

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.10.2018

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

CMA.No.2750 of 2015
and M.P.No.1 of 2015
and Cross.Obj.No.82 of 2016

CMA.No.2750 of 2015

The Oriental Insurance Co., Ltd.,
Divya Towers, 2nd floor, Western Part,
Court Main Road, Salem- 636001 ... Appellant/3rd Respondent

Vs

1. S.Geetha
2. S.Kokila (minor)
3. S.Vasanthkumar (minor)
Minors 2 & 3 are represented by their mother
and N.F.1st respondent S.Geetha
Angappagounder (died)
4. Valliammal. ... R 1 to 4/ Petitioners
5. Eashwaramoorthy @ Rajan
6. V.Natarajan ... Respondents 5 & 6/Respondents 1 & 2

Cross Objection No.82 of 2016

1. S.Geetha
2. S.Kokila (minor)
3. S.Vasanthkumar (minor)
Minors 2 & 3 are represented by their mother
and N.F.1st respondent S.Geetha
Angappagounder (died)
4. Valliammal. Cross objectors/Respondents 1 & 4/
Petitioner

Vs

1. The Oriental Insurance Co., Ltd.,
Divya Towers, 2nd floor, Western Part,
Court Main Road, Salem. ...1st Respondent/Appellant in CMA/
3rd Respondent

2. Eashwaramoorthy

3. V.Natarajan ... Respondents 2 &3/Respondents 5 & 6/
Respondents 1 & 2

COMMON PRAYER : Civil Miscellaneous Appeal & Cross
Objection filed against the Award and decree dated 27.11.2014,
made in M.C.O.P.No.1217 of 2011 on the file of the Motor
Accident Claims Tribunal (Principal Sub Court), Tiruppur.

For Appellant
in CMA/Insurance Company : Mr.S.Manohar

For Respondents/Petitioners/
Cross Objectors : Mr.Ma.Pa.Thangavel for R1 to R4

C O M M O N J U D G M E N T

(KRISHNAN RAMASAMY, J)

The appellant/Insurance Company has preferred the present
appeal in CMA.No.2750 of 2015 and claimants have filed Cross
Objection No.82 of 2016 against the order of Motor Accident
Claims Tribunal, Principal Sub Court, Tiruppur in MCOP No.1217
of 2011 dated 27.11.2014.

2. Heard Mr.S.Manohar, the learned counsel appearing for
the appellant and Mr.Ma.Pa.Thangavel, the learned counsel
appearing for the respondents 1 to 4.

3. The brief facts of the case are as follows:-

On 24.06.2011 at about 1:00 p.m. the deceased
(S.A.Subramanian) was riding a motor cycle bearing registration
No.TN 56 B 5889 with one Karuppusamy as a pillion rider on the
Kunnathur to Perumanallur main road from west to east direction
adhering to the traffic rules and regulations and when the
deceased was nearing Thoravallur parivu on the said road one
Easwaramoorthy being the driver of the Tractor bearing
registration No.TN 23 Z 1578 drove the Tractor in a rash and
negligent manner from opposite direction of the road without any
horn and signal and hit the motor cycle of the deceased. Due to
the sudden hit by the Tractor the deceased and the pillion rider
were thrown away on the road with motor cycle and sustained
injuries. The deceased sustained severe injuries on head, chest,
abdomen, hip, leg and all over the body. The deceased was
immediately taken to K.G.Hospital, Coimbatore and admitted as an
inpatient from 24.06.2011 to 25.06.2011. However the deceased
died on 25.06.2011. Therefore, the case of the petitioners was
that due to the rash and negligent driving of the driver of the
Tractor the accident occurred and the driver is solely
responsible for causing the accident.

4. After the said accident, the Kunnathur Police registered a case against the driver of the Tractor (Easwaramoorthy). The deceased was aged about 46 years and he was the owner of bore well machine (digging of borewell), machinery workshop, petrol bunk, agriculture and doing real estate business. Therefore according to the respondents 1 to 5 (herein after called as petitioners/cross objectors), the deceased was earning about Rs.1,00,000/- per month. The deceased left his wife, two minor children and his father and mother. Hence the petitioners claimed Rs.1,00,00,000/- as compensation before the Tribunal.

