

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2429 of 2015
and M.P.No.1 of 2015
and C.M.P.No.173 of 2018

The Branch Manager

M/s.National Insurance Co.Ltd

No.8, Thiruvengadasamy Chetty Street

Erode

..Appellant/Respondent-3.

vs

1.Jemila

3.Minor.Jemceeth Althaf

3.Minor.Mohamed Souhali

..Respondents 1 to 3
/Petitioners 1 to 3.

4.Mr.Gunasekaran

..Respondent 4
/Respondent -1

5.Renaatus Projects Pvt Ltd

Rep. By its Manager

No.655, 656/2, Chenanathur Panchayat

Hosur Taluk

Krishnagiri District-635 109

..Respondent-5
/Respondent-2

6. Anthoniraj

..Respondent-6
/Respondent-4.

Civil Miscellaneous Appeal filed against the judgment and decree dated 29.06.2015 passed in M.C.O.P.No.26 of 2014 on the file of Motor Accident Claims Tribunal (District Judge, Presiding Officer) Karaikal at Pondicherry.

For appellant : : Mr.J.Chandran

For Respondents : :

for R1 to R3 : : M/s.S.Packiaraj

for M/s.P.J.Anitha

for R7

: :M/s.S.D.Dhakshinamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the 2nd respondent before the Tribunal viz., the Insurance Company, against the judgment and decree dated 29.06.2015 passed in

M.C.O.P.No.26 of 2014 on the file of Motor Accident Claims Tribunal (District Judge, Presiding Officer) Karaikal at Pondicherry.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners is that on 18.02.2013, while the deceased Jahir Usain was proceeding in the vehicle bearing Reg.No.TN-04-AA-6925, along Pidagam Bypass road, a Tipper Lorry bearing Reg.No.TN-70 E-8835 was going ahead of the vehicle in which the deceased was proceeding and as the said Jahir Usain tried to overtake the Tipper Lorry, which was driven by the 2nd respondent in a rash and negligent manner, the said Tipper Lorry dashed against the TATA 1100 vehicle driven by the deceased resulting in grievous injuries to Jahir Husain and he subsequently died due to the fatal injuries suffered by him. It is stated in the claim Petition that the accident occurred only due to the rash and negligent driving of the Tipper Lorry driver and the said lorry was insured with the 3rd respondent. The vehicle driven by Jahir Usain bearing Reg.No.TN-04-AA-6925 belonging to the 4th respondent was insured with the 5th respondent/Insurance company. The petitioners who are the wife and children of the deceased are stated to be dependants of the deceased. The deceased was stated to be 38 years old and was earning Rs.1000/- per day by working as driver. Hence, the Petitioners sought for compensation of Rs.40,00,000/-.

3. On the other hand, opposing the claim of the Petitioners, the 3rd respondent/Insurer of the Tipper Lorry bearing Reg.No.TN-70-E-8835 contends that driver of the Lorry who is the 1st respondent herein did not possess valid driving licence which amounts to violation of Policy condition. Hence, the 3rd respondent is not liable to pay any compensation. The accident occurred only due to negligence of the deceased and on that ground also, the 2nd and 3rd respondents are not liable to pay any compensation. The claim of the Petitioners about the age, avocation and income of the deceased are denied. Hence, the 3rd respondent sought for dismissal of the Claim Petition.

4. Likewise, opposing the claim of the Petitioners, by filing counter, the 5th respondent insurer of the TATA 1100 vehicle bearing Reg.No.TN-04-AA-6925 owned by the 1st respondent which was driven by the deceased contended that the accident occurred only due to rash and negligent driving of the 1st respondent driver and as such, the 4th and 5th respondents who are the owner and insurer of TATA 1100 vehicle are not liable to pay any compensation. The claim of the Petitioners about the age, avocation and income of the deceased are disputed. Thus, the 5th respondent sought for dismissal of the Petition.

5. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.12 to prove their claim. On the side of the 3rd respondent, R.W.1 was examined and Ex.R.1 was marked. On the basis of available evidence on record, the Tribunal found that the negligence on the part of the driver of both the vehicles caused the accident and apportioned negligence at 75% for the 3rd respondent Lorry driver and 25% on the deceased, who drove the vehicle owned by the 4th respondent. The Tribunal passed the award for a sum of Rs.11,04,000/- payable by the respondents 2 and 3. Aggrieved over the said finding, the 3rd respondent/Insurance company has come forward with the present appeal.

