

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
C.M.A.No.1777 of 2017

and

C.M.P.Nos.9548 and 15262 of 2017

M/s.The New India Assurance Company Ltd.,
Rep. by its Divisional Manager, D.O.,
2nd Floor, CSI Complex,
No.1, Officer's Line Road, Vellore. ...Appellant/Respondent 3

Vs

1.Dhanalakshmi

2.Munusamy

3.A.Velayutham

4.A.Radhakrishnan ... Respondents/Petitioners
Respondent 1, 2

PRAYER : Civil Miscellaneous Appeal filed against the judgment and decree dated 7th December 2016 passed in M.C.O.P.No.807 of 2014 on the file of Motor Accidents Claims Tribunal, Ist Addl. Dist. & Sessions Judge, Vellore.

For Appellant : Mr.G.Udaya Sankar

For Respondents : Mr.M.Sivakumar
for Mr.C.Prabakaran (for R1 & R2)

R3 & R4 - Exparte

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J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Insurance Company against the fixing of liability and also the quantum of Rs.17,02,000/- awarded to the claimants for the death of one M.Sasikumar, aged about 23 years, who is a self employed contractor, earning about Rs.15,000/- per month, in the accident

which occurred on 28.07.2008 at 03.15 P.M, when he was driving a two wheeler along with his newly married wife, which hit against the stationary lorry parked on the road.

2.Mr.G.Udhaya Sankar, learned counsel appearing on behalf of the appellant would submit that Ex.P.1/FIR itself would prove that the deceased alone was responsible for the accident, as he drove the two wheeler and hit against the stationary lorry insured with the appellant insurance company. Therefore, no negligence can be fixed on the part of the driver of the lorry and it is the deceased who was the tort-feasor and therefore, the learned counsel appearing on behalf of the appellant seeks to set aside the award passed by the Tribunal.

3.On the other hand, Mr.M.Sivakumar, learned counsel representing on behalf of Mr.C.Prabakaran, learned counsel for the claimants would submit that the lorry was parked on the road side without following the rules and the parking lights were not switched on and therefore, the Tribunal rightly found that the accident occurred only because the lorry was parked on the road side without following the rules and regulations. Moreover, 25% negligence has been fixed on the deceased as he was not wearing helmet. The learned counsel would further submit that the evidence of P.W.2 would categorically prove that the deceased was wearing helmet and therefore 25% contributory negligence slapped on the deceased has to be set aside.

4.A perusal of the records would show that the accident occurred at 03.15 P.M, when the deceased, who was riding his two wheeler dashed against the lorry which was in stationary position. To prove that the accident occurred only because the lorry was parked in a wrong way, P.W.2/eye witness was examined. No doubt, that Ex.P.1/FIR would state that the deceased dashed against the parked lorry and died along with his wife, who was riding pillion. P.W.2/Eye witness would categorically state that the lorry was parked on the Thar road as well as the Mud road, without proper parking signal. There is no cross-examination on the point by the appellant/insurance company. Moreover, though P.W.2/Eye witness had stated that the lorry was parked on the wrong side of the road, during the cross-examination, he had clarified that the lorry was parked both on the Thar road as well as the Mud road without any parking signal. Therefore, it is clear that there was negligence on the part of the lorry driver for having parked the vehicle, that too, on Chennai to Bangalore National Highway [NH-48]. If any of the vehicle is parked without parking lights, definitely there is every chance for the drivers to lose sight of the parked vehicle and sometimes, they will assume that the parked vehicle is moving on the road. Moreover, the Tribunal noted that there is no rebuttal evidence on the part of the appellant. Further, the driver of the vehicle was not examined. However, he had

stated that he had carefully parked the vehicle as per rules and the parking light was also switched on. Therefore, with the available evidence viz., P.W.2/Eye witness, the Tribunal rightly found that the accident occurred due to the wrong parking of the lorry owned by the 4th respondent herein and insured with the appellant insurance company.

5.The Tribunal also relied upon the judgment of this Court made in the case of United India Insurance Company v. Sundaram reported in (2007) 5 MLJ 952, wherein it has been categorically stated that even omission on the part of a person, who is obligated by law or has failed to do anything in a manner, mode, or method envisaged by law per se constitute negligence on the part of such person. Thus, parking the vehicle without parking lights would also amount to negligence. Therefore, the finding reached by the Tribunal that the accident occurred because of parking of the lorry on the National Highway without switching on the parking lights is confirmed to the extent of 50%.

