal responsibility on both the drivers is appropriate.

On quantum:
8. Here there is some merit in the submissions of the appellant's counsel. The Tribunal has not provided anything for the personal expenses of the victim. But the Tribunal has not also awarded anything for loss of consortium and awarded pittance for the loss of love and care of the father for the minor children. And loss of dependency itself needs to be assessed as per Sarla Varma and Santhosh Devi cases referred to above, it is on this platform on which the adequacy of the total compensation needs to be tested.

9. The victim was a flower merchant and was self employed. His monthly income was notionally fixed at Rs.2,500/- by the Tribunal and this was fair enough. Out of this ¼ required to be deducted towards the personal expenses of the deceased as he has to support a family of six. The net monthly support for his family therefore is Rs.1,875/- to which 50% must be added based on the dictum in Santhosh Devi Vs National Insurance Co., Ltd., [2012(2) TN MAC 1 (SC)] since the victim was self employed, and accordingly his annual loss of support is Rs. 33,750. He being 27 years when he died, the appropriate multiplier as per Sarala Varma dictum is 17. If compensation is reworked thus, it is only likely to exceed the total compensation payable as per award. However no cross objection was filed by claimants to consider this possibility. I therefore confirm the quantum awarded by the Tribunal.

10. To conclude the appeal is dismissed the compensation payable is apportioned equally between the owner and the insurers of both the vehicles involved in the accident as has already been determined by the Tribunal and the appellant is directed to deposit 50% of the compensation amount that it is

required to pay, less any amount already deposited, with interest at 6% p.a. within four weeks from date of receipt of copy of this order whereupon the claimants are entitled to withdraw the same in the same proportion in which the award was apportioned by the Tribunal forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ds

To:

1.The Motor Accidents Claims Tribunal,
Principle Sub Court, Gobichettipalayam.

2.The Record Keeper
VR Section, High Court, Madras.

+1cc to M/s.Ma.Pa.Thangavel,Advocate sr.11957

+1cc to M/s.P.Sukumar,Advocate sr.12278

CMA.No.3192 of 2006

gm1(co)
ss(27/3/2017)