5. Per contra the appellant (hereinafter called as third respondent/Insurance Company) filed a counter stating that the deceased was solely responsible for the accident and the deceased being the tort-feasor, the respondent/Insurance Company have no liability to pay any compensation to the petitioners. Further, the third respondent stated that as per Ex.P.4, the Motor cycle was extensively damaged and in respect of the Tractor, only the front bonnet was slightly damaged which discloses that the deceased drove the motor cycle in an uncontrollable speed and dashed against the Tractor. Further, the third respondent stated that the motor cycle was driven by the deceased without a protective head gear. Therefore the third respondent pleaded that the entire claim should be rejected.

6. After considering the pleadings and evidences on the side of the petitioners and as well as on the side of the respondents, the Tribunal came to the conclusion that the negligence was on the part of the driver of the Tractor. Therefore, the Tribunal fixed a sum of Rs.44,83,000/- against the first and third respondents.

7. Against the order of the Tribunal, the appellant/Insurance Company has preferred the present appeal challenging the issue on both negligence and quantum.

Issue of Negligence:-

1. PW2 was examined as an eye witness and according to him the accident occurred between Kunnathur to Perumanallur main road, near Thoravallur parivu, due to the rash and negligent driving of the driver of the Tractor bearing registration No.TN-23Z-1578. He further deposed that the driver of the Tractor drove the vehicle in a rash and negligent manner and hit the motor cycle bearing registration No.TN 56 B 5889. Therefore according to PW2 the accident occurred due to the fault on the part of the driver of the Tractor. Due to the said accident both the deceased and Karuppusamy pillion rider were thrown out with the bike and sustained injuries and the deceased was admitted in K.G.Hospital, Coimbatore on 24.06.2011. Further Kunnathur Police

also registered a case in Crime No.1107/2011 against the driver of the Tractor (Easwaramoorthy) under Section 279,337 and 304 (A) IPC and prosecuted him for the rash and negligent driving and causing the accident. Further on behalf of the petitioners, Motor Vehicle Inspection report was marked as Ex.P.4, Rough Sketch was marked as Ex.P3. On a perusal of the Rough Sketch, it clearly shows that the deceased was riding the motor cycle in a proper manner on the left side of the Kunnathur to Perumanallur main road from west to east direction, whereas the Tractor was driven by the driver in a rash and negligent manner from opposite direction and hit the motor cycle. Further as stated above, FIR also indicates that the accident occurred due to the negligent driving of the driver of the Tractor. However on behalf of the respondents no eye witness was examined to disprove the accident and negligence on the part of the driver of the Tractor. Therefore the Tribunal came to the conclusion and fixed the negligence on the part of the driver of the Tractor. One of the contention of the respondent was that the driver of the Tractor drove the vehicle without license. The contention of the respondent is that the driver of the Tractor drove the vehicle without license and the report Ex.P.4 also proves that the driving licence of the driver was not produced. This Court also came to the conclusion that the driver of the Tractor drove the vehicle without proper licence. Therefore, we uphold the finding of the Tribunal in this point.

Issue of Quantum:-

PW1 is the wife of the deceased and she deposed that her husband was the owner of bore well machine (digging of bore well), machinery workshop, petrol bunk, agriculture and doing real estate business., therefore according to the petitioners the deceased was earning Rs.1,00,000/- per month. Further she deposed that the deceased had very bright chances in his business and would have got high income in the future and maintained the family of the petitioners amicably. All the five petitioners are solely dependent on the income of the deceased. Further she deposed that the second and third petitioners are minor and they have lost their father at their young age. After the demise of the deceased all the business of the deceased was sold by the petitioners and in this regard, PW1 deposed that they have shown the sale proceeds in the income tax returns filed by them. However, they have not sold the agricultural land owned by the deceased.

