

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2250 of 2016
and CMP No.15915 of 2016

The Manager,
M/s.United India Insurance Company Ltd.,
Micro Office, No.26, 3rd Street, 1st Floor,
Sarojini Nagar, Virudhachalam 606 001. ... Appellant/
2nd Respondent

-vs-

1. Rajendran
2. Sivasakthi ... Respondents/Claimants 1 & 2
3. R.Babu ... 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 20.11.2015 made in OP No.430 of 2013 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Perambalur.

For Appellant : Mr. D.Bhaskaran

For Respondent : Mr. T.Gobinath for R1 & R2

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The Insurance Company which suffered an award for payment of Rs.13,67,000/- for death of one Suganthi, who died in a motor accident that occurred on 12.01.2013 is the appellant.

2. According to the claimants, while the said Suganthi was travelling as a pillion-rider in a motor cycle bearing Registration No. TN 31 AV 9667, driven by one Palanivel, the rider of the motor cycle drove the same in a rash and negligent manner, lost control of the vehicle, as a result of which, the vehicle skided and fell on the right side of the road. Due to the said fall, the pillion rider Suganthi sustained grievous injuries and she was immediately rushed to

SRM Hospital, Trichy, where she was treated an in-patient. Later, she was shifted to Tanjavur Medical College Hospital. Despite treatment, she succumbed to the injuries on 16.01.2013. Terming the negligence of the rider of the two wheeler as the cause of the accident, the claimants who are the father and brother of the deceased Suganthi, sought for a compensation of Rs.15,00,000/-.

3. The Claim Petition was resisted by the Insurance Company contending that the accident did not occur in the manner narrated by the Claimants. According to the Insurance Company, the accident register, which is the earliest document, shows that the accident occurred due to an unknown car hitting against the two wheeler. Therefore, the Insurance Company would contend that the entire liability to pay compensation cannot be fastened on it, as the insurer of the two wheeler. The claims relating to the age, educational qualification and the income of the deceased were also denied by the Insurance Company.

4. The Tribunal, which heard the Original Petition, came to the conclusion that the accident register cannot be treated as the conclusive proof of the manner in which the accident occurred. Considering the fact that the FIR was registered against the two wheeler rider and the Insurance Company had not chosen to examine the two wheeler rider, the Tribunal held that the accident occurred due to the rash and negligent driving of the two wheeler and concluded that the Insurance Company is liable to pay the entire compensation.

5. On the quantum, the claimants would contend that the deceased Suganthi was working as teacher in PSV Nursery School, Avinankudi and she was earning Rs.10,000/- as monthly salary. Since no proof of income or the educational qualification was filed, the Tribunal took her income at Rs.8,000/-, added 50% towards future prospects, and adopting a multiplier of 18 and deducting one half towards her personal expenses, concluded that the pecuniary loss caused to the family was Rs.12,96,000/- [Rs.12,000/- x $\frac{1}{2}$ x 12 x 18]. The Tribunal also awarded a sum of Rs.50,000/- towards loss of love and affection, Rs.10,000/- towards funeral expenses, Rs.10,000/- towards transport charges and Rs.1,000/- towards damage to clothing. In all, the Tribunal awarded a sum of Rs.13,67,000/-. The Tribunal also apportioned the compensation between the claimants who are the father and mother at Rs.6,83,500/- each.

6. Aggrieved, the Insurance Company is on appeal.

7. We have heard Mr.D.Bhaskaran, learned counsel appearing for the appellant Insurance Company and Mr.T.Gobinath, learned counsel appearing for Respondents 1 & 2 / claimants. The rider of the two wheeler who is shown as 3rd respondent, as seen from the records of the Tribunal, had remained ex-parte, and hence, notice to him is dispensed with.

8. Mr.D.Bhasakaran, learned counsel appearing for the appellant would contend that the Tribunal was not justified in fastening the entire liability on the two wheeler. He would rely upon the accident register which was produced as Ex.R1 to contend that an unknown car was responsible for the accident. But the Insurance Company did not examine the rider of the two wheeler, who is the best witness to speak about the manner in which the accident had occurred. The Accident Register cannot be taken as conclusive proof of the manner in which the accident had occurred. The First Information Report, has been lodged against the rider of the two wheeler and P.W.2, eye witness has spoken about the accident.

9. We are, therefore, of the view that the Tribunal was right in holding that the accident was due to the rash and negligent driving of the rider of the two wheeler and the Tribunal was right in fastening the entire liability on the Insurance Company. On the quantum, the Tribunal has adopted Rs.8,000/- as monthly income added 50% towards future prospects.

10. Mr.D.Bhaskaran, learned counsel would contend that the adoption of 50% of future prospects is incorrect, in view of the larger Bench decision of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331. He would also fault the Tribunal for taking the notional income at Rs.8,000/- for an accident which occurred in the year 2013. Though the claimants had contended that the deceased was working as a Teacher and drawing a salary of Rs.10,000/-, they have not produced any evidence to prove her income. We are, therefore, of the opinion that notional income could be taken at Rs.7,000/-. Adding 40% towards future prospects, the total amount of compensation under the head of Loss of dependency would be

$$[Rs.7,000/- + 40\% - \frac{1}{2}] \times 12 \times 18 = Rs.10,58,400/-.$$

11. The award of the Tribunal under the other heads is confirmed. The Tribunal has not awarded any amount towards loss of estate. Hence, we award a sum of Rs.20,000/- under the head, "loss of estate". Thus, the total compensation comes to Rs.11,49,400/-.

12. In view of the above discussion, the appeal is partly allowed. The compensation awarded by the Tribunal is modified and reduced to Rs.11,49,400/-. The award will carry an interest of 7.5% p.a. from the date of petition till date of payment. Since the 2nd claimant, who is the brother of the deceased is said to be gainfully employed, he is not entitled to any share of the compensation. We, therefore, direct

payment of the entire compensation to the 1st claimant/1st respondent.

13. It is stated that the Insurance Company has deposited the entire amount and same the remains in deposit before the Tribunal. We therefore permit the 1st claimant/1st respondent, father of the deceased, to withdraw the compensation as per the modified award and the balance amount shall be paid over to the Insurance Company. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

jv

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate Sr.No.69375

+1cc to Mr.T.Gobinath, Advocate Sr.No.69916

KJI(CO)

sm:16.11.2018

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