BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.04.2017
Pronounced on : 05.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.(MD)No.562 of 2014

The Branch Manager,
The Oriental Insurance Company Limited,
No.4, Bharathidasan Road,
Contonment, Trichy-1. ... Appellant/2nd Respondent

Vs.

1.Chandra,
2.T.Jeyapaul,
3.J.Lalitha ... Respondents 1 to 3/ Petitioners 1 to 3
4.M.U.Paritha ... 4th Respondent/ 1st Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.961/2013, dated 05.02.2014, on the file of the Motor Accidents Claims Tribunal cum Special District Court, Trichirappalli.

For Appellant : Mr.K.Bhaskaran.
For Respondents No.1 to 3 : Mrs.T.Kokilavane for Mr.C.Padmaraj
No Appearance for R4.

JUDGMENT
(Judgment of the Court was delivered by **P.VELMURUGAN,J.**)

The Civil Miscellaneous Appeal is directed against the judgment and decree dated 05.02.2014, passed in M.C.O.P.No.961 of 2013, on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Trichirappalli.

2.The case of the claimants 1-3/respondents 1-3 herein as per the claim petition, filed before the Tribunal, is that on 28.07.2012, the deceased J.Jeyachandran had travelled in Qualis car bearing Registration No.TN 20 P 1333 belonged to the first respondent. When the car was proceeding from Chennai to Trichy, while coming near Vikravandi U road at around 12.45 P.M, the driver of the first respondent over took the two wheeler and lorry going ahead of them in a rash and negligent manner and as a result, he lost his control and initially dashed the two wheeler and then the lorry also. Due to the accident deceased J.Jeyachandran and his friends died on the spot. Immediately bodies were taken to Villupuram Medical College Hospital. A case was registered against the driver of the car bearing Registration No. TN 20 P 1333. It is further stated in the claim petition, at the time of the accident, the deceased J.Jeyachandran was aged about 33 years and was working in Saudi Arabia for the past decade and was earning Saudhi Riyals 3,500 and equal to sum of Rs.42,000/- (1 Riyal = INR 12)

3.The first and second claimants are parents of the deceased and the third claimant is his sister. Due to the said accident only, the deceased died and since the deceased is the only son to his parents and the claimants are the dependents of the deceased, they lost the income and hence, they claimed a sum of Rs.75,00,000/- as compensation.

4.The case of the appellant Insurance Company/ second respondent as per the counter filed before the Tribunal is that there are three vehicles involved in the accident viz, the car bearing Registration No.TN 20/P 1333, a lorry and a two wheeler. The claim petition is silent about the details of the lorry and two wheeler. The owners of the lorry and two wheeler are the necessary parties to claim petition. The petitioner did not implead them and also their Insurance companies. Therefore the claim petition is hit by non-joinder of necessary parties. The respondent came to know that first respondent used the offending car for commercial purposes, where as he is permitted to use the same for his personal use only. The said car was insured with the second respondent under private Policy, but used the car for commercial purpose. Therefore, the second respondent is not liable to pay compensation to the person who travelled in the said car. A two wheeler rider suddenly attempted to overtake the car and subsequent to the lorry and at that time, the two wheeler rider lost his control and dashed behind the lorry, fell on the road, which obstructed other users of the road, and thus invited the accident. But the claimants simply thrown the liability upon the respondent. The two wheeler rider was the root cause for the accident and he alone is liable for the accident and the driver of the car bearing Registration No. TN 20 P 1333 was not responsible for the accident. The claim petition has been filed under Section 166 of the Motor Vehicles Act. Therefore, the claimants have to prove the accident, avocation and other things. The monthly income of the deceased as claimed in the claim petition is not correct and here is no permanent employment and permanent monthly salary for the deceased. Therefore, the award claimed by the claimants are highly excessive. Therefore, the claim petition has to be dismissed .

