IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2401 of 2016

The Manager
Cholamandalam MS General Insurance
Company Limited,
2nd floor,
Hosur Durgah Lake NH 7 Main Road,
Hosur,Krishnagiri District-635 109. .. Appellant/2nd Respondent

..vs..

1.Basavaraj @ Basavaraji
2.Sumathi ..Respondents 1&2/Petitioners
3.Dasarathan ..3rd Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 21.12.2015 made in MCOP.No.84 of 2014 on the file of the Motor Accident Claims Tribunal/Additional District Court, Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.S.Murugan for R1 and R2

JUDGMENT

The second respondent/insurance company has come forward with this appeal against the award passed by the Tribunal dated 21.12.2015 made in MCOP.No.84 of 2014 on the file of the Motor Accident Claims Tribunal/Additional District Court, Krishnagiri.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 09.09.2012, when the deceased was going in his two wheeler bearing Registration No.TN-29-Z-4023, near Chinnakoththur bus stop in V.Mathapalli -Gingalur Road, at 16.15 hours, a Mahendra van

bearing Registration No.TN-70-1723, belonging to the first respondent and insured with the second respondent came at high speed and dashed against the motor cycle in which the deceased was travelling. Due to the impact, the deceased fell down and suffered grievous injuries over his body and died on the way to hospital. The negligence of the first respondent driver alone caused the accident. At the time of accident, the deceased was aged about 14 years and was studying. The petitioners, who are the parents of the deceased have lost their son and hence they seeks a compensation of Rs.20,00,000/- from the respondents, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent Insurance company filed a counter stating that the deceased alone caused the accident . The petitioners has to prove the manner of accident and as the deceased minor boy without licence to ride the two wheeler he drove the vehicle negligently dashed against the first respondent vehicle resulting in his death. The first respondent did not inform the second respondent about the accident and as the negligence was on the part of the deceased only, the second respondent is not liable to pay any compensation to the petitioners. Hence, the second respondent sought for dismissal of the petition.

5. Before the Tribunal, the first petitioner examined himself as P.W.1 and eye witness to the occurrence one Ramakrishnan was examined as P.W.2 and produced documents Ex.P1 to Ex.P5 to substantiate their claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced.

6. On the basis of available material on record, the Tribunal found the first respondent driver negligence alone caused the accident to the extent of 90% and the deceased minor boy Jayavarthan contributed 10% negligence. On such finding, the Tribunal awarded a sum of Rs.8,55,000/- as compensation. Aggrieved over the said findings of the Tribunal, the second respondent/Insurance Company has come forward with this present appeal.

7. The learned counsel appearing for the second respondent contends that the Tribunal wrongly fixed the negligence on the part of the first respondent driver to the extent of 90%, whereas the total negligence should have been fixed on the deceased minor boy only. Further, the notional income fixed by the Tribunal at Rs.3,750/- is also excessive, as the deceased was only a school going boy at that point of time. The second respondent also contended that the amount

awarded under the different heads are not proper and the same needs interference. Hence, the second respondent seeks to entertain the appeal.

8. Per contra, the learned counsel appearing for the petitioners/claimants contended that on the basis of available materials on record, the Tribunal has correctly assessed the nature of accident, manner in which the accident occurred and also the loss of income to the petitioners, who are the parents of the deceased. Hence, the petitioners/claimants seeks dismissal of the appeal.

9. I have considered the rival submissions and perused the materials available on record.

10. Admittedly, the deceased Jayavarthan was aged about 14 years and as a minor boy, there is no scope for him to possess the licence. The first petitioner examined himself as P.W.1 and eye witness to the occurrence one Ramakrishnan was examined as P.W.2 to prove the claim. According to P.W.2, the driver of the first respondent alone came at high speed and dashed against the motor cycle in which the minor boy Jayavarthan was travelling. Further, Ex.P1, the first information report also proves the contention of the petitioners. The respondents have not examined the driver of the first respondent vehicle to contradict the evidence of P.W.2. In such circumstances, it is apparent that the first respondent van driver came at high speed and dashed against the deceased. However, the deceased Jayavarthan being a minor boy has driven the two wheeler without any licence. Taking into consideration the same and the fact that there is nothing on record to show as to whether after investigation, the police filed any charge sheet against the first respondent driver, it would be appropriate to apportion negligence for causing the accident between the first respondent driver and the deceased minor boy at 75%(2nd respondent Insurance company) and 25%(minor boy) instead of 90% and 10% fixed by the Tribunal.