8. Under the above circumstances now we have to determine the income of the deceased for the purpose of determining the compensation for the dependants. The petitioners have claimed about Rs.1,00,00,000/- per month as income of the deceased. PW1 also marked Ex.P.25, Ex.P.26 and Ex.P27 which are relating to the income tax returns of the deceased for the three assessment years 2009-2010, 2010-2011, 2011-2012. In the last assessment

year 2011-2012 of the deceased, income from business and profession was shown as Rs.2,56,283/-. Income from capital gain was shown as Rs.93,673/-. Income for a sum of Rs.7,120/- was shown as interest income from bank. A sum of Rs.96,000/- was shown as income from agriculture. Therefore income as per income tax returns filed by the deceased for the assessment year 2011-2012 (Financial year 2010-2011) is a sum of Rs.4,37,220/-.

9. The total income of the deceased are from the business, agriculture, capital gain and interest. As far as the income from agriculture is concerned, we cannot take the said income as income of the deceased for the purpose of calculation of loss of income to the dependants, since the same agricultural activity can be carried on without any disturbances by the dependants. Therefore we are not inclined to take the agricultural income of the deceased for the purpose of calculation of loss of income to the dependants. Further, income from capital gain will not be a recurring income for the deceased, since the deceased earned it out of sale of capital assets. Therefore we cannot take the income from capital gain of Rs.93,673/- as income of the deceased for the purpose of calculation of loss of income to the dependants. Further a sum of Rs.7120/- was shown as income of the deceased out of the interest from bank. Since the interest income was from the deposit lying in the bank and the same will continue for the dependants even after the death of the deceased. Hence, we cannot take the same into consideration as income of the deceased for the present claim.

10. A sum of Rs.2,56,283/- which was shown in the income tax returns as on 31.03.2011 as income from business and profession. The business income also cannot be considered for the purpose of determining the income of the deceased since the same business can be carried out by the dependants of the deceased. However, the case in hand is an exceptional one as the entire business assets which are all movable in nature were sold by the petitioners and the same was deposed by PW1 at the time of her examination before the Tribunal. Further PW1 stated that the sale proceeds was shown in their income tax returns. Therefore we accept the evidence of the PW1 with regard to the sale of the business of the deceased, since the entire business assets were sold, due to the incapability to continue the business of the deceased by the family members they are losing the entire income which are to be received from the business of the deceased. Therefore the petitioners have been suffering to the extent of loss of business income of the deceased. As per the income tax returns filed by the deceased for the year ending 31.03.2011 the business income was shown as Rs.2,56,283/-. Therefore we inclined to take income of the deceased as Rs.2,56,283/- per annum. However, the Tribunal took a sum of Rs.3,17,250/- as the income of the deceased for the year 2010 -

2011. We cannot agree to the income of the deceased as Rs.3,17,250/- which includes capital gain and interest received from the bank. Therefore, we take income of the deceased for the purpose of determining the compensation as Rs.2,56,283/-.

11. PW1, deposed that the age of the deceased was 48 years at the time of death. In support of her contention, Ex.P11, Ex.P.12, Ex.P7 Death certificate, Ex.P9 Death Report were also marked. As per the said report the age of the deceased is 46 years. Therefore Tribunal took the age as 46 years and we also concur with the same.

12. Future Prospects:-

Since the deceased died at the age of 46 years, we add 30% towards future prospects as held by the Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. If 30% is added on Rs.2,56,283/- it will come around Rs.76,884/-. By adding 30% to the salary of the deceased, the income of the deceased along with future prospects would be a sum of Rs.3,33,167/-. Therefore, total income of the deceased for the purpose of calculating the loss of dependency is determined as Rs.3,33,167/-.

13. Deduction:-

Further in order to calculate the personal expenses the Hon'ble Apex Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, has observed if the deceased is married and dependants are 4 or 5, $1/4^{\text{th}}$ of the total income to be deducted towards the personal expenses of the deceased. Therefore, we deduct $1/4^{\text{th}}$ of the total annual income for calculating personal expenses. Deducting an amount of one fourth i.e., (Rs.83,292/-) towards personal expenses, the loss of dependency per annum works out to Rs.2,49,876/- = (Rs.2,56,283/- + Rs.76,884 - Rs.83,292/-). Now with regard to the multiplier, the Hon'ble Apex Court in the case of Sarla Verma case (cited supra) held that if the person having the age of 45 to 50 years the multiplier of "13" to be taken into account for calculating the loss of dependency. Applying the multiplier of '13' the total loss of dependency would work out to Rs.32,48,388/- = (Rs.2,49,876x13). Therefore the loss of dependency will be a sum of Rs.32,48,388/-. Further the Tribunal awarded Rs.4,00,000/- towards loss of love and affection, however we re-fix the said amount as follows:-