5.Before the Tribunal, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P1 to P16 were marked and on the side of the respondents, R.W.1 was examined and no document was marked. After considering the claim petition, counter affidavit, Oral and documentary evidence and other materials, the Tribunal has passed the award as follows:

HEAD	AMOUNT AWRDED BY THE TRIBUNAL (Rs)
Loss of income	30,41,577/-
Loss of love and affection	30,000/-
Transportation and Funeral Expenses	10,000/-
Total	**30,81,577/-**

6.Aggrieved by the said award the second respondent/the appellant Insurance company, has filed the present Civil Miscellaneous Appeal, stating that the liability fixed by the tribunal is not correct. Even though three vehicles were involved in the accident, the main root cause for the accident is only, by the rider of the two wheeler. Furthermore, the car was insured under private policy, but the same was used for commercial purpose. Therefore, it is the violation of policy, hence, the owner of the car only is liable to pay compensation. Further he would submit that there is no permanency of employment and no permanent monthly salary for the deceased and hence, the monthly salary in Dubai is entirely different when comparing to the economic situation in India. Therefore, the monthly income can not be taken as it is, as mentioned in the claim petition. There is no proof, to show that the deceased contributed the entire salary to the claimants, no bank statement was filed and hence, the Tribunal has erred in fixing the monthly income of the deceased and the award passed by the Tribunal does not reflect any just and reasonable and hence, it is liable to be set aside.

7.The learned counsel for the respondents/claimants would submit that to prove the accident, P.W.2, who was an eye witness was examined and he has spoken about the manner of the accident. The accident had occurred duly due to rash and negligent driving of the driver of the Qualis car bearing Registration No. TN.20 P 1333. From the available evidence it is clear, the complaint also was lodged against the driver of the Qualis and FIR also was registered against him and as per the evidence of P.W.2, the Tribunal correctly fixed the liability on the driver of the car bearing Registration No. TN.20 P 1333.

8.He would further submit that as far as the quantum of the compensation is concerned, P.W.1 was examined and to prove the income, she has marked the Passport, employment certificate and salary certificate of the deceased, which would show that the deceased was earning 3500 Riyals equivalent to INR.42,000/-. He was a bachelor and he was not residing in Dubai along with his family members /the claimants and therefore, he would spend a meagre amount for his personal expenses and the remaining amount shall be given to the claimants and hence the award passed by the Tribunal is not excessive and the same is just and reasonable. Therefore, the appeal has to be dismissed.

9.Points for consideration arise that:-

i) Whether the accident occurred purely due to the rash and negligent driving of the driver of the offending Car bearing Registration No. TN 20 P 1333?

ii) Whether the award passed by the Tribunal is just and reasonable?

iii) What other reliefs the parties are entitled to?

<u>Point No1.</u>

10.As far as the first point is concerned, the claimants have stated that their son arrived from Dubai, on 28.07.2012, he landed at Chennai Airport and he boarded in one of his friends' Qualis car bearing Registration No.TN20 P1333, belong to the first respondent. While, they were coming from Chennai to Tiruchy, due to the rash and negligent driving of the driver of the car bearing Registration No. TN 20 P 1333, dashed with two wheeler, by which, he died on the spot. Even though the first claimant is not an eye witness, he gathered the facts from the persons, who had spoken about the occurrence. To substantiate his claim, he examined P.W.2, who is stated to be an eye witness and who is the claimant in M.C.O.P.No.2031 of 2013, which has arisen out of the same accident. P.W.2 is one of the co-passengers in the Qualis car and he has spoken about the manner of the accident. Though a suggestion was put before him about the accident, which occurred only due to the negligent act of two wheeler, he denied the same. Therefore, from the evidence of P.W.2, it is clear that the accident had occurred only due to the rash and negligent driving of the driver of the car bearing Registration No.TN 20 P1333. Further, the Insurance Company has summoned the driver of the car and he was examined as R.W.1 on the side of the appellant Insurance Company. From his evidence, it would show that he had driven the car in a moderate speed of 50 to 60 km and in his chief examination, he has admitted that when the lorry driver applied the brake suddenly, the two wheeler hit against the lorry and hence, the car dashed against the two wheeler and therefore, the accident occurred due to the negligent act of the driver of the lorry and also the two wheeler and he is not the root cause for the accident. On a careful scrutiny of the evidence of R.W.1, even in the chief examination, he has stated that when he was proceeding, the two wheeler over took the car and hit the lorry and due to the sudden application of brake by the driver of the lorry, he hit the lorry. If at all, R.W.1 had cautiously driven the vehicle on the road in a moderate speed and maintaining the distance as per the Motor Vehicle Rules, when the lorry driver applied sudden brake, he could have stopped the car and avoided the accident. Since the driver of the car was driving the vehicle in a rash and negligent manner without keeping adequate distance, the accident had occurred. Therefore, the Tribunal has correctly fixed the liability and there is no reason to interfere with the same. The first point is answered accordingly.

