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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.04.2017
Delivered on : 19.04.2017
CORAM :

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

C.M.A. (MD) No.680 of 2011 and
CROS.OBJ (MD).No. 24 of 2011 and
M.P. (MD).No.2 of 2013

C.M.A. (MD) No.680 of 2011

The Oriental Insurance Co.Ltd.,
Through its Branch Manager,
No.5, G.H. Road,
Theni - 625 531.

... Appellant/2nd respondent

Vs.

1.Regin Deepa
2.Soosai Mariyan
3.Amala Rani
4.Minor Jenisa
(Minor 4th respondent rep.through
by her mother and next guardian
1st respondent, Regin Deepa)

...Respondents 1 to 4/Petitioners 1 to 4

5. Elavarasan
(5th respondent remained exparte
before the Lower Court)

... 5th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Award of Rs. 31,00,000/- (Rupees Thirty One Lakhs Only) passed in M.C.O.P.No. 440 of 2009 dated 01.10.2010, on the file of the Motor Accidents Claims Tribunal cum Additional District judge, (FTC-2), Tirunelveli.

CROSS.OBJ.(MD)No.24 of 2011

- 1.Regin Deepa
- 2.Soosai Mariyan
- 3.Amala Rani
- 4.Minor Jenisa

(Minor 4th respondent rep.through
by her mother and next guardian
1st respondent, Regin Deepa)

: Cross Objectors

Vs.

- 1.The Oriental Insurance Co.Ltd.,
Through its Branch Manager,
No.5, G.H. Road,
Theni - 625 531.

- 2.Elavarasan : Respondents
(2nd Respondent remained exparte before the Lower Court)

PRAYER : Cross Objection is filed under Order 41 Rule 22 of CPC Vehicles Act, 1988, against the order and decree dated 01.10.2010 of the learned Motor Accidents Claims Tribunal cum Additional District Judge/Fast Track Court No.II, Tirunelveli, in M.C.O.P.No 440 of 2009.

C.M.A.(MD)No.680 of 2011

For Appellant : Mr. K. Bhaskaran

For R 1-4 : Mr.T. Selvakumar

For R-5 : No appearance

CROSS.OBJ.(MD)No.24 of 2011

For Cross Objectors : Mr.T. Selvakumar

For R 1 : Mr. K. Bhaskaran

For R-2 : No appearance

C O M M O N J U D G M E N T

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

The Civil Miscellaneous Appeal in C.M.A.(MD)No.680 of 2011 has been filed by the appellant/second respondent, to set aside the award of Rs. 31,00,000/- (Rupees Thirty One Lakhs Only) passed in M.C.O.P.No. 440 of 2009 dated 01.10.2010, on the file of the Motor Accidents Claims Tribunal cum Additional District judge, (FTC-2), Tirunelveli.



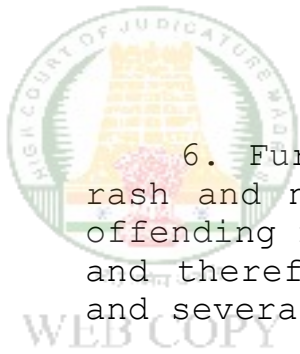
2. Cross Objection in Cross.Obj.(MD)No.24 of 2011 has been filed by the respondents 1-4/claimants 1-4, against the order and decree dated 01.10.2010 of the Motor Accidents Claims Tribunal cum Additional District Judge/Fast Track Court No.II, Tirunelveli, in M.C.O.P.No 440 of 2009.

3. Issue involved in these matters are as one and the same and so these matters are taken up together and disposed of by this common Judgment.

4. The case of the claimants in the claim petition is that on 03.03.2009, at about, 5.45 pm, when the deceased was riding a motorcycle bearing Reg.No. TN 74 U 2217 from West to East on the Vetoornimadam-Vadaseri main road, near Indira Medical on the left side of the road, the lorry bearing Reg. No.TN 02 H 4515 belonging to the first respondent was driven by its driver from East to West in a rash and negligent manner and entered into the wrong side, beyond the mediation line and dashed with the motorcycle, which was ridden by the deceased. As a result of which, the deceased sustained multiple serious injuries all over his body and immediately he was taken to the Government Hospital at Asaripallam, where the doctor declared him as dead.

