

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2119 of 2018
& CMP No.16493 of 2018

Manager,
Oriental Insurance Company Ltd,
Third Party Claims Hub,
256/115, Prakasam Road,
Oriental House, Broadway,
Chennai 600 108. Appellant/2nd Respondent

-vs-

1. Tmt. Vimala
2. Sathya
3. Sowmiya 1 to 3 Respondent/Petitioner
10 to 3
4. Tmt. Nirmala 4th Respondent/1st Respondent

(Petition against R2 and R3 dismissed
before the Tribunal, 4th respondent set-exparte
in the lower Court. Hence, notice to R2 to R4
dispensed with)

Civil Miscellaneous Appeal filed under Section 173 of the Motor
Vehicles Act, 1988, against the Judgment and decree dated
23.04.2018 made in MCOP. No.216 of 2016, on the file of the
Motor Accidents Claims Tribunal (Special District Court),
Villupuram.

For Appellant : Mr.R.Sivakumar

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The Insurance Company which suffered an award for payment
of a sum of Rs.49,12,128/- for the death of one Balu, in a Motor
Accident that occurred on 20.04.2016 is the appellant.

The case of the claimants before the Tribunal is as follows:

2. The deceased Balu, who was working in a Southern Railway as the Points man was riding a Motor Cycle bearing Registration No.TN 32 AH 4677, at about 4.00 p.m. near Maniyarasi Thirumana Mandabam, Thirunagar on Pondy to Villupuram Road on the extreme left side of the road. The bus bearing Registration No.TN 32 AW 4370, driven by its driver in a rash and negligent manner came from behind and hit against the two wheeler. As a result of the impact, the deceased suffered grievous injuries and died on the way to the Hospital. Contending that the deceased was earning a sum of Rs.24,455/- at the time of the accident, the claimants sought for compensation of Rs.70,00,000/-.

3. The Claim Petition was resisted by the Insurance Company contending that the rider of the two wheeler, namely the deceased Balu was responsible for the accident. It was contended that the bus was driven at a slow speed and the deceased slowed down the vehicle all of a sudden, as a result of which, the bus dashed against him. Age, educational qualification, employment and income of the deceased were denied by the Insurance Company.

4. The Tribunal which heard the Original Petition concluded that the accident occurred due to the rash and negligent driving of the driver of the bus bearing Registration No. TN 32 AW 4370. In coming to the said conclusion, the Tribunal has relied upon the FIR and the evidence of P.W.2, who was an eyewitness to the accident.

5. On the quantum, the Tribunal found the monthly income of the deceased was Rs.23,932/-, adding 50% towards future prospects as he was aged about 30 years at the time of the accident, the Tribunal arrived at the annual income of the deceased for the purposes of calculating the loss of dependency at Rs.4,30,776/-. The Tribunal deducted 1/3 towards personal expenses and applying a multiplier of 17, the Tribunal awarded a sum of Rs.48,82,128/- towards loss of dependency. The Tribunal awarded a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate and arrived as a total compensation of Rs.49,12,128/-.

6. Aggrieved, the Insurance Company has come forward with this Appeal.

7. We have heard Mr.R.Sivakumar, learned counsel appearing for the appellant/Insurance Company.

8. Though, Mr.R.Sivakumar, learned counsel would attempt to argue the question of negligence, we find that the Insurance Company has not let in any evidence to contradict to the contents of the FIR as well as the evidence of P.W.2. We, therefore, do not think that the Insurance Company could raise the question of negligence in the absence of any evidence on its side.

9. On the quantum Mr.R.Sivakumar, would contend that the Tribunal has not made any deductions towards Income Tax and that the Tribunal was wrong in deducting 1/3 towards personal expenses, inasmuch as the deceased was a bachelor. We do not find any substance in both the contentions of the learned counsel for the appellant. Insofar as the deduction of Income Tax is concerned, the annual income of the deceased at the time of the accident was Rs.2,87,184/-, the deceased being a salaried employee was entitled to avail standard deductions. Hence, we do not find any merit in the contention of the learned counsel regarding non deduction towards income tax.

10. As regards the contention relating to deduction of 1/3 for personal expenses, deduction of $\frac{1}{2}$ of the income towards personal expenses, in respect of a bachelor is not an absolute rule, it may vary depending upon the facts and circumstances of the case. It is seen from the evidence that the deceased had two unmarried sisters, apart from a widowed mother. He was the sole breadwinner of the family, therefore, it is quite probable the deceased would have spent less on himself, as he would have thought it fit to save some money for the marriage of his sisters.

11. The Hon'ble Supreme Court in Magma General Insurance Co. Ltd., v. Nanu Ram alias Chuhru Ram & Ors., (Civil Appeal No.9581 of 2018) decided on 18.09.2018, had upheld deduction of 1/3 towards personal expenses in a case where, the deceased was found to have three dependants, while doing so, the Hon'ble Supreme Court observed as follows:

8.2. With respect to the issue of deduction from the income of the deceased, the Insurance Company contended that the deduction ought to have been $\frac{1}{2}$, and not $\frac{1}{3}^{\text{rd}}$, since the deceased was a bachelor.

This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third, as contribution to the family will be taken as two-third.

Considering that the deceased was living in a village, where he was residing with his aged father who was about 65 years old, and Respondent No.2 - an unmarried sister, the

High Court correctly considered them to be dependents of the deceased, and made a deduction of 1/3rd towards personal expenses of the deceased.

The judgment of the High Court is, therefore, affirmed on this Count.

12. In view of the aforesaid ratio laid down by the Hon'ble Supreme Court, we find that the deduction of 1/3 towards personal expenses is just and reasonable. No other ground was urged by the counsel for the appellant. We, therefore, find no reason to entertain the appeal and the appeal is therefore dismissed.

13. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment, as per the award of the Tribunal. On such deposit, the 1st claimant, namely the mother of the deceased/1st respondent herein will be entitled to withdraw the entire amount.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

jv

To

The Motor Accidents Claims Tribunal
Special District Court,
Villupuram.

+1cc to Mr.R.Sivakumar, Advocate SR.No.64752

CMA.No.2119 of 2018
& CMP No.16493 of 2018

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RSY (CO)

GMV (01/11/2018)