6.Though the parking of lorry without parking lights is one of the main reasons, at the same time, the rider of the two wheeler should have been careful enough to ride the vehicle safely, that too in the mid day. Without noting the parked vehicle, the rider of the two wheeler dashed against the same and invited the accident. Therefore, 50% negligence should also be attributed to the deceased. The Tribunal only fixed 25% negligence on the part of the rider, since he was not wearing the Helmet. However, the said finding is erroneous as the rider of the two wheeler was wearing Helmet as proved by P.W.2/Eye witness.

7.Therefore based on Ex.P.1/FIR and the evidence of P.W.2/Eye witness, this Court comes to the conclusion that the driver of the lorry as well as the deceased are equally responsible and also contributed negligence equally for the accident. Therefore 50-50 negligence is fixed both on the driver of the lorry as well as the deceased two wheeler rider.

8.In view of the above stated position, the finding reached by the Tribunal fixing 75% liability on the driver of the lorry and 25% liability on the deceased two wheeler rider is set aside and the same is fixed as 50 - 50.

9.It is proved by Ex.P.6/Transfer Certificate that the age of the deceased was 25 years at the time of the accident. The deceased was stated to be a Contractor and self employed earning about Rs.15,000/- per month. Exs.P.6 to P.8/Educational Certificates of the deceased would prove that the deceased had studied polytechnic course. Ex.P.10 is the Appointment order from M/s.Arvind Varun Associates. However, the Tribunal without

finding whether the deceased joined the work or not, taking into consideration of all the documents, instead of fixing the monthly income of the deceased at Rs.15,000/- had rightly fixed the monthly income at Rs.10,000/-.

10. Since the deceased was self employed, only 40% has to be added towards future prospects, as per the Constitution Bench's Judgment in Pranay Sethi's case. Therefore, the monthly income of the deceased would be Rs.14,000/- with 40% future prospects. (Rs.10,000/- (+) 40% of Rs.10,000/-)

11. As per the judgment of the Hon'ble Apex Court in Sarla Verma, 1/3rd has to be deducted towards personal expenses, though the deceased was married and his wife also died in the accident. After deduction, the monthly contribution would be Rs.14,000 - $[14,000 \times 1 / 3] = \text{Rs.}9333/-$.

12. The relevant multiplier as per the age of the deceased viz., 25 years based on the judgment of the Hon'ble Apex Court in Sarla Verma's case is 18. Therefore, "Loss of Income" is,

$$\begin{aligned}\text{Loss of Income} &= \text{Rs.}9333/- \times 12 \times 18 \\ &= \text{Rs.}20,15,928/-\end{aligned}$$

13. Since 50% negligence is fixed on the deceased, loss of income will be Rs.20,15,928/- $\times \frac{1}{2} = \text{Rs.}10,07,964/-$

14. The Tribunal rightly fixed Rs.50,000/- towards loss of love and affection to the parents. Hence the same is confirmed.

15. Rs.25,000/- was awarded towards funeral expenses by the Tribunal, which is not in consonance with the Constitution Bench's Judgment in Pranay Sethi's case. Hence, the same is reduced to Rs.15,000/-

16. No amount was awarded towards "loss of estate" by the Tribunal. Hence a sum of Rs.15,000/- is awarded under the said head as per the Constitution Bench's Judgment in Pranay Sethi's case.

17. A sum of Rs.5,000/- was awarded by the Tribunal towards "Transportation" and the same is enhanced to Rs.10,000/-

18. A sum of Rs.2,000/- awarded by the Tribunal towards damages to cloths and articles is confirmed.

19. Hence, the total compensation awarded in this case is Rs.10,99,964/-, rounded off to Rs.11,00,000/-

Head	Amount (Rs.)
Loss of income	1007964
Loss of love and affection	50000
Funeral expenses	15000
Loss of estate	15000
Transportation	10000
Damages to cloths and articles	2000
Total	1099964

20.The rate of interest awarded by the Tribunal at 4% p.a is enhanced to 7.5% per annum. Out of the award amount, the claimants, who are the parents of the deceased are entitled to get equal share.

21.The appellant is already said to have deposited the entire amount along with interest and costs before the Tribunal as per the award of the Tribunal. Therefore, the Tribunal is directed to transfer the respective shares of the claimants to their respective bank accounts through RTGS, as per the modified award passed by this Court, within one week from the date of receipt of a copy of this order. As this Court has reduced the compensation amount, the balance amount has to be refunded to the appellant within one week thereafter.

22.With the above directions, this Appeal is disposed of. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

pgp

To

The Ist Additional District & Sessions Judge,
Motor Accidents Claims Tribunal,
Vellore.

+1 cc to Mr.Udayasankar Advocate sr 27060

+1 cc to Mr.C.Prabakaran Advocate sr 26915

C.M.A.No.1777 of 2017

na (co)

aa12/06/2018