6. The learned counsel for the 3rd respondent/Insurance company contends that the compensation awarded by the Tribunal is highly excessive. The Tribunal ought to have held that the accident occurred only due to the negligent act of the deceased and therefore, the Tribunal ought to have reduced the compensation. Since the accident occurred while the vehicle driven by the deceased tried to overtake the Tipper Lorry belonging to the 2nd respondent, the Tribunal should have concluded that the negligence of the deceased alone caused the accident. The Tribunal failed to consider the admission of P.W.2 that the accident occurred only due to attempt of the deceased to overtake the Tipper Lorry on the wrong side. The evidence of P.W.2 was not properly considered by the Tribunal. The reasoning of the Tribunal for fixing 75% negligence on the part of the 1st respondent driver was not appropriate. Hence, the 3rd respondent seeks to entertain the appeal and to set aside the award passed by the Tribunal.

7. On the other hand, the learned counsel for the Petitioners/Claimants contends that the accident occurred only due to negligence of the 1st respondent driver and as such the entire negligence has to be placed on him only. It is further contended that the Tribunal, after considering the evidence on record granted compensation of a meagre sum only and there is no need to interfere with the same. Hence, the Petitioners/claimants/Respondents 1 to 3 herein seek dismissal of the appeal.

8. Heard both sides and perused the materials available on record.

9. The Petitioners who are the wife and minor children of the deceased Jahir Usain contended that the deceased while driving TATA 1100 vehicle bearing Reg.No.TN-04-AA-6925 met with the accident in Pidagam Bypass road and the same occurred only due to the negligence on the part of 1st respondent/driver of the Tipper Lorry. The 1st petitioner, who deposed as P.W.1 is not an

eyewitness to the accident. However, the Petitioners examined P.W.2 Sundar who witnessed the accident in person to prove their claim. According to P.W.2 while he was travelling in a bus from Trichy to Chennai, he witnessed the accident. According to P.W.2, TATA 1100 vehicle driven by the deceased tried to overtake the Tipper Lorry going ahead of it and as TATA 1100 Van crossed almost half the length of the Lorry, the driver of the Lorry without give way to the van, drove the Lorry in high speed in zig zag way, which resulted in the accident. The Petitioners produced Copy of the FIR as Ex.P.1. The Petitioners contend that the evidence of P.W.2 and the contents of Ex.P.1-FIR proved that the negligence of the 1st respondent driver alone caused the accident. However, as rightly pointed out by the Tribunal, the evidence of P.W.2 appears to be doubtful as he has contradicted himself in his cross examination by stating that the accident occurred in the one way road and at the time of the accident, no other vehicle was going ahead or behind the vehicles involved in the accident. On the side of the Respondents, neither the 1st respondent, who drove the Tipper Lorry nor any other person was examined. As such, there is no oral evidence on the respondents side. The accident as stated in the contents of Ex.P.1-FIR occurred in the early hours at 4.30 a.m., in the National Highway near Pidagam Bypass road. Admittedly, both the vehicles involved in the accident were moving in the National Highway which is a four-way Track. It is evident from Ex.P.6 Report (Copy of AIR of the 2nd respondent vehicle) that the rear left side mudguard of the Lorry had been damaged. As per the contents of Ex.P.9-Copy of the AIR of the vehicle relating to the TATA 1100 Van driven by the deceased, it is clear that the front side of the said van was damaged. Pointing it out, the learned counsel for the Respondent-3/Insurance Company contended that the as the deceased who drove the TATA 1100 van attempted to overtake the Lorry driven by the 1st respondent without waiting the Lorry driver to change the track, which resulted in the accident and consequently the front side of the TATA and the rear side of the Lorry got damaged.

10. The appellant/3rd respondent/Insurance Company has submitted that the deceased attempted to overtake on the left side of the Lorry and dashed against the rear side of the Lorry and as such, there is no negligence on the part of the 1st respondent Lorry driver, who was going ahead of the vehicle driven by the deceased. Hence, the 3rd respondent contended that the entire negligence should be placed on the deceased only.

11. However, as stated earlier, the accident occurred when two moving vehicles collided in National Highways. There is nothing on record to show that the Police have filed charge sheet in this case. There is no other independent evidence on the side of the Petitioners to disprove the version given on the

side of the 3rd respondent. In such circumstances, considering the Investigation Report-Ex.R.1 and the evidence adduced by R.W.1, the Investigator as well as Ex.P.6 and Ex.P.9-Copy of the AIR in respect of 2nd respondent vehicle and the vehicle driven by the deceased, viz., the vehicles involved in the accident, it is clear that both the vehicles underwent damage in the collision. The same could have been avoided if both the drivers have acted in a more careful manner. In any event, the fact to be considered herein is that the van as well as the Tipper Lorry are involved in the accident whereby the deceased sustained fatal injuries in the Highway and succumbed to it. In such circumstances, as rightly pointed out by the Tribunal, the negligence on the part of both drivers has caused the accident. However, the documents produced and the evidence adduced on the side of the 3rd respondent established the fact that the deceased went on wrong side of the track and dashed against the rear left side of the Lorry, and the same is only because of the negligence of the deceased. Hence, the negligence fixed by the Tribunal at 75% against the Lorry driver and 25% on the TATA Van driver is modified to the extent of 60% on the part of Lorry driver and 40% on the deceased/TATA Van driver.

