IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01.11.2018

JUDGMENT PRONOUNCED ON : 26.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.1745 of 2011
and C.M.P.No.12120 of 2016

1.P.Lokanayaki
2.N.Perumal .. Appellants / Claimants

versus

1.S.Venkatesan

2.Reliance General Insurance Co. Ltd.,
Unit-I, 3rd Floor, No.23,
Spur Tank Road,
Chetpet, Chennai - 600 031.
Now operating from
Plot No.2054, Rais Towers, 2nd Floor,
Next to G.R.T.Jewellery,
2nd Avenue, Anna Nagar,
Chennai - 600 040. .. Respondents /Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.11.2010 passed in M.C.O.P.No.448 of 2008 on the file of the Motor Accidents Claims Tribunal,Chief Judge [In the Court of Small Causes], Chennai.

For Appellant : Mr.S.Gangaram Prasad

For Respondent No.1 : Exparte

For Respondent No.2 : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants [claimants], challenging the judgment and decree dated 30.11.2010 passed in M.C.O.P.No.448 of 2008 on the file of the Motor Accidents Claims Tribunal [In the Court of Small Causes], Chennai.

2. For the sake of convenience hereinafter the parties are referred to, as per their litigative status before the Tribunal. The case of the claimants is that, on 22.11.2007 at about 22.00 hours, while the deceased P.Ramesh was travelling in a two-wheeler bearing Registration No.TN-20-AY-2288 as a pillion rider, along with his friend [K.Shanmugam], who is the petitioner in M.C.O.P.No.444 of 2008, from south to north in Madhavaram High Road [near St. Antony Higher Secondary School], Chennai, a Van bearing Registration No.TN-22-R-2173 owned by the first respondent and insured with the second respondent, driven by its driver, came in a rash and negligent manner from opposite direction particularly on the extreme wrong side of the said road and dashed against the two-wheeler, due to the said accident, the deceased succumbed to injuries in the Hospital. During the time of accident, the deceased was aged about 21 years, he was a student in D.B.Jain College, Chennai and doing III year B.Sc., the claimants, who are the parents of the deceased have filed a Claim Petition before the Claims Tribunal under Section 166 of the Motor Vehicles Act, in which, they claiming compensation of Rs.10 lakhs from the respondents for the death of their son.

3. Per contra, opposing the claim of the claimants, by filing counter, the second respondent [Insurance Company] disputed the claim of the claimants, he denied the manner in which the accident had occurred, further, the claim of the claimants, about the age, avocation and income of the deceased are also denied. According to him, since the cheque issued by the first respondent towards the premium of insurance was dishonoured, the policy issued to the offending vehicle was cancelled on the date of accident. Therefore, on the date of accident, the policy is not in force and thus, the second respondent sought for dismissal of the Claim Petition.

4. Before the Claims Tribunal, this Claim Petition had been tried along with the Claim Petition filed by the injured in M.C.O.P.No.444 of 2008. The claimant in the above petition is the driver of motorcycle in which the deceased was travelled as a pillion rider. During the time of enquiry, in order to prove the claim, the second claimant, who is the father of the deceased has been examined as P.W.1. The injured, who is the claimant in M.C.O.P.No.444 of 2008 was examined as P.W.2, and 17 documents were marked as Ex.P.1 to Ex.P.17. On the side of the respondents, neither oral nor documentary evidence was let in. The first respondent remained exparte.

5. The Claims Tribunal, on the basis of the available records, found that the rash and negligent act of the first respondent's Van driver alone is the reason for the accident and

passed an award for a sum of Rs.6,45,000/- along with interest @ 7.5% per annum as compensation to the claimants. Further, it was concluded that, the cancellation of the policy alleged in the counter by the second respondent has not been proved and hence, the first and second respondents are jointly and severally liable to pay compensation to the claimants and finally, directed the second respondent to pay the compensation on behalf of the first respondent. Aggrieved over the said finding, the claimants have come forward with the present Civil Miscellaneous Appeal praying to enhance the award amount.

6. When the appeal is taken up for consideration, I have heard the arguments of Mr.S.Gangaram Prasad, learned counsel appearing for the appellants, Mr.S.Arunkumar, learned counsel appearing for the second respondent and also perused the records carefully.

7. In respect to the negligent aspect, the Claims Tribunal held that the accident had happened only due to the rash and negligent act of the driver of the Van owned by the first respondent. In this aspect, on going through the evidence of P.W.2, who is the witness to the occurrence has stated at the time of occurrence, the driver of the Van driven his vehicle in a rash and negligent manner, came in a wrong side and resultantly dashed against the motorcycle driven by him. In order to substantiate the said evidence, the copy of the First Information Report, which have been registered by the Police is marked as Ex.P.1. The averments made in the First Information Report clearly corroborated the evidence given by P.W.2. In otherwise in order to deny the said evidence, nobody has been examined on the side of the respondents, so the conclusion arrived at by the Claims Tribunal that the accident had occurred only due to the rash and negligent act of the first respondent's driver is logically and factually correct and the findings arrived at by the Claims Tribunal is affirmed by this Court.

