

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.190 of 2015  
and M.P.No.1 of 2015

The Divisional Manager  
New India Assurance Company Limited  
Bharathi Road, Arcot Woodlands Building  
Cuddalore

..Appellant/  
2<sup>nd</sup> respondent.

-vs-

1.R.Ezhumalai (died)

2.Ranganathan

3.Anjalai

4.Malar

5.Minor Sandhiyakumari

6.Minor Dhivagar

Minor respondents 5 and 6

rep.By their mother Malar as guardian

.. Respondent/Petitioner

7.D.Kumar

.. Respondent/1<sup>st</sup> Respondent

8.V.Arumugam

..Respondent/2<sup>nd</sup> Respondent

Prayer:- Civil Miscellaneous Appeal filed against the judgment and decree dated 21.04.2014 made in MCOP.No.2707 of 2008 on the file of learned Motor Accident Claims Tribunal, Additional Subordinate Judge, Cuddalore.

For appellant

:: Ms.S.R.Sumathy

For respondents

:: M/s.A.N.Viswanatha Rao  
and Ramya V.Rao. For R1 to R6.

JUDGMENT

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 21.04.2014 made in MCOP.No.2707 of 2008 on the file of learned Motor Accident Claims Tribunal, 1<sup>st</sup> Additional Subordinate Court, Cuddalore.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the 1<sup>st</sup> Petitioner/R.Ezhumalai, who passed away pending proceedings was travelling as pillion rider in the two wheeler bearing Reg.No.TN-31-D-1472 in Anguchettipalayam to Siruvathur Road and at that time, another two wheeler bearing Reg.No.TN-31-D-9139 came in the opposite direction at very high speed, driven in a rash and negligent manner, dashed against the deceased/Petitioner's two wheeler, causing multiple grievous injuries and also fracture to the said R.Ezhumalai. According to the Petitioners/claimants, the accident occurred only due to negligence of the 1<sup>st</sup> respondent, who was riding the other two wheeler. The deceased/1<sup>st</sup> petitioner/R.Ezhumalai underwent treatment in Government Hospital, Panruti, and thereafter, in Government Hospital, Cuddalore and later in Vallivilas Hospital, Cuddalore. At the time of the accident, the claimant was aged 32 years and by working as Mason, was earning Rs.7500/- per month. Subsequent to the filing of the claim petition, the 1<sup>st</sup> petitioner/claimant Elumalai died due to the injuries suffered by him in the accident, nearly 28 months after the accident, on 22.12.2010 and the same was only due to the after effects of the injury suffered by him in the accident. The other petitioners are the legal heirs of the deceased 1<sup>st</sup> petitioner/claimant. The petitioners seek a sum of Rs.5,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 3<sup>rd</sup> respondent/Insurance company contends that the accident did not occur due to the negligence of the 1<sup>st</sup> respondent/two wheeler driver. The rider of the TVS 50 bearing Reg.No.TN-31-D-1472 did not possess valid driving licence. The Police complaint was lodged only 9 days after the accident. The 2<sup>nd</sup> respondent is the close relative of the injured Petitioner and they colluded together to lodge false complaint with considerable delay to gain undue advantage. The claim of the petitioner is exorbitant. The age, avocation and income of the injured as alleged in the petition is not correct. Thus, the 3<sup>rd</sup> respondent/Insurance company sought for dismissal of the petition.

4. Before the Tribunal, the petitioners examined P.W.1 and produced documents Ex.P.1 to Ex.P.8 to prove their claim. On the side of the 3<sup>rd</sup> respondent, R.W.1 was examined, documents Ex.R.1 to Ex.R.3 was marked. On the basis of available evidence, the tribunal passed the award for a sum of

Rs.6,99,874/- directing the 3rd respondent insurance company to pay the amount to the petitioners. Aggrieved over the finding of the Tribunal, the 3rd respondent/Insurance company has come forward with the present appeal.

5. The learned counsel for the 3rd respondent/Insurance company contends that the accident occurred only due to negligence of the rider of two wheeler in which the 1st petitioner was travelling as pillion rider and not due to negligence of the 2nd respondent vehicle driver. The Tribunal also failed to consider the fact that there was no documentary proof to connect the death of the 1st petitioner to the injury suffered in the accident. There was no Post Mortem report also. There is no medical evidence to prove that the injuries suffered by the 1st petitioner was grievous in nature. The amount of compensation awarded by the Tribunal is on the higher side. Hence the 3rd respondent/Insurance company sought for setting aside the award passed by the Tribunal.

6. Per contra, the learned counsel for the Petitioners/claimants contends that the accident occurred due to the negligence of the rider of the 2nd respondent vehicle and the 1st petitioner/victim died only due to the injuries suffered in the accident. The Tribunal, after analysing the evidence on record has properly concluded that the negligence of the 2nd respondent vehicle driver alone caused the accident and passed the award providing just and fair compensation; as such, the appeal lacks merit and the petitioners/claimants sought for dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. The Petitioners examined 4th Petitioner who is the wife of the deceased/1<sup>st</sup> Petitioner as the only witness to prove the claim. Admittedly, she is not the eyewitness to the occurrence. The Police registered Ex.P.1-FIR against the driver of the 2<sup>nd</sup> respondent motor cycle. However, the incident occurred between two moving vehicles and both the vehicles dashed against each other. Apart from Ex.P.1-FIR, there is no other materials like final report of the Police or other eyewitness account about the occurrence. In such circumstances, the conclusion of the Tribunal solely on the basis of Ex.P.1-FIR that negligence on the part of the 2<sup>nd</sup> respondent vehicle driver is the sole cause for the accident is not proper. As such, considering the only available oral evidence of P.W.1 and other attendant circumstances, it will be appropriate to apportion the negligence at 50% each on the deceased/1<sup>st</sup> petitioner and the rider of the 2<sup>nd</sup> respondent vehicle as the cause for the

accident.

