

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM:

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

C.M.A. No.2874 of 2017
and
C.M.P.No.16442 of 2017

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai - 600 013. Appellant/2nd Respondent

-vs-

1.P.Vasantha
2.R.Harsha (minor)
[Minor rep. by her grandmother P.Vasantha]
... 1 & 2 Respondents/Petitioners
3.P.Ramachandran
... 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 23.01.2017 made in MCOP.No.2933 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.K.Varadhakamaraj for R1 and 2

J U D G M E N T

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

1. The Insurance Company which had suffered an award for a sum of Rs.25,42,500/- for the death of one Navaneetha who died in a motor accident that occurred on 19.07.2011 is the appellant.

2. According to the claimants who are the mother-in-law and daughter of the deceased Navaneetha, the said Navaneetha was travelling as pillion rider with her husband P.Ramachandran when they were proceeding towards Tambaram near Alandur on GST Road, the rider viz., Ramachandran drove the vehicle in a rash and

negligent manner swerved to his right and fell down, resulting in grievous injuries. Both the husband and wife were removed to hospital, where the pillion rider (wife) died. Contending that the accident occurred due to the rash and negligent driving of the two-wheeler by the said Ramachandran, the claimants sought for compensation from the Insurance Company which was the insurer of the two-wheeler. The claimants also contended that the deceased was a Micro Biologist at Precision Diagnostic Centre drawing a monthly salary of Rs.10,000/- including allowance. Therefore, the claimants would seek compensation of Rs.11,00,000/- for the death of the daughter-in-law of the 1st claimant and mother of the 2nd claimant.

3. The claim was resisted by the Insurance Company contending that there was no negligence on the part of the rider of the two-wheeler, so as to make the insurer of the two-wheeler liable to pay the compensation. Relying upon the FIR registered, based on the statement given by the rider of the two-wheeler viz., Ramachandran, the Insurance Company would contend that the accident had occurred because of the fact that an unidentified car had hit the two-wheeler from behind. Therefore, according to the Insurance Company, if at all a claim could be made it has to be made only against the insurer of the car and not the two-wheeler. The Insurance Company also contended that the particulars of the Educational Qualification and the salary drawn are not correct and the quantum of compensation claimed is also on the higher side.

4. The Tribunal, based on the evidence on record, particularly the evidence of PW2 viz., Sreenivasan, who was an eye witness concluded that the accident had occurred due to the negligence of the rider of the two-wheeler and no evidence has been let in by the Insurance Company to show that the rider of the two-wheeler was not negligent.

5. On the quantum, the Tribunal relied upon Ex.P6 which is the Revised Compensation Package to fix the income of the deceased at Rs.11,115/-adding 50% towards future prospects, the Tribunal arrived at a monthly income of Rs.16,672.50/-, deducting 1/3rd for the personal expenses the Tribunal fixed the annual loss of dependency at Rs.1,33,380/-. Applying the multiplier of '17', the Tribunal arrived at the total loss of dependency at Rs.22,67,460/-. The Tribunal also granted a sum of Rs.2,50,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Thus, the total compensation awarded by the Tribunal worked out to Rs.25,42,460/- and the same was rounded off to Rs.25,42,500/-. The Tribunal granted a sum of Rs.1,00,000/- to the 1st claimant, the mother-in-law and Rs.24,42,500/- to the 2nd claimant daughter. It is this award that is under challenge in the appeal.

6. We have heard Mr.C.Paranthaman, learned counsel appearing for the appellant Insurance Company and Mr.K.Varadhakamaraj, learned counsel appearing for the respondents 1 and 2.

7. Mr.C.Paranthaman, learned counsel appearing for the appellant, Insurance Company would vehemently contend that there was no negligence on the part of the rider of the two-wheeler, on the basis of the FIR that has been produced as Ex.P1. He would also contend that the FIR was registered on the basis of the statement given by the rider of the two-wheeler who is none other than the husband of the deceased. Therefore, according to him there is no reason to dis-believe the contents of the FIR and attribute negligence to the rider of the two-wheeler.

