IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 1296 of 2017

Oriental Insurance Company Limited,
Jawahar Complex, Neelampur,
Mancheri. ..Appellant

Vs.

1. Tmt. Asha Sewarsa
2. Ukam Singh
3. Minor Priyanka
(minor represented by her guardian
and mother Asha Sewarsa)
4. S. Devadoss
5. Mohammed Kutty

(4^{th} and 5^{th} respondents herein remained ex parte before the Tribunal. Hence, summmons to 4^{th} and 5^{th} respondents may be dispensed with.) ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 28.02.2013 passed in M.C.O.P. No. 507 of 2007 by the Motor Accidents Claims Tribunal and III Additional District Sessions Court, Coimbatore.

For Appellant :: Mr.S. Manohar

For Respondents:: Mr.C.R. Prasannan for R1 to R3

R4 and R5 Exparte before the Tribunal.

J U D G M E N T

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

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.21,63,000/- for the death of one Arjun Singh, aged about 38 years, dealing in gold business in Coimbatore, allegedly earning about Rs. 3 lakhs per annum, in the accident, which occurred on 25.07.2004, when the deceased was driving his Maruti Car from West to East on National Highway towards Dingidul from Palani and near the bend at Ramayanpatti, a lorry bearing Registration No. KL-10-K-4329, belonging to the 5th respondent, insured with the appellant and driven by the 4th respondent, in a rash and negligent manner, dashed against the Maruti Car, resulting in the accident. Hence, the claim petition.

2. On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the lorry, which was insured with the appellant and awarded compensation of Rs. 21,63,000/-. The said award is being challenged by the Insurance Company on the question of negligence as well as quantum.

3. Heard Mr.S. Manohar, learned counsel for the appellant and Mr.C.R. Prasannan, learned counsel for respondents 1 to 3/claimants.

4. Mr.S. Manohar, learned counsel for the appellant would submit, relying upon Ex-P9, rough sketch, that the accident occurred because of the rash and negligent driving by the deceased as he was driving the vehicle on the wrong side while turning near the bend at Ramayanpatti and hit the lorry, which was coming in the opposite direction. Therefore, he would submit that while fixing negligence, at least 50% contributory negligence has to be attributed to the deceased as it was a head-on collision. Further, the learned counsel would submit that though Rs.12,500/- fixed by the Tribunal, as the monthly income of the deceased, based on Exs-P11 and P12, Income Tax Returns, the said Returns were filed not in his personal capacity, but it pertains only to his business. Besides, even after the demise of the victim in this case, the business has been continued. Therefore, there is no loss of income and even if there is loss of income, it will only be minimal. Based on the above contentions, the learned counsel for the appellant seeks to reduce the award amount.

5. Per contra, Mr.C.R. Prasannan, learned counsel for the claimants would submit that there is no contra evidence available on the side of the Insurance Company to prove that the accident occurred because of the rash and negligent driving by the driver of the Maruti Car, the deceased. He would submit that though in the income tax returns, the income is termed as business income, the amount shown is only his personal income. Further, according to the learned counsel, the Tribunal rightly determined the monthly income of the deceased at Rs.12,500/- based on the income tax returns Exs-P11 and P12.

6. From a perusal of the records, it is seen that it was the cleaner of the lorry, who had lodged the FIR stating that the deceased was responsible for the accident. It is quite natural for a cleaner of the lorry involved in the accident to state so as one cannot expect him to lodge a complaint against the driver of the lorry, where he is employed, even if the driver had been at fault. In any event, the filing of FIR against the deceased cannot be considered as conclusive proof to say that it was the deceased, who was responsible for the accident and FIR is not an encyclopaedia. Moreover, P.W.2, who is an eye-witness to the occurrence has categorically stated that the accident occurred because of the rash and negligent driving of the insured vehicle and there is no rebuttal evidence let in, on the side of the Insurance Company, to prove otherwise. If really, the victim was responsible for the accident, then nothing prevented the Insurance Company from examining the driver or any other eye-witness. Therefore, the finding reached by the Tribunal that the driver of the lorry was responsible for the accident, cannot be interfered with. As regards reliance placed on Ex-P9 rough sketch, the Honourable Supreme Court, in Jiju Kuruvilla v. Kunjujamma Mohan reported in 2013 9 SCC 166, held that the scene mahazar could not be a substantial proof as to the rash and negligent driving on the part of one or the other. The relevant paragraphs are usefully extracted as follows:

> "20.5. The mere position of the vehicles after accident, as shown in a scene mahazar cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative

evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

20.6. ...The mere suspicion based on Ext.B-2 "scene mahazar" and Ext. A-5 postmortem report cannot take the place of evidence, particularly, when the direct evidence like P.W.3 (independent eyewitness), Ext.A-1(FIR), Ext.A-4(charge-sheet) and Ext-B1 (FI Statement) are on record."