We determine a sum of Rs.40,000/- towards loss of consortium. In this regard as per the Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra) it is made clear that the maximum amount of consortium cannot be awarded more than Rs.40,000/-. Therefore we fix the amount as Rs.40,000/- towards loss of consortium for the first petitioner. Since the

petitioners 2 & 3 are minors we determine a sum of Rs.1,50,000/- each and for the father (who was the fourth petitioner before the Tribunal and died during trial) we fix a sum of Rs.30,000/- and for the fourth petitioner who is the mother of the deceased we fix a sum of Rs.30,000/- .

14. As no amount was awarded by the Tribunal towards "Loss of estate" by the Tribunal, a sum of Rs.15,000/- is fixed under that caption. Under the head "Funeral expenses" this Court is inclined to reduce the amount from Rs.25,000/- to Rs.15,000/- as fixed in Pranay Sethi case (cited supra). A sum of Rs.37,000/- is awarded by the Tribunal towards "Medical expenses" and we confirm the same.

15. Hence the total compensation payable to the petitioners are as hereunder.

Head	Amount
Loss of dependency	Rs. 32,48,388/-
Medical expenses	Rs. 37,000/-
Loss of estate	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Loss of love and affection to the 2 nd petitioner/daughter	Rs. 1,50,000/-
Loss of love and affection to the 3 rd petitioner/son	Rs. 1,50,000/-
Loss of love and affection to the father (died during trial)	Rs. 30,000/-
Loss of love and affection to the 4 th petitioner / mother	Rs. 30,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs. 37,15,388/-

16.Hence, the total compensation payable in this case is Rs.37,15,388/-.

17. The total amount of compensation shall be shared by the respondents 1 to 4 herein in the following manner:-

The wife of the deceased who is the first respondent herein shall receive a sum of Rs.17,15,388/-. Since the father of the deceased who was fourth petitioner before the Tribunal died during the trial, his share of Rs.3,00,000/- had to be shared equally by the 2nd, 3rd and 4th respondents herein. After sharing, the daughter of the deceased who is the second respondent herein shall receive a sum of Rs.8,00,000/-, the son of the deceased who is the third respondent herein shall receive a sum of Rs.8,00,000/-, and the mother of the deceased who is

the fourth respondent herein shall receive a sum of Rs.4,00,000/-

18. Accordingly, the Insurance Company is directed to deposit the entire amount, with interest and costs directly through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. Thereafter the Insurance Company shall take necessary action against the owner of the Tractor bearing registration No.TN 23 Z 1578 to recover the said amount. On such deposit being made, the respondents 1 & 4 are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed this Court, in the ratio fixed as above. The share in respect of the second and third respondents who are the minors, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till they attain majority. The 1st respondent being the mother of the second and third respondents is permitted to withdraw the quarterly interest from the said deposit.

19. In the result the Cross.Obj.No.82 of 2016 is dismissed. CMA.No.2750 of 2015 is partly allowed and the award passed by the Tribunal to the tune of Rs.44,83,000/- is reduced to Rs.37,15,388/-. The said amount shall carry the same rate of interest as awarded by the Tribunal namely 7.5% per annum and the apportionment shall be as ordered by this Court. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dpq

To

The Principal Subordinate, Tiruppur
(Motor Accident Claims Tribunal)

+lcc to Mr.S.Manohar, Advocate, S.R.No.69731

+lcc to Mr.Ma.P.Thangavel, Advocate, S.R.No.70474

CMA.No.2750 of 2015
and M.P.No.1 of 2015
and Cross.Obj.No.82 of 2016

GJII(CO)

RRS (28/3/2019)