Point No.2:

11.As far as the quantum of compensation is concerned, in order to prove the income of the deceased, his father was examined as P.W.1 and through him, Ex.P4, Passport, Ex.P5, PAN card, Ex.P6, degree certificate, Exs.P.9 and 13, bonus certificates, Ex.P10 and 14 Salary certificates, Exs.P11 and 12 Appointment Orders of Red Sea Gateway Terminal. Perusal of the salary certificates produced by the claimants would show that the deceased was earning Rs.42,000/- per month. Except this, no other document has been produced by the deceased for proving the income. The other documents viz., passport, PAN card, degree certificates and other things would show that he was having qualification to work as Tally Man in Red Sea Gateway Terminal. Perusal of the records would show that no terms and conditions of appointment order has been furnished to show, his period of working in Dubai and whether his employment was permanent in nature. The period of employment was also not proved. The only available documents to prove the income of the deceased are Exs.P10 and 14. The same had not been proved as the manner known to law. The claimants have pleaded as "the deceased who was sojourning in Saudi Arabia for the past decade spent is valuable prime of his youth solely as a divorsional servant on a purely roaming in service, because of his ardent meticulous sacrificing in getting his salary per mensum to the tune of Saudi Riyals 3,500/- equivalent to Indian money Rs.42,000/- per month". However, the same was not substantiated by any cogent proof. Mere production of certificates Ex.P.10 and 14 were found to be insufficient proof about such employment or earning. This Court finds the conclusions rendered by the Tribunal is not appropriate. Therefore, we cannot fix the monthly income as per Exs.P10 and 14. In this regard, it is worthwhile to refer to the decision of Division Bench of Kerala High Court, in the case of **Vahisa and others Vs. C.I Lincy and others**, reported in **2017 ACJ P.669.** The relevant portion of the judgment is extracted below;-

9. In the decision of Valsamma v. Binu Jose, 2014 ACJ 997 (Kerala), this court has held that income of a person

in a foreign country which is not a permanent employment cannot be taken into consideration for the purpose of assessing compensation under the head of loss of dependency and the income will have to be assessed in the context of Indian standards which such person if he is employed in India will be getting. Considering the circumstances, the amount of Rs. 6,000/- fixed by the Tribunal as his monthly income can not be said low and it is reasonable as well."

12.In this case, considering the educational qualification of the deceased, definitely, he would have earned some income and hence, considering the age, nature of the qualification of the deceased, had he worked in India, definitely, he could get Rs.15,000/- per month. Therefore, this Court fixes the notional income at Rs.15,000/- per month.

13.As per Ex.P4, passport of the deceased, his date of birth is 24.03.1979 and the accident had taken place on 28.03.2012 Therefore, at the time of the accident, the age of the deceased is 33 years and he died as bachelor. The first claimant is the mother and the second claimant is the father and the third claimant is the sister of the deceased.

14.However, at the time of the accident, the age of the deceased is 33 years and died as bachelor, the average age of his parents has to be taken into consideration for adopting multiplier for calculating loss of income. Perusal of the claim petition, the age of his father and mother is mentioned as 55 and 49 respectively. However, in Ex.P.3 the legal heir certificate, it is mentioned as the age of the father of the deceased is 65 and the age of the mother of the deceased 61. During the cross examination of P.W.1, he has deposed that he only gave the legal heir particulars to the Thasildar and hence, there is a controversial statement with regard to the age of the parents, in between the claim petition and the legal heir certificate. Since, Ex.P3, legal heir certificate has been issued by the Tahsildar, Srirangam, which is an authenticate document, we take the age of the parents as stated in the legal heir certificate. At this juncture, it is pertinent to refer to the decision in the case of, **Bajaj Alliance General Insurance Com.Ltd Vs. Bipin Laxmichand Mehta and others**, reported in **2017 ACJ 30**, the Bombay High Court has held as follows:

