IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2528 of 2016
and C.M.P.No.17888 of 2016
and Cross Objection No.1 of 2017

CMA.No.2528 of 2016:-
The Branch Manager
The New India AssuranceCompany Limited
P.R.K.Complex, First FloorSouth Main Street
PudhukottaiAmbalpuram 622 001 ..Appellant/2nd respondent.

Versus

1.Anbazhagan

2.Jayanthi …Respondents 1 and 2/Claimants

3.N.S.Yoganathan ...Respondent No.3/ 1st respondent.

Cross Objection No.1 of 2017:-

1.Anbazhagan

2.Jayanthi …Cross Objectors/Claimants

Versus

The Branch Manager
The New India AssuranceCompany Limited
P.R.K.Complex, First FloorSouth Main Street
PudhukottaiAmbalpuram 622 001 ..1st respondent/Respondents

2.N.S.Yoganathan ..2nd respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act and Cross Objection filed against the order and decree dated 07.06.2016 made in M.C.O.P.No.89 of 2015 on the file of Motor Accident Claims Tribunal, 1st Additional District Judge, at Tindivanam.

For appellant : : Mr.G.Anandan
For Respondents 1 and 2: : Ms.K.Vasanthamala

JUDGMENT

The Appellant/Insurance Company has filed C.M.A.No.2528 of 2016, challenging the order and decree dated 07.06.2016 made in M.C.O.P.No.89 of 2015 on the file of Motor Accident Claims Tribunal, 1st Additional District Judge, at Tindivanam. Cross Objectors/claimants filed Cross.Obj.No.1 of 2017 seeking enhancement of the compensation.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 03.05.2013 at about 3.00 p.m, while the deceased Ganesh was proceeding in his two wheeler bearing Reg.No.PY-01-V-0198 and to reach KarnavurPettai, he stopped the vehicle to cross the National Highwayhs at Byepass road and at that time, a car bearing Reg.NO.TN-55-AA-333 came at high speed, driven in a rash and negligent manner in Villupuram to Chennai Road, dashed on the two wheeler, resulting in the death of the Ganesh on the spot itself. The accident occurred due to rash and negligent driving of the 1st respondent car driver only. At that point of time, the deceased was aged 17 years and he was a school student. The Petitioners who are the parents of the deceased lost their only son. As such, they sought for a sum of Rs.15,00,0000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident did not occur in the manner alleged by the Petitioners. On 03.05.2013, while the driver of the 1st respondent car was proceeding from Villupuram to Chennai, while going near Karnavur Byepass Road, he saw the deceased crossing the road and immediately applied sudden brake to avoid dashing on the two wheeler of the deceased. Inspite of the same, the deceased dashed his motor cycle on the right side of the car resulting in the accident. It is only due to the negligence of the deceased the accident took place. As the owner and insurer of the two wheeler are not added as parties, the petition is bad for non-joinder of necessary parties. The claim of the Petitioners about the age and other details of the deceased is denied. The driver of the 1st respondent car did not possess valid driving licence. The claim of the Petitioners is exorbitant. Thus, the 2nd respondent sought for dismissal of the claim petition.

4.Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 produced documents Ex.P.1 to Ex.P.6 to prove their claim. On the side of the respondents, 1st respondent remained exparte and on the side of 2nd respondent, neither oral nor documentary evidence was let in. On the basis of available evidence on record, the Tribunal found negligence of the 1st respondent car driver alone caused the accident, passed an award for a sum of Rs.10,47,000/- payable by the respondents to the Petitioners.

5. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance company has preferred the appeal in

CMA.No.2528 of 2016 while on the other hand, not satisfied with the quantum of the award, the Petitioners/claimants have come forward with the Cross Objection No.1 of 2017.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the 2nd respondent/Insurance company contends that the Tribunal erred in fixing negligence on the 1st respondent car driver. Further the Tribunal fixed notional income of the deceased who was only a student at Rs.6000/- per month instead of fixing of Rs.2500/- per month. The multiplier adopted by the Tribunal is not correct. The amount provided for under different heads is highly excessive. Hence, the 2nd respondent sought for setting aside the award passed by the Tribunal by entertaining the appeal.