5. During the relevant period, the deceased occurred working in a Multi National Mercantile Ship belonging to the Leo Shipping Private Limited and drawing a monthly salary of Rs. 70,000/- (Rupees Seventy Thousand only) and at the time of the accident, the deceased was aged about 27 years. The claimants 1,2,3 and 4 are the wife, father, mother and minor daughter of the deceased respectively. Therefore, the claimants, under various heads, have claimed a total sum of Rs. 2,00,00,000/- (Rupees Two Crores) towards compensation as follows:-

HEAD	AMOUNT CLAIMED BY THE CLAIMANTS (Rs.)
For Loss of earnings & future prospects	2,00,00,000/-
Transport and funeral expenses	10,000/-
For Loss of Consortium	5,00,000/-
For Loss of Love and affection	1,00,000/-
Compensation for shock and mental agony	1,00,000/-
Total	2,07,10,000/-
Claim restricted to	2,00,00,000/-



6. Further they stated that the accident was only due to the rash and negligent driving of the driver of the first respondent offending mini lorry, which was insured with the second respondent and therefore, both the first and second respondents are jointly and severally liable to pay the compensation to the claimants.

7. The case of the respondents is that, the accident occurred not due to rash and negligent driving of the driver of the lorry. But the accident occurred only due to the rash and negligent riding of the deceased-rider of the motorcycle. Therefore the driver of the first respondent lorry is not solely responsible for the accident. In fact, the first respondent lorry was proceeding from East to West on the Vadaseri - Vetturimadam main road and the deceased was also proceeding on the same direction from East to West just behind the first respondent lorry. When the said lorry reached signal point, on seeing red signal in the signal board, the driver stopped the lorry. But the deceased, who was riding the motorcycle in a rash and negligent manner at a high speed, following the said lorry could not have control over his motorcycle and thereby dashed against the right rear side of the lorry and fell on the road and sustained grievous injuries. Therefore, the accident occurred not due to rash and negligent driving of the driver of the lorry as stated in the claim petition by the claimants.

8. It is further stated that the deceased was riding the said motorcycle without any valid licence and he wantonly violated the traffic rules and invited the accident. The said motorcycle was insured with the New India Assurance Company Limited, Nagercoil. But the said Insurance Company was not impleaded as a party and due to non joinder of the said Insurance Company, the petition is not maintainable in law and liable to be dismissed as non joinder of necessary parties.

9. The compensation claimed by the claimants is highly excessive. The first respondent is not solely responsible for the accident. But the accident occurred only due to the rash and negligent riding of the deceased-rider of the motorcycle. Even otherwise also he had contributed his negligence to the accident. Therefore the second respondent is not solely responsible to pay compensation and the order passed by the Tribunal has to be set aside.

10. In order to prove the case, on the side of the claimants, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.33 were marked. On the side of the respondents, no witness was examined and no oral evidence was let in and no document was marked.

11. After considering all the facts and circumstances of the case and the oral and documentary evidence let in by claimants, the Tribunal awarded the following compensation:-



HEAD	AMOUNT AWRDED BY THE TRIBUNAL (Rs)
For Loss of earnings & future prospects	30,60,000/-
Transport and funeral expenses	10,000/-
For Loss of Consortium	-
For Loss of Love and affection	30,000/-
Compensation for shock and mental agony	-
Total	31,00,000/-

Aggrieved by the award passed by the Tribunal, the second respondent Insurance company has preferred the present Civil Miscellaneous Appeal and in which the claimants have filed Cross Objection.

12. Heard both sides and considered the rival submissions made by both the counsel.

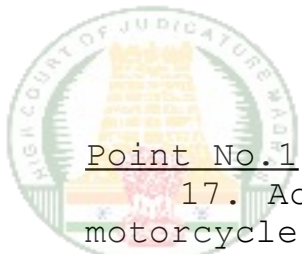
13. The learned counsel for the appellant/2nd respondent would submit that the accident occurred not due to rash and negligent driving of the driver the of lorry bearing Reg.No.TN 02 H4515. But the accident occurred only due to the rash and negligent riding of the deceased-rider of the motorcycle bearing Reg.No.TN 74 U 2217. The deceased had ridden the said motorcycle without any valid licence and he had violated the traffic rules and invited the accident. The said motorcycle was insured with the New India Assurance Company Limited, Nagercoil. But the said Insurance Company was not impleaded as a party. Therefore the first respondent is not solely responsible for the accident and the award is liable to be dismissed.

14. The learned counsel for the respondents/claimants would submit that, the accident which took place on 03.03.2009, was only due to the rash and negligent driving of the driver of the first respondent offending lorry. As a result of which the deceased sustained multiple injuries all over his body and died. During the period, the deceased was aged about 27 years, was working in a Multi National Mercantile Ship belonging to the Leo Shipping Private Limited and was drawing a monthly salary of Rs.70,000/- (Rupees Seventy Thousand only). Therefore, the claimants have claimed a total sum of Rs. 2,00,00,000/- (Rupees Two Crores) towards compensation.

