

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1523 of 2018

and

C.M.P.No.12154 of 2018

ICICI Lombard General
Insurance Company Limited,
140, Nungambakkam High Road,
Nungambakkam, Chennai - 600 034. ..Appellant

Versus

1.Packiammal
2.Mani
3.Sasirehka
[3rd respondent remained ex-parte
in the lower Court] ..Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.10.2011 made in M.C.O.P.No.162 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Attur.

For Appellant : M/s. R.Sree Vidhya
For Respondents : Mr. V.R.Annagandhi [for RR1 and 2]

J U D G M E N T

The Appellant/Insurance Company has filed this appeal against the judgment and decree dated 28.10.2011 made in M.C.O.P.No.162 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Attur. With consent of the learned counsel on either side, the main Civil Miscellaneous Appeal itself is taken up for final disposal at the time of admission stage itself.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants is that on 06.12.2009 while the mother of the petitioners one Ramayee was walking from West to East in Aathur to Kallakurichi Main Road while going near Jayavel weigh bridge situated at Kattukottai at about 6.30p.m., the 1st respondent lorry bearing Registration No.TN-28-J-1029 came at high speed driven in a rash and

negligent manner dashed against the said pedestrian Ramayee, causing her fatal injuries, resulting in her death on the spot itself. The accident occurred due to negligence of the 1st respondent vehicle driver only. The said lorry was insured with the 2nd respondent at the time of accident. The deceased was aged 50 years and was earning Rs.4,500/- per month by carrying on milk vending business. The petitioners/claimants who are the children of the deceased have lost the love and affection of their mother and also her financial contribution to the family. Thus, the petitioners/claimants seek a sum of Rs.5,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the petitioners/claimants has to prove the age, occupation and the monthly earnings of the deceased and also the nature of accident, resulting in the death of their mother. On the occurrence date, while the 1st respondent lorry was going at a normal speed, the deceased attempted to cross the road suddenly and dashed against the lorry, resulting in her death. Thus, the negligence of the deceased - Ramayee alone caused the accident. Even assuming, the driver of the lorry also contributed to the accident, the deceased is mainly responsible for the occurrence. The amount claimed by the petitioners/claimants is exorbitant. Thus, the petition is liable to be dismissed.

4. Before the Tribunal, the petitioners/claimants examined P.W.1 produced documents Exs.P.1 to P.4 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, after analysing the evidence on record found that the negligence of the 1st respondent lorry driver alone caused the accident passed an award for a sum of Rs.3,30,000/- payable by the respondents to the petitioners/claimants. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal failed to note that the deceased also contributed to the accident and erred in not apportioning the liability. The Tribunal failed to appreciate the evidence which clearly proves that the deceased was walking in the middle of the road and contributed to the accident. The Tribunal passed an award granting higher compensation. The

Tribunal fixed the monthly income of the deceased at Rs.3,000/-, inspite of P.W.1 admitting that the deceased was earning only Rs.1,500/- to Rs.2,000/- per month. The multiplier adopted by the Tribunal is not proper. The 2nd respondent/Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioners/claimants contends that the accident occurred only due to the negligence of the 1st respondent lorry driver. The Tribunal after fixing the negligence on the driver passed an award giving just and proper compensation to the petitioners/claimants. There is no need to interfere with the same. Thus, the petitioners/claimants seek dismissal of the appeal.

8. The 2nd petitioner/claimant who deposed as P.W.1 stated that only because of rash and negligent driving by the driver of the lorry bearing Registration No.TN-28-J-1029 the accident occurred and his mother Ramayee died on the spot. P.W.1 clearly stated that he witnessed the occurrence and lodged complaint with the Police, Ex.P.1 - F.I.R is registered against the 1st respondent driver only. The contents of Ex.P.1 - F.I.R corroborates the version of accident given by P.W.1. There is no contra evidence let in by the respondents, to disprove the claim of the petitioners/claimants about the manner in which the accident occurred. Thus, on the basis of P.W.1 eye-witness account and contents of Ex.P.1 - F.I.R, the Tribunal has correctly concluded that the negligence of the 1st respondent vehicle driver alone caused the accident.

9. The petitioners/claimants stated that the deceased was aged 50 years and she was earning Rs.4,500/- per month by doing milk vending business. However, there is no proof or independent evidence produced by the petitioners/claimants, to prove the said contention. As such, relying upon Ex.P.2 - Post mortem report, the age of the deceased is fixed as 50 years. The multiplier to be applied for the said age group is '13'.

10. Even though, the petitioners/claimants claimed that the deceased was earning Rs.4,500/- per month, in the absence of any proof for the same, it will be appropriate to fix her monthly earnings at Rs.3,000/-. Considering, the fact that two dependants are there, it will be appropriate to deduct, 1/3rd of the income towards personal expenses of the deceased. Thus, the loss of dependency is calculated as follows,

$$\text{Rs.3000} - \frac{1}{3} (1000) = \text{Rs.2000} \times 12 \times 13 = \text{Rs.3,12,000/-}$$

As the accident occurred in the year 2009, the amount provided

by the Tribunal under other heads for Funeral, Transport, Loss of Love and Affection is appropriate and the same is confirmed.

11. Considering the evidence available on record their appears to be no ground to entertain the appeal. There is nothing on record to show that the deceased contributed to the accident. The Tribunal has correctly fixed the notional income of the deceased at Rs.3,000. In such circumstances, no ground is made out by the 2nd respondent/Insurance Company to entertain the appeal. As such, the appeal has to fail. The point is answered accordingly.

12. In the result, the Civil Miscellaneous Appeal is Dismissed and the Award passed by the Tribunal in M.C.O.P.No.162 of 2009 dated 28.10.2011 is confirmed. The Appellant/Insurance Company is directed to deposit the award amount with accrued interest and costs, less the amount, if any, already deposited, within a period of four weeks from the date of receipt of copy of this order. On such deposit, the respondents 1 and 2/claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of such application. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
The Subordinate Judge, Attur.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to M/s. R.Sree Vidhya, Advocate sr.no.47662

+1cc to M/s.V.R.Annagandhi, Advocate sr.no.47215

C.M.A.No.1523 of 2018

cp(co)
nr 04/10/2018