8. The Claims Tribunal arrived a finding that the respondents 1 and 2 are jointly and severally liable to pay compensation to the claimants, further in the award it was a direction to the second respondent to pay the entire award amount to the claimants. In this aspect, on going through the contents of the counter filed by the second respondent [Insurance Company] it was mentioned that for the policy issued to the offending vehicle, the first respondent paid the premium through a cheque and the same was dishonoured at the time of encashment. Further, it was averred that due to the said dishonour, the policy issued to the offending vehicle was cancelled. According to him, on the date of accident the policy issued in favour of the offending vehicle is not in force. Even though the said plea was taken by the Insurance Company is a valuable one, in order to prove the said plea, nobody has been

examined on the side of the second respondent. Even the document related to the dishonour of cheque as well as the notice issued to the first respondent for cancelling the policy have not been marked before the Claims Tribunal to show the contention of the second respondent. So without any document we cannot came to the conclusion that the contention raised by the second respondent in the counter affidavit is true one. Therefore, the findings arrived at by the Claims Tribunal in respect to the liability is also affirmed by this Court.

9. In respect to the quantum of compensation arrived at by the Claims Tribunal, it estimated that the notional income of the deceased is Rs.7,500/- per month, and after deducting 50% of the monthly income towards the Personal and Living Expenses, calculated Rs.45,000/- is the annual income and after adopting multiplier 14, determined Rs.6,30,000/- as a compensation. As per the evidence of P.W.1, at the time of accident, the deceased was a student in D.B.Jain College, he was doing III year B.Sc., so it is not possible to determine the correct income of the deceased at the time of his death. However at the time of death, the deceased was aged about 21 years, Ex.P.6 is the Transfer Certificate issued to the deceased proves the same. In the said Certificate, his Date of Birth was mentioned as 27.02.1986. In this context, it is necessary to refer the judgment of SYED SADIQ ALI AND OTHERS vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD. reported in 2014 [1] TNMAC 459 [SC], in which, our Honourable Apex Court has fixed the monthly income of a vegetable vendor as Rs.6,500/- per month in the year of 2006. But the occurrence pertaining to this Claim Petition had happened in the year 2007, so this Court decided to fix the monthly income of the deceased is Rs.7,000/-.

10. Coming to the Future Prospects, it is necessary to follow the judgment of our Honourable Apex Court in NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, our Honourable Apex Court has held that, if a person is self-employed and under the age of 40 years, 40% of the established monthly income is to be the Future Prospects for calculating the Loss of Dependency. In this way, after adding 40% of the monthly income, the total income of the deceased Ramesh would be at Rs.9,800/- [Rs.7,000/- + 40%]. Accordingly, the total income of the deceased per annum is calculated as Rs.1,17,600/- [Rs.9,800/- x 12 (9,800)].

11. Now, coming to the point of deduction, it is an admitted fact that at the time of accident the deceased was unmarried and the claimants are alone the survivors, so 50% of the total income has to be deducted towards Personal and Living Expenses of the deceased. Accordingly, the Loss of Contribution

per year is calculated as Rs.58,800/- [Rs.1,17,600 /- (-) 50% (1,17,600/-].

12. Coming to the choice of multiplier, at the time of accident, the deceased [Ramesh] was aged about 21 years. Taking into consideration of the age of the deceased, the Tribunal had adopted multiplier 14. Now on going through the judgment of our Honourable Apex Court in SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121, if a person having the age between 21 to 25 years, the appropriate multiplier for calculating the Loss of Dependency is 18. Therefore, this Court decided that the appropriate multiplier in this appeal is 18. So, the Loss of Dependency is calculated as Rs.10,58,400/- [Rs.58,800 x 18].

13. In so far as the conventional damages, the Tribunal awarded Rs.10,000/- towards Loss of Love and Affection, Rs.5,000/- towards Funeral Expenses. Now, as per the judgment in Pranay Sethi's case [stated supra], this Court necessarily has to fix Rs.15,000/- towards Loss of Amenities and Rs.15,000/- towards Funeral Expenses. So, following the judgment of our Honourable Apex Court, Rs.30,000/- is awarded towards conventional heads as above. Accordingly, the claimants are entitled to the compensation as follows:

Head	Amount (Rs.)
Loss of Dependency	10,58,400.00
Loss of Amenities	15,000.00
Funeral Expenses	15,000.00
Total	10,88,400.00

14. In the result,

[i] The Civil Miscellaneous Appeal is allowed.

[ii] The award amount is enhanced to Rs.10,88,400/- from Rs.6,45,000/-. The claimants in M.C.O.P.No.448 of 2008 is entitled to the award amount of Rs.10,88,400/- [Rupees Ten Lakhs Eighty Eight Thousand Four Hundred only] with 7.5% interest per annum from the date of petition till the date of realisation. In the said amount, the claimants are entitled to get equal share.

[iii] The second respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit being made, the appellants [claimants] in this appeal are permitted to withdraw the same, by filing

necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

The Motor Accidents Claims Tribunal
[In the Court of Small Causes], Chennai.

Judgment in
C.M.A.No.1745 of 2011

VD(CO)
CSL/13.03.2019