"37. We may note that the Apex court in the case of Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Another (2015) 2 SCC 180. was required to deal with a similar situation where the deceased was 19 years old. The Hon'ble Court while calculating the compensation applied the multiplier as per the age of the parents of the deceased. The Court held:

"11. .....Therefore, we have no doubt in ascertaining the future income of the deceased at Rs. 25,000/- p.m. i.e. Rs. 3,00,000/- p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in Sarla Verma case, we arrive at a total loss of dependency at Rs. 26,00,000/- [(Rs. 3,00,000 minus 1/3 X Rs. 3,00,000)X 13]".

38. The Apex Court in the case of National Insurance Company Limited v. Shyam Singh and Others (2011) 7 SCC 65 was required to deal with a similar situation where the aged parents were sole dependents of their young deceased son. After consideration and following the case of Ramesh Singh v. Satbir Singh: (2008) 2 SCC 667 the Apex court held that the multiplier that would apply would be after considering the age of the parents of the deceased. The Court has held in Para 9 and 10:

"9. This Court in the case of Ramesh Singh v. Satbir Singh, (2008) 2 SCC 667, *after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:*

*"6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. v. Charlie:*AIR 2005 SC 2157, *it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the trial court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.*

7. The learned Counsel relying on the Second Schedule of the Act contended that the deceased being about 16 or 17 years of age, a multiplier of 16 or 17 should have been granted. It is undoubtedly true that Section 163-A was brought on the statute book to shorten the period of litigation. The burden to prove the negligence or fault on the part of driver and other allied burdens under Section 140 or Section 166 were really cumbersome and time consuming. Therefore as a part of social justice, a *system was introduced via Section 163-A wherein such burden was avoided and thereby a speedy remedy was provided. The relief under Section 163-A has been held not to be additional but alternate. The Schedule provided has been threadbare discussed in various pronouncements including Deepal Girishbhai Soni v. United India Insurance Co. Ltd.*: AIR 2004 SC 2107. *The Second Schedule is to be used not only for referring to age of victim but also other factors relevant therefor. Complicated questions of facts and law arising in accident cases cannot be answered all times by relying on mathematical equations. In fact in U.P.SRTC v. Trilok Chandra*: (1996) 4 SCC 362, *Ahmadi, J. (as the Chief Justice then was) has pointed out the shortcomings in the said Schedule and has held that the Schedule can only be used as a guide.* ***It was also held that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. If a young man is killed in the accident leaving behind aged parents who may not survive long enough to match with a high multiplier provided by the Second Schedule, then the Court has to offset such high multiplier and balance the same with the short life expectancy of the claimants.*** *That precisely has happened in this case. Age of the parents was held as a relevant factor in case of minor's death in recent decision in Oriental Insurance Co. Ltd. v. Syed Ibrahim.*: AIR 2008 SC 103. *In our considered opinion, the courts below rightly struck the said balance."*

10. In our view, the dictum laid down in Ramesh Singh case is applicable to the present case on all fours...... "

(Emphasis supplied)

39. Thus, what is evident from the above decisions is that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. In the present case, the age of the deceased at the relevant time was 20 and the father and mother were aged 54 and 51 years at the time of the accident and 60 and 57 years when the evidence was recorded. Keeping in mind the above decisions, we are of the view that the Tribunal erred in applying the multiplier of '17', by considering the age of the deceased. In the facts of the present case, according to us, the multiplier which ought to be applied is '11', considering the average age of the first and second respondent i.e. 54 and 51 i.e. 52 years."

15.In this case also the ages as mentioned in Ex.P3, legal heir certificate, age of the father of the deceased is 65 and age of the mother of the deceased is 61 and hence, the average age of the first and second respondents has to be taken as 63 years.

