

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1220 of 2018
and
CMP.No.9921 of 2018

The United India Insurance Co. Ltd.,
Catholic Centre, 1st Floor,
No.64, Armenian Street,
Chennai 600 001. Appellant/2nd Respondent

Vs

1.Jaya

2.Kanchana

3.Eswari

4.Thirunavukkarasu 1 to 4 Respondent/Petitioners

5.V.N.Anandh 5th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the
Award and Decree dated 22.01.2018 made in MCOP.No.3179 of 2014
on the file of the Motor Accident Claim Tribunal, (Small Causes
Court III, Chennai IV Judge - FAC).

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : Mr.Amar D.Pandiya (R1 to R4)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company aggrieved over the compensation of Rs.16,14,400/- for the death of one A.Krishnan, aged about 49 years, Civil Construction Labourer, allegedly earning about Rs.15,000/- per month viz., Rs.500/- per day in the accident, which occurred on 16.03.2014, when he was knocked down by a two wheeler belonging to the 5th respondent and insured with the appellant/insurance company while crossing 200 feet road, Kolathur, Chennai.

2. Heard Mr.A.Dhiraviyanathan, learned counsel for the appellant. He would submit that the award has to be set aside for wrongly fixing the liability on the rider of the two wheeler and also the quantum of compensation is on the higher side. He would specifically point out that the victim was under the influence of alcohol and he would rely upon the evidence of RW1, RW2 as well as Ex.R2, copy of accident register, where it has been mentioned that at the time of accident, the victim was smelling alcohol. Therefore, he would submit that as the victim was under the influence of alcohol, he negligently crossed the road and invited the accident. He would further submit that at least contributory negligence should be fixed on the victim. Further he would submit that the award amount is on the higher side and contrary to the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), Rs.40,000/- has been awarded by the Tribunal towards loss of love and affection. Therefore, he seeks to reduce the award amount.

3. A close scrutiny of the award would show that the victim while crossing the road was hit by the motorcycle. PW2 eyewitness categorically stated that because of the rash and negligent driving of the offending two wheeler, the accident occurred. Ex.P.1-FIR and Ex.P.2-charge sheet were filed against the rider of the two wheeler viz., the 5th respondent herein. Therefore, the finding reached by the Tribunal that the rider of the two wheeler alone was responsible for the accident cannot be disturbed.

4. With regard to the contention of Mr.A.Dhiraviyanathan, learned counsel for the appellant that the victim was under the influence of alcohol, the content of alcohol in the blood has to be proved as per the provisions of the Motor Vehicles Act viz., Section 185. Section 185 of the Motor Vehicles Act, 1988 is extracted as follows:

"185. Driving by a drunken person or by a person under the influence of drugs. - Whoever, while driving, or attempting to drive, a motor vehicle - (a) has, in his blood, alcohol exceeding 30 mg. Per 100 ml. of blood detected in a test by a breath analyser, or (b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with

imprisonment for a term which may extend to two year, or with fine which may extend to three thousand rupees, or with both."

5.A perusal of Section 185 of Motor Vehicles Act, 1988 would reveal that if the alcohol content exceeds 30 mg. per 100 ml by test or breath analyser, then only it could be concluded that the person was under the influence of alcohol. Even, that provision is not applicable to the victim as the victim was not a rider or driver of the motorcycle or car and he was only a pedestrian. Therefore, relying upon Ex.R2, which shows that the victim was smelling alcohol, it cannot be concluded that he was under the influence of alcohol. Therefore, the said contention is also rejected.

6.The claimants contended that the deceased was earning about Rs.15,000/- per month or Rs.500/- per day. However, no document has been filed, except PW1's evidence. Relying upon the judgment of the Honourable Supreme Court in Nita and Others V. Divisional Manager, MSRTC, Kolapur reported in 2015 (1) TNMAC 161, wherein the Honourable Supreme Court determined the income of a Carpenter at Rs.15,000/- and relying upon the notification under Minimum Wages Act, the Tribunal has fixed the monthly income at Rs.12,000/-. In this case, the accident occurred on 16.03.2014. Therefore, Rs.12,000/- determined by the Tribunal is in consonance with the said judgment. Moreover, in the year 2014, no manual labour could be availed for Rs.300/- per day and it would have been around Rs.400/- to Rs.500/-. Therefore, a very reasonable amount of Rs.12,000/- has been fixed by the Tribunal.

7.Relying upon the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 10% has been added towards future prospects as the deceased was aged about 50 years as proved by Ex.P.3-Post mortem certificate and the monthly income was rightly determined at Rs.13,200/- (Rs.12,000/- + 10% of Rs.12000/-).

8.Since the size of the family is four, $\frac{1}{4}$ th was deducted by the Tribunal towards personal expenses. The same is confirmed. The appropriate multiplier of "13" has been applied as the age of the deceased was 50 years.

9.Therefore, determination of Rs.12,000/- per month and adding of 10% towards future prospects and deduction of $\frac{1}{4}$ th towards personal expenses and application of multiplier "13 " are well founded and consequently, Rs.15,44,400/- arrived at as loss of dependency is confirmed.

10.Mr.A.Dhiraviyanathan, learned counsel for the appellant would contend relying upon the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), that no amount could be awarded towards loss of love and affection. A perusal of the said judgment would reveal that there is no such prohibition. In fact, the Honourable Supreme Court awarded a sum of Rs.40,000/- towards loss of consortium to the spouse. The amount awarded towards loss of love and affection is akin or similar to the amount awarded towards loss of consortium to the spouse. Therefore, though Rs.10,000/- each awarded by the Tribunal to respondents 1 to 4, is on the lower side, the same is confirmed. The sum of Rs.15,000/- awarded by the Tribunal, each towards funeral expenses and medical expenses are confirmed. The total award amount of Rs.16,14,400/- along with 7.5% interest is confirmed and the amounts apportioned by the Tribunal to the respondents/claimants are also confirmed.

11.The insurance company is directed to deposit the entire award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of the claimants with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon.

12.Accordingly, this appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-MR)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Judge, (FAC III Court of Small Causes)
the Motor Accident Claim Tribunal,
Court of Small Causes, Chennai.

+1cc to Mr.A.DHIRAVIYANATHAN, Advocate, S.R.No.37208

+1cc to Mr.S.RAVIKUMAR, Advocate, S.R.No. 37261

C.M.A.No.1220 of 2018

MR (CO)

TR(26/07/2018)