

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2364 of 2015
and M.P.No.1 of 2015
and CMP.No.223 of 2016

Bharathi AXA General Insurance Co.Ltd.,
Salem ...Appellant/3rd Respondent

vs

1.Panchali ... Respondents 1 to 6/Petitioner

2.Sumathi

3.Ramesh

4.Elango

5.Minor Radha

6.Minor Rukmani

Respondents 5 and 6 represented
by her mother/guaridan/next friend
1st respondent.

7.M.Govindaraj

8.P.Madhu ... Respondents 7 & 8/Respondents 1 & 2

Civil Miscellaneous Appeal filed against the judgment and
decree dated 27.04.2015 made in M.C.O.P.No.45 of 2014 on the
file of Motor Accident Claims Tribunal, Special District Judge,
Dharmapuri.

For appellant : : Mr.S.Arun Kumar
for Respondents : : Mr.A.Ilaya Perumal for R1 to R6.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the
appellant/claimant, challenging the judgment and decree dated
27.04.2015 made in M.C.O.P.No.45 of 2014 on the file of Motor
Accident Claims Tribunal, Special District Judge, Dharmapuri.

2. For the sake of convenience, the parties are referred to
as per their litigative status before the Tribunal. It is a
fatal case. The case of the Petitioner is that on 28.01.2011,
when the deceased was returning to his village in the Tractor
attached with Trailer bearing Reg.No.TN 29 A 8314, at about 6
p.m., near the house of one Gopal in Dharmapuri to Palacode

Road, by driving his Tractor at normal speed, another tractor attached with Trailer bearing Reg.No.TN 29 H 2153, owned by the 1st respondent and insured with the 3rd respondent and the Tractor bearing Reg.No.TN 29 B 9871 belonging to the 2nd respondent, came from Dharmapuri towards Palacode, loaded with sugarcane, driven in a rash and negligent manner, by its driver and as the driver of the said Tractor bearing Reg.No.TN 29 B 9871 lost control, dashed against the Tractor driven by the deceased. Due to the impact of the same, the deceased Thandavan/the husband of the 1st petitioner and father of the other petitioners suffered fatal injuries and subsequently passed away on 31.01.2011. The accident according to the petitioners occurred only due to the rash and negligent driving of the 1st respondent Tractor driver. At the time of the accident, the deceased was aged 40 years and by working as Tractor driver was getting Rs.7500/- per month. According to the petitioners, they lost the only bread winner of the family viz., the deceased, who was taking care of all the petitioners and further stated they were dependants of the deceased. Hence, the petitioners sought for a total compensation of Rs.10,00,000/- from the respondents herein.

3. On the other hand, opposing the petition, the 3rd respondent/Insurance Company contends that the said offending vehicle TN 29 H 2153 and the Tractor Trailer TN 29 B 9871 was not insured with them. The driver of the said vehicle TN 29 H 2153 was not having valid driving licence and the same will disentitle the petitioner from claiming any compensation from the 3rd respondent/Insurance Company. The Petitioner has to establish the manner of accident and negligence of the 1st respondent driver alone caused the accident. It is further stated that the 1st respondent Tractor Trailer was proceeding at normal speed, but the deceased who was riding his Tractor bearing Reg.No.TN 29A 8314 came in the opposite direction in a rash and negligent manner and dashed against the 1st respondent Tractor resulting in the accident. The 3rd respondent contends that only due to rash and negligence on the part of the deceased, the accident occurred. The Police have registered a case against him only. Hence, the 3rd respondent seeks dismissal of the petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.5 to prove their claim. On the side of the respondents, R.W.1 to R.W.3 was examined and documents Exs.R.1 to R.5 was produced. The Tribunal on the basis of available materials on record found that the 1st respondent Tractor driver's negligence caused the accident and awarded compensation of Rs.9,60,000/- to the petitioners and directed the 3rd respondent/Insurance Company to pay the award amount. Aggrieved over the said finding of the Tribunal, the 3rd

respondent-Insurance Company has come forward with the present appeal.

5. The learned counsel for the Appellant/3rd respondent/Insurance Company contends that the finding of the Tribunal that the accident occurred only due to the negligence of the 1st respondent Tractor driver is not proper and the tribunal has not appreciated the evidence of R.W.1 to R.W.3 in that regard properly. The conclusion of the Tribunal that the driver of the 1st respondent alone is fully responsible for the accident is not correct. The claim of the petitioners is exorbitant and as such, the reasoning and the conclusion arrived at by the Tribunal is not sustainable and is liable to be set aside. Hence, the learned counsel for the 3rd respondent/insurance company seeks to set aside the award passed by the Tribunal.