8. Per contra, the learned counsel for the Petitioners/claimants contends that the Tribunal failed to appreciate the evidence on record properly and passed the award for a very meager sum. The Tribunal ought to have awarded a sum of Rs.1,00,000/- towards loss of love and affection to each of the Petitioners. For Transport, the Tribunal ought to have awarded Rs.25,000/-. The compensation awarded under different heads is very nominal. Hence, the Petitioners/claimants seeks enhancement of the award amount.

9. The Petitioners stated that on 03.05.2013, while the deceased was proceeding in his two wheeler near KarnavurPettai, the 1st respondent car bearing Reg.No.TN-55-AA-333 came at high speed, dashed against the two wheeler, causing fatal injuries to the Petitioners' son and he died on the spot itself. The 1st petitioner who deposed as P.W.1 stated about the occurrence, but he is not the eyewitness to the accident. The Petitioners examined P.W.2 who witnessed the accident and he has spoken clearly the manner in which the accident took place. The Police also registered case against the 1st respondent vehicle driver as per Ex.P.1-FIR. It is therefore, clear from P.W.1 and P.W.2 evidence as well as contents of Ex.P.1-FIR which corroborates the version of P.W.2 about the manner in which the accident occurred. On the other hand, neither the driver of the 1st respondent car or any other witness was examined by the 2nd respondent to disprove the claim of the Petitioners. As such, the Tribunal, on the basis of P.W.2 evidence and Ex.P.1-FIR correctly concluded that the negligence of the 1st respondent car driver alone caused the accident.

10. The learned counsel for the 2nd respondent/Insurance company contended that the deceased did not possess driving licence and he contributed to the accident. However, refuting the same, the learned counsel for the Petitioner/claimant contends that there is no evidence to prove negligence on the

part of the deceased as the cause for the accident and as such, even if no driving licence is available, the same cannot be a ground for rejecting the Petitioner's claim. In support of the same, the learned counsel for the claimants relied upon the Ruling reported in 2018 (1) TN MAC 34 (SC) [Dinesh Kumar @ Dinesh Vs. National Insurance Co.Ltd., and others], wherein, in paragraph 8, it is held as follows:-

> "8. Insofar as the Judgment of the High Court is concerned, the Division Bench has placed a considerable degree of importance on the fact that there was no visible damage to the Lorry but that it was the Motorcycle which had suffered damage and that there was no eyewitness. We are in agreement with the submission, which has been urged on behalf of the appellant that plea of Contributory Negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was Contributory Negligence on the part of the Appellant is held to be without any basis, the second aspect which weighed both with the Tribunal and the High Court, that the Appellant had not produced the Driving Licence, would be of no relevance. This aspect has been considered in a Judgment of this Court in Sudhir Kumar (supra), where it was held as follows:-
>
> ''9. If a person drives a vehicle without a Licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the Courts below that it was the Driver of the Mini Truck, who was driving rashly and negligently. It is one thing to say that the Appellant was not possessing any Licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a Licence, he would be held to be guilty of Contributory Negligence. ..."

In the case on hand, there is nothing on record to prove that the deceased contributed to the accident by his negligence. As such, the claim of the Petitioners/claimants that there was no negligence on the part of the deceased/rider is well founded and the same is to be accepted. Further the fact that the 1st respondent was the owner of the above said car and the same was insured with the 2nd respondent is not disputed. The same is clear from the contents of Ex.P.2 -MVI Report. In the said report, it is clearly stated that the driver of the 1st respondent vehicle possessed valid driving licence. As such, the respondents who are the owner and insurer of the offending vehicle are liable to pay the compensation.

11. The Petitioners stated that their son, the deceased Ganesh was aged 17 years and he was a school going student on the date of the accident. In Ex.P.3-Post Mortem Certificate, the age of the deceased is mentioned as 15 years. In the claim Petition, it is stated as 17 years. In the Transfer Certificate of the deceased produced as Ex.P.4, his date of birth is mentioned as 15.12.1996. It is therefore, clear from the same that the age of the deceased was 17 years only and not 18 years as fixed by the Tribunal. The Tribunal has fixed the notional income of the deceased at Rs.6000/-. This according to the 2nd respondent/Insurance company is highly excessive and the monthly income should be fixed at Rs.2500/-.