11. Admittedly, the deceased minor boy was student at the time of the accident, as evidenced by Ex.P5 School certificate. The petitioners who are the parents of the deceased Jayavarthan, as the legal heirs as evidenced by Ex.P4 legal heir certificate. The deceased was stated to be 14 years old and the same is proved by Ex.P5 School Certificate. The Tribunal has fixed the notional income of the deceased at Rs.2,500/- per month. The learned counsel appearing for the second respondent/Insurance Company contends that the Tribunal by adding Rs.1250/- towards future expectations has assessed the monthly income at Rs.3,750/- and the same is on the higher

side. Refuting the same, the learned counsel appearing for the petitioners/claimants relying upon the order passed in CMA.No.2845 of 2015 dated 08.12.2016 by another Bench of this Court, contended that the notional income of the deceased should be fixed at Rs.60,000/- per annum. In the said Ruling it is stated as follows:-

> 4. In the decision of the Hon'ble Supreme Court in the case of Kishan Gopal and another vs. Lola, reported in 2013 (2) TNMAC 358 SC, (as relied upon by the learned counsel for the appellants), wherein, in the case of road accident that had happened on 19.07.1992, where a student, aged 10 years, died, the Hon'ble Supreme Court has taken the notional income of the deceased at Rs.30,000/-. The relevant portion read as under:-
>
> "In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all force is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value was come down drastically from the year,1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was abaout 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma V Delhi Transport Corporation, the multiplier of 15 can be applied to the multiplicand."
>
> Applying the ration laid down by the Hon'ble Supreme Court, this Court take the notional income of the deceased at Rs.60,000/- p.a. The consideration of increase on account of future prospective increase in income would remain off-set by

> deduction towards personal expenses of the deceased. Adopting the multiplier of '16' as per the age of the deceased mother, the pecuniary loss is quantified Rs.9,60,000/-.

12. Following the above said ruling and the materials available on record, it would be appropriate to fix the notional income of the deceased at Rs.60,000/- per annum. As the deceased was aged about 14 years at the time of the accident, the multiplier to be applied in this case is 18. As such the loss of income calculated is as follows:-

Rs.60,000/- per annum x 18 = Rs.10,80,000/-.Thus, the notional income comes to Rs.10,80,000/-.

13. Following the Apex Court decision reported in 2017 (2) TN MAG 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:-

Transportation	=	Rs.	10,000.00
Funeral Expenses	=	Rs.	15,000.00

14. Further, a sum of Rs.50,000/- awarded by the Tribunal under the head of loss of love and affection is hereby set aside.

15 Accordingly, the compensation warded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Notional loss of income	8,10,000.00	10,80,000.00
2.	Transportation	20,000.00	10,000.00
3.	Loss of love and affection	1,00,000.00	-
4.	Funeral Expenses	20,000.00	15,000.00
	Total	9,50,000.00	11,05,000.00

16. As stated earlier, the negligence for causing the accident between the first respondent driver and the deceased as 75% and 25%, after deducting 25% of the total compensation amount viz Rs.2,76,250/-, the respondent/Insurance Company is liable to pay a sum of Rs.8,28,750/- for their negligence to the petitioners.

17. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire

award amount of Rs.8,28,750/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioners are entitled to equal share in the award amount. The petitioners are permitted to withdraw their respective share with accrued interest,less the amount if any already withdrawn, by filing necessary application before the Tribunal. The appellant/Insurance company is entitled to withdraw the excess amount deposited before the Tribunal along with proportionate interest thereon.

Sd/-
Asst. Registrar (CS-VII)

/true copy/

Sub Asst. Registrar

rrg

To

The Additional District Judge,
Motor Accident Claims Tribunal
Krishnagiri.

Copy to: The Record Keeper, VR Section,
High Court, Madras.

- 1 cc to Mr.S.Murugan, Advocate Sr.10439
- + 1 cc to MR. N. Vijayaraghavan, Advocate Sr.10442

C.M.A.No.2401 of 2016

VGI(CO)
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