6. Per contra, the learned counsel for the respondents 1 to 6/petitioners contend that the Tribunal properly appreciated the materials available on record and found that the 1st respondent Tractor driver alone has caused the accident and the compensation of Rs.9,60,000/- granted by the tribunal itself is very low and the same has to be enhanced. Hence the petitioner seeks dismissal of the appeal. It is also contended that the husband of the 1st petitioner the deceased Thandavan was driving Tractor TN 29 A 8314 from Dharmapuri to Palacode on 28.01.2011 at 6.30 p.m., and at that time, the 1st respondent owned Tractor Trailer bearing Reg.No.TN 29 H 2153, loaded with sugarcane driven in a rash and negligent manner dashed against the Tractor driven by the deceased resulting in his death. The eye witness to the occurrence deposed as P.W.2 corroborated the manner in which the accident occurred.

7. However disputing the claim of the petitioners, it is contended by the 3rd respondent/Insurance Company that the accident occurred only due to the rash and negligent driving of the deceased. It is stated by the 3rd respondent that the Police registered Ex.P.1 FIR against the deceased Thandavan and after investigation Ex.R.5 Charge sheet also laid against the deceased Thandavan only. The 3rd respondent also produced the motor vehicle inspection report as Ex.R.4. The Respondent examined R.W.1 to R.W.3 to prove that the accident occurred due to the negligence of the deceased. However, the tribunal after considering the materials placed before it, observed that Ex.P.1-FIR was registered 2 days after the accident alleging negligence on the part of the deceased as the cause for the accident. The Tribunal, considering the fact that the Palacode Police have closed the case on the ground that the accused has died and that too, without examining any witness is not proper and as such, Ex.P.1-FIR and Ex.R.5-Charge sheet cannot be considered for arriving at a conclusion as to whose negligence

caused the accident. Since the petitioners examined eye witness as P.W.2, who has stated categorically that the 1st respondent Tractor driver alone is responsible for the accident held that the accident occurred due to the negligence of the 1st respondent Tractor driver only.

8. The learned counsel for the appellant/3rd respondent/Insurance company also did not stress the issue regarding the negligence. In such circumstances, considering the materials on record, this court is of the view that the conclusion arrived at by the tribunal regarding negligence of the 1st respondent Tractor Driver caused the accident is well reasoned and the same needs no interference.

9. The deceased who is the husband of the 1st petitioner is stated to be 40 years at the time of the death and by working as Tractor driver, and he was earning Rs.7500/- per month. It is evident from Ex.P.2 Post Mortem Certificate that the deceased was aged 40 years. In the absence of any other material to prove his age, on the basis of Ex.P.2-Post mortem certificate, the age of the deceased is fixed at 40 years. The petitioners have not produced any documents to prove the income of the deceased. In such circumstances, as the deceased is stated to be a Tractor driver, the monthly income of the deceased is fixed at Rs.4500/- by the Tribunal. The same appears to be just and proper. As the petitioners who are 6 in numbers, and stated to be dependants of the deceased, 1/4th of the income of the deceased has to be deducted towards personal expenses of the deceased. Considering that the petitioners have not established that the deceased was having permanent job, considering the income and the age of the deceased, 25% is added towards Future Prospects and by applying correct multiplier 15, the calculation of loss of dependency is as under:-

4500 + 25% (1125) = 5625 ;
deducting 1/4 th towards personal expenses
5625 - 1400 = 4225
4225 x 12 x 15 = 7,60,500/-

As such, the loss of dependency is fixed by this Court as Rs.7,60,500/-.

Further, following the decision of Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs Pranay Sethi and Others], this court is also inclined to award the following amounts as compensation under conventional heads:-

Loss of consortium	- 40,000/-
Funeral expenses	- 15,000/-
Loss of estate	- 15,000/-
Transport expenses	- 5,000

Total	= Rs. 8,35,500/-

Thus, the modified reduced compensation granted by this Court is Rs.8,35,500/-.

10. In the result, the Civil Miscellaneous Appeal is Partly allowed in the terms as shown below:-

- (1) The award granted by the Tribunal is reduced to Rs.8,35,500/- from Rs.9,60,000/-;
- (2) The award amount will carry interest at 7.5% per annum from the date of petition till the date of deposit.;
- (3) Since it is stated that the appellant/Insurance Company has already deposited the entire award amount granted by the Tribunal, the Insurance company is permitted to withdraw the excess amount, if any, after satisfying the order of this court, along with proportionate accrued interest and costs.
- (4) The Petitioners 1 to 4/claimants are permitted to withdraw the award amount along with with accrued interest, before the Tribunal, by filing necessary application, less the amount if any already withdrawn in the apportionment as under:-
Petitioners 1 and 2 - 10% each
Petitioners 3 to 6 - 20% each
As far as petitioners 5 and 6 are concerned, their share shall be deposited in Fixed Deposit in a Nationalised Bank, till they attain majority and the interest accrued therein shall be withdrawn by the mother/1st petitioner, once in 3 months.
- (5) Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

nvsri

To

- 1.The Motor Accident Claims Tribunal,
Special District Judge, Dharmapuri.
- 2.The Section Officer, V.R.Section, High Court, Madras.

+ 1 cc to Mr.S.Arun Kumar Advocate,SR.12214
+ 1 cc to Mr.A.Ilaya Perumal Advocate,SR.11618

C.M.A.No.2364 of 2015

mp(co)
nr 21/03/2018