12. Refuting the same, the learned counsel for the Petitioners/claimants contends that even for a 10 years old boy, the Apex court has fixed the notional income at Rs.30,000/- per annum, in the case, wherein the accident took place in 1992. As such, the monthly income of the Petitioner should be fixed at much higher level in the present case. In support of the same, the learned counsel for the Petitioners/claimants relied upon Ruling reported in 2013 2 TN MAC 358, wherein it is held as follows:-

> "Fixation of compensation for the deceased, - 10 years old boy, assisted his family in their Agricultural occupation - Notional income of non-earning person contemplated in Second Schedule to Section 163-A, MV Act at Rs.15,000/- per annum, Rupee value drastically come down from year 1994, when second schedule introduced in MV Act – Considering contribution of deceased to family, held, fixing Notional income at Rs.30,000/- would be just and reasonable"

13. It is clear from the same that in respect of the accident, which took place in 1992, the Apex court has fixed the notional income of the 10 year old boy at Rs.30,000/- per annum.

14. The learned counsel for the Petitioners/claimants, relying upon the Ruling reported in 2014 2 TNMAC 6 SC [V.Mekala Vs. M.Malathi and another], contended that for an injured claimant, aged 16 years, who was a brilliant student of 11th Standard, the Apex Court fixed the notional income at Rs.10,000/- per month. In the said Ruling , in paragraph 19, held as follows:-

> "Therefore, in the light of the principles laid down in the aforesaid case, it would be just and proper for this Court and keeping in mind her past results we take Rs.10,000/- as her monthly notional income for computation of just and reasonable compensation under the head of loss of income."

In the above said Ruling, the victim is stated to be the First Rank Holder and a Brilliant student. In the present case, there is nothing on record to show about the marks obtained by the deceased. In such circumstances, it will be appropriate to fix the notional monthly income of the deceased at Rs.8500/- instead of Rs.6000/- fixed by the Tribunal. Considering the age of the deceased was 17 years, towards future prospects, it will be appropriate to add 50% of the income. Deduction shall be made at the rate of 50% as he was a bachelor and the correct multiplier to be applied is '18'. The loss of dependency is calculated as follows:-

Notional Monthly income - Rs.8500/-

Addition of 50% towards future prospects - 4250

8500 + 4250 = 12,750

Deduction 50% towards personal expenses (12,750 - 50%(6375))

12,750 - 6375 = 6375.

6375 x 12 x 18 = Rs.13,77,000/-.

15. Following the decision of 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. VS. Pranay Sethi and others] under conventional heads, the following amounts are awarded:-

Loss of Estate - Rs.15,000/-

Funeral expenses - Rs.15,000/-

Further, towards Transport expenses, this court is inclined to grant Rs.5000/- and under the head "Loss of love and affection", Rs.50,000/- granted by the Tribunal to each of the Petitioners is confirmed. The modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Pecuniary loss	9,72,000	13,77,000
2.	Funeral expenses	25,000	15,000
3.	Loss of love and affection to Petitioners	50,000	1,00,000
4.	Loss of estate	---	15,000
5.	Transport	---	5,000

	Total	10,47,000	15,12,000

For the reasons stated above, this court finds no merit in the appeal filed by the Insurance company. The same lacks merit. In view of the foregoing discussion, CMA filed by Insurance Company is dismissed. Cross Objection filed by Claimants is allowed.

16. In the result,

(i) Civil Miscellaneous Appeal No.2528 of 2016 is Dismissed; Cross Objection No.1 of 2017 is allowed.

(ii) The award amount is enhanced to Rs.15,12,000/- from Rs.10,47,000/-.

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The Appellant in CMA.No.2528 of 2016/Insurance Company is directed to deposit the modified award amount as ordered by this court, along with proportionate accrued interest and cost, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(v) The appellants/claimants are entitled to equal share in the award amount and they shall withdraw the same along with accrued interest, less the amount already withdrawn. For the enhanced award amount, the cross objectors/claimants shall pay necessary court fee, if necessary, before obtaining copy of the decree. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount. No costs. Consequently, connected MPs are closed.

Sd/--
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
1.The Motor Accidents Claims Tribunal/
1st Additional District Judge, at Tindivanam.

+1cc to Mr.G.Anandan, Advocate SR.NO.43465
+1cc to Mr.U.M.Ravichandran, Advocate SR.NO.43048

KGK(CO)
sm:17.09.2018