15. *Points for consideration:-*

- i) Whether the accident occurred due to rash and negligent driving of the driver of the offending lorry?*
- ii) Whether the award passed by the Tribunal is just and reasonable?*

16. This Court carefully perused the claim application filed by the claimants, counter affidavit filed by the second respondent, the evidence let in by claimants and also the documents produced by the claimants.



Point No.1

17. According to the respondents, the deceased was riding the motorcycle bearing registration No.TN 74 U 2217 from East to West and the mini lorry bearing registration No.TN 02 H 4515 came in the opposite direction, in a rash and negligent manner and dashed against the motorcycle. Immediately the deceased sustained multiple injuries and was lying in the pool of blood. He was admitted in the Asaripallam hospital and subsequently the same was informed to the relatives of the deceased. In order to prove the accident. Mr. Gruz, was examined as P.W.2 and during the examination, when a suggestion was put to him that when both the vehicles came in a same direction, the deceased came behind the offending the mini lorry and in the signal he dashed behind the lorry, he denied the same. Therefore from the evidence of the P.W.2, it is clear that the accident occurred only due to the rash and negligent driving of driver of the first respondent mini lorry. In order to prove the case of the respondent, no witness has been examined on his side. However, it is stated that the deceased also has contributed his negligence to the accident. In the absence of the contra evidence, from the materials available on record such as, FIR and charge sheet laid down against the driver of the offending vehicle and evidence of the P.W.2, this Court finds that the accident occurred due to rash and negligent driving of the driver of the lorry, which is insured with the second respondent and the Tribunal has correctly held that the first and second respondents are jointly and severally liable to pay compensation to the the claimants. The Point No.1 is answered accordingly.

Point No. 2

18. According to the claimants, during the relevant point of time, the deceased was aged about 27 years and was working as an Oiler, in a Multi National Mercantile Ship belonging to the Leo Shipping Private Limited and he was drawing a monthly salary of Rs. 70,000/- (Rupees Seventy Thousand only) and he contributed the maximum of his earnings to the claimants. Due to the accident and demise of the deceased they lost the income. Even though they have claimed a sum of Rs.2,07,10,000/- they have restricted their claim to only Rs. 2,00,00,000/-.

19. In support of their claim, claimant/wife of the deceased was examined as P.W.1. She had stated about the educational qualification, income, avocation and contribution to the family of the deceased and Ex.P.1 to Ex.P.29 were marked through her. Further, in support of their claim, a co-worker of the deceased was examined as P.W.3, who had spoken about his employment, the employment and income of the deceased and through him Ex.P.30 to Ex.P.33 were marked.

20. From the evidence of the P.W.1 to P.W.3, it is proved that the deceased was having requisite technical qualification for working in a Shipping Company.



21. Insofar as the quantum of compensation is concerned, the Tribunal had arrived at a conclusion that since the deceased was aged about 24 years and was working in a Multi National Mercantile Ship and drawing a monthly salary of 500 US \$, which comes to INR. 24,000/- per month. The Tribunal taking into account the age of the deceased and after deducting 1/3 from the salary towards his personal expenses, fixed the loss of income and future prospects at Rs. 30,60,000/-.

22. As per Ex.P.6, the passport of the deceased, the date of birth of the deceased is 26.04.1985 and the accident occurred on 03.03.2009. So, at the time of the accident he was aged about 24 years. Therefore, the multiplier to be adopted is 18. Ex.P.24 and Ex.P.26 the terms and conditions of services, show that the period of contract is for 12 months. Though the period of contract is for 12 months, it can not be said that all the 12 months he would be employed continuously. Ex.P.23 shows that the deceased was engaged for a period from 18.01.2008 to 11.04.2008 and it shows only a consolidated wages of 450 \$. No other documents have been filed either to prove continuity of service or permanent employment. Under the said circumstances, in our considered view, the award of compensation under this head appears to be very higher side and based on assumptions and presumptions to which we do not concur.

In this regard, it is worthwhile to refer, 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."

Therefore in the absence of oral and documentary evidence that the deceased was getting monthly salary on permanent employment, the salary mentioned in Ex.P.23, Ex.P.24 and Ex.P.26 can not be taken into consideration for the purpose of assessing compensation under the head of loss of dependency.



