

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3758 of 2011 and
M.P.No.1 of 2011

National Insurance Company Limited.,
Rep. by its Manager,
Bye Pass Road, Dharmapuri. ...Appellant

Vs

1.Vijaya
2.M.Sekar ...Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.A.C.T.O.P.No.201 of 2009 dated 28.09.2010 on the file of Motor Accidents Claims Tribunal, (Principal District Judge), Dharmapuri.

For Appellant : Mr.M.Krishnamoorthy

For 1st Respondent : Mr.M.Selvam

For 2nd Respondent : No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 28.09.2010 passed by the Motor Accidents Claims Tribunal, (Principal District Judge), Dharmapuri in M.A.C.T.O.P.No.201 of 2009.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) One Sakkubai died on 11.12.2006 as a result of an accident caused by a motorcycle bearing Registration No.TN-29-AZ-4312 owned by the 2nd Respondent and insured with the Appellant. The 1st Respondent being the only Legal Representative of the deceased Sakkubai, who is the 1st Respondent in this Appeal preferred a claim before the Motor Accidents Claims Tribunal in M.A.C.T.O.P.No.201 of 2009 seeking a compensation of Rs.6,00,000/-.

(ii) The Motor Accidents Claims Tribunal, by its Award dated 28.09.2010 in M.A.C.T.O.P.No.201 of 2009, directed the Appellant to pay the 1st Respondent a sum of Rs.4,24,850/-

together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. The Tribunal under the impugned Award has also permitted the Appellant to pay the compensation amount to the 1st Respondent and recover the same from the 2nd Respondent who is the owner of the insured vehicle.

3. Aggrieved by the Award dated 28.09.2010 passed by the Motor Accidents Claims Tribunal in M.A.C.T.O.P.No.201 of 2009, the instant appeal has been filed by the Insurance Company.

4. Heard Mr.M.Krishnamoorthy, Learned Counsel for the Appellant and Mr.M.Selvam, Learned Counsel for the 1st Respondent. The 2nd Respondent has remained exparte before the Tribunal as well as before this Court.

5. According to the Learned Counsel for the Appellant, the 1st Respondent, though a Legal Representative of the deceased, is not a dependent of the deceased. According to him, the deceased is the mother of the 1st Respondent and the 1st Respondent at the time of the accident is a married daughter. Therefore, the Tribunal ought to have deducted 50% towards personal expenses of the deceased instead of deducting only 1/3rd under the impugned Award. Further, he would contend that the compensation awarded under various heads is excessive.

6. Per contra, the Learned Counsel for the 1st Respondent would submit that the 1st Respondent is a dependent of the deceased and therefore, the Tribunal has rightly deducted only 1/3rd towards personal expenses of the deceased while assessing the compensation. Further, he would contend that in view of the latest Constitution Bench judgment of the Honourable Supreme Court in the case of National Insurance Company Limited V. Pranay Sethi and others reported in (2017) 16 SCC 680 : 2017(2) TN MAC 609(SC), the Tribunal ought to have awarded a higher compensation towards transportation charges and loss of love and affection. According to him, the compensation awarded by the Tribunal under the impugned Award is a just compensation.

7. This Court, after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective Counsels, observes the following:

(a) The Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened which has resulted in the death of Sakkubai.

(b) Admittedly, the 1st Respondent is a married daughter of the deceased and therefore, she cannot be a dependent of the deceased who was her mother. No evidence has been let in by the 1st Respondent before the Tribunal that she was a dependent of the deceased. But, she is the only Legal

Representative of the deceased Sakkubai. No contra evidence has been produced by the Appellant before the Tribunal to disprove the claim of the 1st Respondent that she is the only Legal Representative of the deceased Sakkubai. As the 1st Respondent is not a dependent of the deceased, the Tribunal applying the principles laid down in the judgment of the Honourable Supreme Court in Sarla Verma and others V. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, ought to have deducted 50% towards personal expenses of the deceased, instead of 1/3rd under the impugned Award.

(c) Thus, taking the monthly income of the deceased at Rs.3000/- and adding 25% of the future prospects at Rs.750/- and deducting 50% of her personal expenses, the loss of monthly dependency is at Rs.1875/-. Therefore, the loss of Annual dependency is arrived at Rs.22,500/- (1875 x 12) and applying the multiplier of 13, the revised compensation towards loss of dependency is arrived at Rs.2,92,500/- (22,500 x 13).

(d) The Tribunal under the impugned Award has awarded only a sum of Rs.1,850/- towards Ambulance charges and Rs.5,000/- towards love and affection. Being a fatal accident, in the considered view of this Court, the compensation towards Ambulance charges will have to be enhanced from Rs.1,850/- to Rs.2,000/- and towards love and affection will have to be enhanced from Rs.5,000/- to Rs.10,000/-. In respect of other heads, the compensation awarded by the Tribunal is not disturbed by this Court.

8. In the light of the above observations, the quantum of compensation of Rs.4,24,850/- awarded by the Tribunal is reduced to Rs.4,09,500/- by this Court in the following manner:

Heads	Amount awarded by Tribunal	Amount award passed by this Court
Loss of dependency	Rs.3,12,000/-	Rs. 2,92,500/-
Medical expenses	Rs.1,00,000/-	Rs. 1,00,000/-
Funeral Expenses	Rs. 5,000/-	Rs. 5,000/-
Loss of Love and affection	Rs. 5,000/-	Rs. 10,000/-
Ambulance Charges	Rs. 1,850/-	Rs. 2,000/-
Total	Rs.4,24,850/-	Rs.4,09,500/-

9. In the instant case, the owner of the insured vehicle viz., the 2nd Respondent has remained exparte both before the Tribunal as well as this Court. Despite the Appellant issuing a notice calling upon the 2nd Respondent to produce the driving license, the 2nd Respondent has not produced the same and he has also failed to appear before the Tribunal. Therefore, it can be inferred that the driver of the insured vehicle did not

possess a valid driving license at the time of the accident. Therefore, in the considered view of this Court, the Tribunal has rightly granted pay and recovery rights to the Appellant under the impugned Award and the said finding is also confirmed by this Court.

10. In fine, the Civil Miscellaneous Appeal is partly allowed. The Appellant/Insurance Company is directed to pay the sum to the 1st Respondent and on such payment being made, the Appellant shall recover the same from the 2nd Respondent in accordance with law. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

Sgl/arb

To

1. The Principle District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

2. The Record Clerk,
VR Section,
High Court, Madras.

+ 1 cc to Mr. M. Krishnamoorthy, Advocate Sr. 68583

+ 1 cc to Mr. M. Selvam, Advocate Sr. 68731

सत्यमेव जयते

C.M.A.No.3758 of 2011

SS (CO)
EU (15/11/2018)

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