12. According to P.W.1, the deceased Jahir Usain was her husband and the age of the deceased was 38 years. It is evident from Ex.P.2 Post Mortem Certificate that the age of the deceased was 38 years. The deceased was stated to have worked as Driver and was earning Rs.1000/- per day. The D.L., of the deceased is produced as Ex.P.3. From that it is clear that the deceased possessed valid driving licence. However, the Petitioners have not produced any documentary proof about the avocation and monthly income of the deceased. In such circumstances, the Tribunal has fixed the notional monthly income of the deceased at Rs.10,000/-. The same is just and proper. As the deceased was aged 38 years, by following the judgment of the Hon'ble Apex Court in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], 40% of the income has to be added towards Future Prospects. As the number of dependants are three in number, 1/3rd of the income has to be deducted towards personal expenses of the deceased. The correct multiplier to applied herein is '15'. Accordingly, the loss of dependency for the family of the deceased is calculated as under:-

Rs.10000/- + 40% Future Prospects (4000)
Rs.10,000/- + Rs.4000/- = Rs.14,000/-
Rs.14,000/- - 1/3 deduction (4666) = Rs.9334/-
Rs.9334/- x 12 x 15 = Rs.16,80,120/-

Thus, a sum of Rs.16,80,120/- is awarded under the head "Loss of dependency". By following the dictum laid down by the Apex Court in the ruling reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], towards loss of estate, loss of consortium and funeral expenses, this court

is inclined to modify the compensation as under:-

Loss of Estate = Rs.15,000/-

Loss of consortium = Rs.40,000/-

Funeral Expenses = Rs.15,000/-

Further, this court is of the considered opinion that Rs.4000/- awarded by the Tribunal under the head "Transport expenses" is fair and reasonable and hence the same is confirmed. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of dependency	Rs. 9,60,000/-	Rs.16,80,120/-
2	Loss of consortium	Rs. 50,000/-	Rs. 40,000/-
3	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
4	Love and affection	Rs. 75,000/-	---
5	Transport expenses	Rs. 4,000/-	Rs. 4,000/-
6	Loss of estate	----	Rs. 15,000/-
	Total	Rs.11,04,000/-	Rs.17,54,120/-

As stated earlier, the deceased Jahir Usain also contributed to the accident by his careless driving and negligence, hence, the negligence on the part of the deceased is fixed at 40%. As such, the Petitioners/claimants/Respondents 1 to 3 herein are entitled to 60% of the award amount.

60% of 17,54,120/- = Rs.10,52,472/-.

Thus, the compensation amount that is granted to the Petitioners 1 to 3/Respondents 1 to 3 at 60% is Rs.10,52,472/-.

13. In the light of the foregoing discussion, the award of the Tribunal is modified and the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed.

(1) The award granted by the Tribunal is reduced to Rs.10,52,472/- from Rs.11,04,000/-.

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

(3) This court by order dated 30.10.2015 directed the appellant/Insurance Company to deposit the entire award amount. Therefore, excess amount, if any, in deposit can be withdrawn by the appellant/Insurance Company after satisfying the order of this court, within a period of six weeks from the date of receipt of a copy of this order.

***"The claimants are entitled to modified compensation amount as per the following apportionment:-**

(i) 1st respondent/petitioner, wife is entitled to 40%;

(ii) 2nd and 3rd respondents/petitioners, are entitled to 30% each. The 1st respondent/Petitioner/wife is permitted to withdraw her share of the award amount with proportionate accrued interest, by filing necessary application. Insofar as respondents 2 and 3/Petitioners 2 and 3 are concerned, their share shall be deposited in a Fixed Deposit in a Nationalised Bank, till they attain majority and the accrued interest therein, shall be withdrawn by the 1st Petitioner/mother once in three months."

Sd/-

Assistant Registrar (CS V)

dt.8.5.2018

***Amended as per order dated 14.6.2018**

Sd/-

Assistant Registrar (CS V)

dt.19.7.2018

//True copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
(District Judge, Presiding Officer)
Karaikal at Pondicherry.

2.The Section Officer,
V.R.Section, High Court,
Madras.

To be substituted to the
order already despatched
on 28.5.2018

+1cc to Mr.J.Chandran, Advocate SR.No.25539

+1cc to Mr.P.J.Anitha, Advocate SR.No.25764

+1cc to Mr.s.Dhakshnamoorthy, Advocate SR.No. 25326

C.M.A.No.2429 of 2015

KJ (CO)

GN (10/05/2018)

EU:20.7.2018