Therefore, based on Ex-P9 rough sketch alone, this Court cannot come to the conclusion that the accident occurred because of the rash and negligent driving of the deceased. When an independent witness has been examined and his evidence is categoric and remains uncontroverted, this Court has to come to the conclusion that the accident occurred because of the rash and negligent driving by the driver of the lorry, insured with the appellant Insurance Company.

7. As rightly pointed out by Mr. S. Manohar, Exs-P11 and P12 are the income tax returns in respect of the business of the deceased. Based on those documents only, the Tribunal determined the monthly income at Rs.12,500/-. However, a person, who starts a business, in his name, investing a huge sum of money, must be a man of means. His loss in the business certainly cannot be estimated. But, a dealer in gold business would have earned about Rs.10,000/- per month, even in the absence of business. Therefore, this Court re-determines the monthly income at Rs.10,000/- instead of Rs.12,500/- fixed by the Tribunal. Since the deceased was aged about 38 years, 40% has to be added towards "Future Prospects" as per the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company V. Pranay Sethi and others reported in 2017 ACJ 2700. Therefore, adding 40%, the " total monthly income" comes to,

Monthly Income	::	Rs.10,000/-
Add: 40% towards "Future Prospects"	::	Rs.10,000/- + 40% (Rs.10,000/-)
Total Monthly Income	::	Rs.14,000/-

A perusal of the claim petition would reveal that the size of the family of the deceased is four. Therefore, one-fourth has to be deducted towards "Personal Expenses" of the deceased. Deducting one-fourth, "Loss of Monthly Contribution of the deceased to his family" comes to,

Total Monthly Income	::	Rs.14,000/-
Less: 1/4th towards "Personal Expenses"	::	Rs.14,000/- (-)1/4 (Rs.14,000/-)

Monthly Contribution	::	Rs.10,500/-
Annual Contribution	::	Rs.10,500 x 12

The age of the deceased, as per the postmortem certificate, Ex-P4 is proved to be 38years. The appropriate multiplier, for the said age, as per the judgment of the Honourable Apex Court in Sarla Verma's case (2009 (6) SCC 121) is 15 whereas the Tribunal erroneously adopted multiplier 16. Therefore, applying the correct multiplier corresponding to the age of the deceased, " Loss of Income" is calculated as hereunder:

Loss of Income	::	Rs.10,500 x 12 x 15
	::	Rs.18,90,000/-

8. As far as conventional heads are concerned, the amount of Rs.25,000/- awarded by the Tribunal towards "Loss of Consortium" is enhanced to Rs.40,000/-, as per the judgment of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700). Towards "Loss of Love and Affection" to respondents 2 and 3, a sum of Rs.1lakh is awarded enhancing from Rs.25,000/-. The amounts awarded towards " Funeral Expenses" and " Transport Expenses" are enhanced to Rs.15,000/- and Rs.10,000/- respectively. A sum of Rs.15,000/- is awarded towards " Loss of Estate" following the judgment of the Honourable Apex Court in Pranay Sethi's case as no amount was awarded under the said head by the Tribunal. The sum of Rs.1000/- awarded towards "Damages to Clothes" is confirmed . The modified compensation payable to the claimants comes to,

Loss of Income	::	Rs.18,90,000/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Love and Affection	::	Rs. 1,00,000/-
Loss of Estate	::	Rs. 15,000/-
Funeral Expenses	::	Rs. 15,000/-
Transport Expenses	::	Rs. 10,000/-
Damage to Clothes	::	Rs. 1,000/-
Total	::	Rs.20,71,000/-
rounded off to	::	Rs.20,70,000/-

The rate of interest awarded by the Tribunal @ 7.5% per annum remains undisturbed. It is stated that the claim petition came to be dismissed for default on 06.01.2009 and it was restored on 22.02.2011. For the said period, the claimants would not be entitled to any interest on the award amount.

9. The compensation amount of Rs.20,70,000/- has to be shared equally by the claimants.

10. It is stated that the appellant Insurance Company has already deposited the entire amount, as per the award of the Tribunal. Hence, the Tribunal, after transferring the respective shares of the major claimants to their respective

bank accounts, through RTGS, as per the apportionment made by this Court, within a period of one week from the date of receipt of a copy of this order and depositing the minor claimant's share in interest bearing Fixed Deposit in any one of the Nationalised Banks, shall refund the excess amount to the appellant, pursuant to the modified award passed by this Court.

11. The Civil Miscellaneous Appeal filed by the Insurance Company is partly allowed and the award of the Tribunal is reduced to Rs.20,70,000/- from Rs.21,63,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nv
To

1. The MACT (III Addl. District and
 Sessions Court), Coimbatore.

2. The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.S.MANOHAR, Advocate, S.R.No. 38958
+1cc to Mr.C.R. PRASANAN, Advocate, S.R.No. 38947

C.M.A. No. 1296 of 2017

SS(CO)
TR(06/08/2018)