23. Considering the technical qualification and opportunity for the employment of the deceased, this Court fixes Rs.15,000/- per month as notional income to the deceased. The loss of income would come to Rs. $15000 \times 18 \times 12 =$ Rs.32,40,000/-. So far as the personal expenses is concerned, considering the nature of the job of the deceased, mostly he has to be away from his family. Therefore he could not spend either 3 /4 or 2/3 of his income to his family. Considering the nature of job of the deceased, since he was working in ship and also the peril involved in ship, 50 % of the salary has to be deducted towards his personal expenses. Accordingly, the loss of income would come to Rs.32,40,000 - Rs.16,20,000/- =Rs. 16,20,000/-. As per the judgment of *Rajesh and Others Vs. Rajbir Singh and others reported in 2013 ACJ 1403 (SC)*, 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%. Accordingly, future prospects would come to Rs.7500X18X12 =Rs.16,20,000/- and 50% of the future prospects has to be deducted towards personal expenses and accordingly the loss of future prospects would come to Rs.8,10,000/-

24. In so far as the other heads of compensation are concerned, the Tribunal had awarded Rs.10,000/- for funeral expenses which is reasonable and the same need not be interfered by this Court and accordingly, the same is remained. Further, the Tribunal had not awarded any compensation for the consortium to the wife of the deceased. As per the judgment in *Rajesh and Others Vs. Rajbir Singh and others reported in 2013(2) TNMAC 55(SC)*, a sum of Rs.1,00,000/- has to be awarded for loss of consortium. Therefore, a sum of Rs.1,00,000/- is awarded towards loss of consortium to the wife of the deceased/1st claimant. The Tribunal has awarded only Rs.30,000/- for love and affection to the claimants in toto. The first claimant is the wife of the deceased. The claimants 2,3 and 4 are the father, mother and minor daughter of the deceased and hence, we are of the view that the claimants 1 to 4 shall be given Rs.50,000/- each towards love and affection. Likewise the Tribunal has not awarded any compensation towards loss of estate and transportation. The Tribunal ought to have awarded Rs.5,000/- for loss of estate and Rs.10,000/- towards transportation. We are of the considered view the same is just and reasonable compensation.

25. The compensation claimed by the claimant, the compensation awarded by the Tribunal and the compensation awarded by this Court are as follows:-



HEAD	AMOUNT CLAIMED BY THE CLAIMANTS (Rs.)	AMOUNT AWARDED BY THE TRIBUNAL (Rs)	AMOUNT AWARDED BY THIS COURT (Rs.)
For Loss of earnings & future prospects	2,00,00,000/-	30,60,000/-	24,30,000/-
Funeral expenses	10,000/-	10,000/-	10,000/-
Transportation			10,000/-
For Loss of Consortium	5,00,000/-	-	1,00,000/-
For Loss of Love and affection	1,00,000/-	30,000/-	2,00,000/-
For loss of estate			5,000/-
Compensation for shock and mental agony	1,00,000/-	-	-
Total	2,07,10,000/-	31,00,000/-	27,55,000/-
Claim restricted to	2,00,00,000/-	-	-

26. In the result,

(i) This Civil Miscellaneous Appeal in C.M.A.(MD)No.680 of 2011 is partly allowed and the compensation awarded by the Tribunal is modified as shown above. The appellant Insurance Company is directed to deposit the compensation with interest at 7.5% per annum from the date of petition, if already not deposited, if already deposited any amount less the amount already deposited, 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. Since the accident is in the year of 2009, the claimants are permitted to withdraw the entire amount that would be deposited by the appellant Insurance Company. The claimants 1, 3, 4 wife, mother and minor daughter are dependants as well as first class legal heirs of the deceased. The 1 claimant, wife of the deceased is entitled to Rs.13,00,000/-, the 3rd claimant, mother of the deceased is entitled to Rs. 3,00,000/-, 4th claimant, minor daughter of the deceased is entitled to Rs. 10,00,000/- and the 2nd claimant, the father of the deceased is not totally dependant of the deceased and so he is entitled to Rs. 1,55,000/-.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 and the Tribunal is directed to deposit the share of the minor in any one of the Nationalized Banks until she attained majority. The 1st claimant is permitted to withdraw the interest amount once in six months, if she wants, for maintaining minor daughter.



ii) In view of the judgment passed in CMA.(MD).No. 680 of 2011, the Cross Objection in CROS.OBJ.(MD).No.24 of 2011 is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

The Additional District Judge,
(Fast Track Court No.2),
The Motor Accidents Claims Tribunal
Tirunelveli.

+One cc to Mr.K.Bhaskaran, Advocate, SR.No.52740

+One cc to Mr.T.Selvakumaran, Advocate, SR.No.52913

Arul/dsk

RL/4C/10P/KP/SAR1/3/7/2017

Judgment made in

C.M.A.(MD)No.680 of 2011 and
CROS.OBJ (MD).No. 24 of 2011 and
M.P.(MD).No.2 of 2013

19.04.2017