9. It is contended by the 3<sup>rd</sup> respondent/insurer that driver of the 2<sup>nd</sup> respondent vehicle was not having valid driving licence. A copy of the Advocate notice sent to the 2<sup>nd</sup> respondent and the acknowledgment for the same is produced as Ex.R.1 to Ex.R.3. In spite of notice being served, the 2<sup>nd</sup> respondent failed to produce driving licence of the rider to the Insurance company/appellant herein. It is clear from Ex.P.1-MVI report that driving licence of the driver of the vehicle involved in the accident was not produced. As such, the contention of the 3<sup>rd</sup> respondent that the rider of the 2<sup>nd</sup> respondent vehicle did not possess valid driving licence is to be accepted. However, the vehicle was having Policy coverage. The 2<sup>nd</sup> and 3<sup>rd</sup> respondent as the owner and insurer are liable to pay the compensation. As the owner/2<sup>nd</sup> respondent failed to prove the rider of the vehicle was possessing valid driving licence, the same will amount to violation of policy condition. As such, the 3<sup>rd</sup> respondent/Insurance company is at liberty to recover the award amount from the owner/2<sup>nd</sup> respondent after fulfilling the payment of award amount at first instance.

10. According to P.W.1, her husband, the deceased 1st petitioner suffered grievous injuries and in spite of treatment died on 22.12.2010. The death certificate of the 1st petitioner is produced as Ex.P.7 and the legal heir certificate as Ex.P.8. It is clear from the same that the 4th petitioner is the wife of the deceased 1st petitioner, while the 2nd and 3rd petitioners are the parents of the deceased 1st petitioner, the 5<sup>th</sup> and 6th petitioners are the children of the deceased 1st petitioner and his wife, the 4th petitioner. As such, they are entitled for compensation as legal heirs of the deceased. The 1st petitioner was aged 32 years and stated to have been worked as Mason, earning Rs.7500/- per month. There is no proof for the same. As such, it will be appropriate to fix the notional monthly income at Rs.2500/- per month. As the deceased died at the age of 35 years, the multiplier to be applied is "16". The compensation for loss of dependency is calculated as under:-  
$$\text{Rs.2500} \times 12 \times 16 = 4,80,000/-$$

Following the decision of Apex Court in National Insurance Co. Ltd., Vs. Pranay Sethi and others [2017 (2) TN MAC 609 (SC)], in respect of conventional heads viz., Rs.15,000/- towards "Funeral expenses"; Rs.15,000/- towards "loss of estate" and Rs.40,000/- towards "loss of consortium" is provided. Thus the modified compensation granted by this court is as shown below:-

| Heads                 | Award granted by the Tribunal | Award granted by this court |
|-----------------------|-------------------------------|-----------------------------|
| 1. Loss of dependency | Rs.5,76,000/-                 | Rs. 4,80,000/-              |
| 2.Medical expenses    | Rs. 67,874.30                 | Rs. ---                     |
| 3.Loss of estate      | ---                           | Rs. 15,000/-                |
| 4.Funeral expenses    | ---                           | Rs. 15,000/-                |
| 5.Loss of consortium  | ---                           | Rs. 40,000/-                |
| 6.miscellaneous       | Rs. 56,000/-                  | ---                         |
| Total                 | Rs.6,99,874/-                 | Rs.5,50,000/-               |

As stated earlier, 50% of the negligence is placed on the 2<sup>nd</sup> respondent vehicle driver and 50% negligence on the rider of the two wheeler, in which the deceased R.Ezhumalai travelled as pillion rider, hence, the Petitioners/claimants are entitled to only 50% of the award amount. Thus, out of the award amount of Rs.5,50,000/-, the Petitioners/claimants are entitled to Rs.2,75,000/- only.

11. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;

(ii) The quantum of award amount is reduced to Rs.5,50,000/- from Rs.6,99,874/-. The Respondents 2 to 6/claimants are entitled to Award amount of Rs.2,75,000/- only as compensation as the negligence is refixed in the ratio of 50% : 50% on the 2<sup>nd</sup> respondent vehicle rider as well as on the deceased.

(iii) Since this court held that there is violation of Policy condition by the owner of the offending vehicle/2<sup>nd</sup> respondent before the Tribunal, the appellant/3<sup>rd</sup> respondent-Insurance company is at liberty to recover the award amount from the owner/2<sup>nd</sup> respondent after fulfilling the payment of award amount at first instance.

(iv) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(v) This court, by order dated 08.04.2015, directed the appellant/Insurance Company to deposit the entire award amount along with interest and cost. Hence, the appellant is entitled for refund of excess sum, if any lying in deposit, after satisfying the award of this court.

(vi) The claimants/Respondents 2 to 4 are entitled to withdraw their respective share along with proportionate accrued interest as shown hereunder:

Respondents 2 and 3 - 10% each

Respondent No.4 - 40%;

Respondents 5 and 6 - 20% each.

Insofar as share of Respondents 5 and 6 is concerned, the same shall be invested in a fixed deposit in a Nationalised Bank and renewed periodically, till they attain majority. The interest accrued therein shall be withdrawn once in three months by the 4<sup>th</sup> respondent/mother of minor claimants.

(vii) The Tribunal shall follow the appropriate procedure for disbursement of the award amount to the claimants.

(viii) No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accidents Claims Tribunal,  
Additional Subordinate Judge, Cuddalore.

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

+1cc to M/s.A.N.Viswanatha Rao, Advocate, S.R.No.26092

C.M.A.No.190 of 2015

MR (CO)  
CS/25/10/2018

सत्यमेव जयते

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