

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A. No.194 OF 2018
& C.M.P. No.2308 of 2018

United India Insurance Co. Ltd.,
Motor Third Party Claims Hub,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 600 006.

... Appellant / 2nd respondent

-vs-

1.T.Sathish Kumar ...1st respondent/1st petitioner

2.R.Prema ...2nd respondent/2nd petitioner/Claimants

3.V.Senthil Kumaran

Garuda Infrastructure, Travels & Services,
No.2, Gandhi Nagar, 1st Street,
Veerapuram, Chengalpattu,
Kancheepuram District.

...3rd respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree dated 14.09.2017 made in M.C.O.P.No.7085 of 2013 on the file of the Motor Accidents Claims Tribunal [II Court of Small Causes], Chennai.

For Appellant सत्यमेव जयते: Mr.D.Bhaskaran

For Respondent Nos.1 & 2 : Mr.F.Terry Chella Raja

J U D G M E N T

[Judgment of the Court was delivered by N.KIRUBAKARAN, J.]

The appeal has been preferred by the Insurance Company against the award of Rs.26,30,000/- for the death of one Vineetha, aged about 19 years, B.E. [Electronics and Communication Engineering] Student in the accident which occurred on 18.09.2013, when the deceased was travelling as a pillion rider in a two wheeler from Chengalpattu to Tambaram direction on G.S.T. Road and was knocked by the bus belonging to

the third respondent insured with the appellant/Insurance Company. Therefore, the claim petition.

2. On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the bus and awarded the aforesaid amount, against which only, the present appeal has been filed before this Court.

3. Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant / Insurance Company and Mr.F.Terry Chella Raja, learned counsel appearing for the respondents 1 and 2 / claimants.

4. Though Mr.D.Bhaskaran, learned counsel appearing for the appellant / Insurance Company would contend that the two wheeler came in a wrong direction as proved by sketch and the two-wheeler rider invited the accident and therefore, the negligence has to be fixed on the rider of the two wheeler and not on the driver of the bus, however, the Tribunal taking note of Ex.P.1 [F.I.R.] and Ex.P.10 [charge sheet] against the driver of the bus and on considering P.W.2 evidence and further supported by the Investigating Officer's evidence, rightly came to the conclusion that the bus was driven rashly and negligently and the driver alone was responsible for the accident. Moreover, there is no rebuttal evidence on the side of the Insurance Company, owner and driver and therefore, the finding reached by the Tribunal that the driver of the bus was alone responsible for the accident cannot be set aside.

5. As far as the quantum is concerned, the deceased was a Engineering College student. Therefore, the notional income was fixed atn Rs.15,000/- by the Tribunal. While fixing the monthly income at Rs.15,000/-, the Tribunal only followed the judgment of this Court in THE MANAGING DIRECTOR vs. GEETHAKUMARI [C.M.A.No.1532 of 2016 dated 25.11.2016] and rightly determined the monthly income at Rs.15,000/-.

6. However, in view of the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 ACJ 2700, this Court adds 40% towards "Future Prospects". After adding 40% towards 'Future Prospects', the income of the deceased comes to Rs.21,000/- [Rs.15,000/- (+) 40% of Rs.15,000].

7. Since, the deceased was a spinster, 50% has to be reduced towards "Personal Expenses". After deducting 50% towards "Personal Expenses", the monthly income of the deceased would be Rs.10,500/- [Rs.21,000/- (-) 50% of Rs.21,000/-].

8. The age of the deceased was 19 years, as proved by Ex.P.7 [College Mark sheet] and Ex.P.9 [Aadhar Card] and for the

age of 19 years, the appropriate multiplier is "18" and therefore, the loss of income would be Rs.22,68,000/- [Rs.10,500/- x 12 x 18].

9. The Tribunal has awarded Rs.1,75,000/- towards "Loss of Love and Affection" to the parents/respondents 1 and 2. In view of the Constitution Bench's judgment, the same has to be reduced to Rs.1,00,000/- [Rs.50,000/- each to the father and mother / claimants]. The sum of Rs.25,000/- towards "Funeral Expenses" awarded by the Tribunal is reduced to Rs.15,000/-. No amount has been awarded towards "Loss of Estate" and a sum of Rs.15,000/- is awarded towards the same.

10. Hence, the total compensation of Rs.26,30,000/- awarded by the Tribunal in this case is reduced to Rs.23,98,000/- rounded off to Rs.24,00,000/-. The rate of interest awarded by the Tribunal at 9% is reduced to 7.5% per annum.

11. The appellant / Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already paid, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer 50% each to the respondents 1 and 2 / claimants, through RTGS along with proportionate interest and costs, within a period of one week thereafter.

12. With the above directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

sri
To

The Motor Accidents Claims Tribunal/II Judge
Court of Small Causes,
Chennai.

+1 CC to Mr.D. Bhaskaran, Advocate sr 28347.

+1 CC to Ms.M.Malar, Advocate sr 28308.

C.M.A. No.194 OF 2018
& C.M.P. No.2308 of 2018

KGK(CO)
SP(31/05/2018)