Considering the above said decision and the average age of the parents, multiplier 7 can be adopted. Accordingly, the loss of income of the deceased would come to Rs.15000X 7 X12=Rs.12,60,000/-. Further, in the case of, ***Rajesh and Others Vs. Rajbir Singh and others,*** reported in ***2013 ACJ 1403 (SC),*** the Hon'ble Supreme Court has held that even in a case where persons are not having any permanent income, future prospects will have to be taken into consideration and in the age group upto 40, future prospects has to be taken as 50% and the age between 40 and 50, future prospects has to be taken as 30%. However, in this case, the average age of the parents is fixed as 63. Therefore, the claimants are not entitled to any future prospects.

16.In view of the law laid down by the Hon'ble Apex Court, in S**arla Verma's case reported in 2009 ACJ 1298(SC)** and upheld by a larger Bench of the Hon'ble Apex Court ,in the case of, **Reshma Kumari, reported in 2013 ACJ 1253 (SC),** in case of a bachelor, half of the income is required to be deducted towards personal expenses of the deceased. In this case, since the deceased was a bachelor at the time of the accident, 50 % of the income towards personal expenses of the deceased is deducted and accordingly the loss of income would come to Rs.6,30,000/-.

17.In so far as other heads are concerned, the Tribunal has awarded Rs.30,000/- towards loss of love and love affection and the same is enhanced to Rs.1,50,000/- and the Tribunal has awarded Rs.10,000/- towards transport and funeral expenses and the same is modified and awarded as Rs.25,000/- towards funeral expenses and Rs.10,000/- towards transportation. The tribunal has not awarded any compensation towards loss of estate and Rs.5,000/- is awarded towards the same. We are of the view that the same is just and reasonable compensation.

18.The compensation awarded by the Tribunal is modified as hereunder:-

HEAD	AMOUNT CLAIMED BY THE CLAIMANT (Rs.)	AMOUNT AWRDED BY THE TRIBUNAL (Rs)	AMOUNT AWARDED BY THIS COURT (Rs.)
Loss of income		30,41,577/-	6,30,000/-
Transportation			10,000/-
Loss of love and affection	75,00,000/-	30,000/-	1,50,000/-
Transportation and Funeral Expenses		10,000/-	-- ___________ --
Funeral expenses			25,000/-
Loss of Estate		-	5,000/-
Total		**30,81,577/-**	**8,20,000/-**

19. *In the result,*

(i) This Civil Miscellaneous Appeal in C.M.A.(MD)No.562 of 2014 is partly allowed and the award passed by the claims Tribunal is modified as shown above.

(ii) In the facts and circumstances of the case, there shall be no order as to costs.

(iii) The second respondent is directed to deposit the compensation with interest at 7.5% per annum from the date of petition, less the amount already deposited, if any, along with proportionate interest and cost to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this order. The claimants are entitled to the modified compensation, in which the 1st claimant being the mother of deceased as well as the first class heir is entitled to Rs.4,00,000/- and the 2nd claimant father is entitled to Rs.3,00,000/-. As far the 3rd claimant elder sister of the deceased is concerned, perusal of Ex.P.3 legal heir certificate would show that the 3rd claimant is not a legal heir of the deceased and hence, this Court is of the view that the 3rd claimant is not depending up on the deceased. Even P.W.1, in his evidence has stated that, he has a married daughter and hence, the 3rd claimant is not dependant of the deceased. Had the deceased been alive, he would have supported his sister to some extent. Hence, the 3rd claimant is entitled to Rs.1,20,000/-. Since the accident occurred in the year 2012, the claimants are permitted to withdraw the entire amount that would be deposited by the appellant. The claimants are permitted to withdraw their share with award amount less the amount already withdrawn if any, with proportionate interest and cost, through RTGS by filing necessary Application before the Tribunal. The appellant is permitted to withdraw the excess amount, if any.

Sd/-
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To
1. The Motor Accidents Claims Tribunal/
   Special District Court, Trichirappalli.
2. The Record Keeper,
   V.R. Section, Madurai Bench of Madras High Court, Madurai.

+3 CC to Mr.K.Bhaskaran, Advocate, SR No. 58243.

ARUL/DSK
PSM/KKR/SAR4/29.06.2017/10P/6C

Judgment made in
C.M.A.(MD)No.562 of 2014
05.06.2017