8. Mr.C.Paranthaman, would also contend that the award of the Tribunal under the head of loss of love and affection is on the higher side. He would point out that the mother-in-law of the deceased has been granted a sum of Rs.50,000/- towards loss of love and affection and the minor child has been granted Rs.2,00,000/- towards loss of love and affection. He would invite our attention to the judgment of the larger bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331 to contend that the damages under the conventional heads cannot be over and above the limits prescribed by the Hon'ble Supreme Court.

9. Per contra Mr.K.Varadhakamaraj, learned counsel appearing for the claimants would submit that, no doubt, the FIR has been registered on the basis of the statement of the husband, who was the rider of the two-wheeler. However, the evidence of PW2, according to him, has not been shown to be worthless. Drawing our attention to the evidence of PW2, Mr.K.Varadhakamaraj, learned counsel appearing for the claimants would contend that nothing has been elicited in cross examination to discredit the testimony of the said witness. He would therefore submit that the Tribunal was right in rejecting the contents of the FIR and relying upon the evidence of PW2 to conclude that the entire negligence was on the rider of the two-wheeler. On the quantum, the learned counsel would submit that the award as a whole is reasonable and therefore, the same cannot be interfered with.

10. We have considered the rival submissions. On the question of liability and negligence we see considerable force in the submissions of Mr.C.Paranthaman, learned counsel appearing for the Insurance Company. Mr.K.Varadhakamaraj, would contend that this would be a case of composite negligence and in view of the judgment of the Hon'ble Supreme Court in Khenyei Vs.

New India Assurance Company Ltd. and others reported in 2015 (1) TN MAC 801 (SC), the claimants can sue any one of the joint tort-feasors and the remedy of the joint tort-feasor is against the other joint tort-feasor. He would also invite our attention to the judgment of the Hon'ble Supreme Court in Pawan Kumar and another etc., Vs. Harkishan Dass Mohan Lal and others reported in 2014 (1) TN MAC 321 (SC), where the Hon'ble Supreme Court considered the question of contributory negligence.

11. From the evidence on record in the case on hand, it is seen that the FIR has been recorded based on the statement of the driver of the two-wheeler viz., Ramachandran while he was in hospital. He had very clearly stated that the accident had occurred due to the fault of an unidentified car which came from behind and dashed against the two-wheeler. Though, the said Ramachandran was impleaded as 1st respondent in the proceedings before the Tribunal he did not chose to defend the proceedings, and remained exparte. Even here the said Ramachandran though served is not appearing either in person or through counsel.

12. All that we have as evidence is that the contents of the FIR and the evidence of PW2. Based on the FIR the Police have also filed a final report closing the case as untraceable. We have considered the evidence of PW2. As rightly pointed out by Mr. K. Varadhakamaraj, nothing has been elicited from PW2 in the cross examination so as to belittle his testimony. However, we are also conscious of the fact that the husband of the deceased has given a statement before the Police saying that unidentified vehicle was responsible for the accident. Considering the evidence that is on record we are of the considered opinion that there should have been some negligence on the part of the two-wheeler rider. The stretch of the GST road where the accident had occurred is a very busy stretch and there is little scope for the vehicles to travel at a hectic speed. Hence, in the absence of some contribution on the part of the two-wheeler, the collision could not have occurred. We are therefore of the considered opinion that the two-wheeler rider has also contributed to the accident. May be he could have given a statement before the Police with a view to avoid any criminal proceedings against him. We therefore conclude that the contribution of the two-wheeler rider to the accident could be fixed at 60% and the contribution of the unidentified vehicle could be fixed at 40%.

13. Coming to the quantum of compensation, there is no dispute regarding the monthly salary as it is evidenced by valid documentary proof. But the Tribunal was however not right in adding 50% towards future prospects. The addition could only be 40%. considering the fact that the deceased was employed in a Private Enterprise. Therefore, taking the monthly income at Rs.11,115/- and adding 40% towards future prospects, the monthly

income for arriving at the loss of dependency would be Rs.15,561/- deducting 1/3rd of the same towards personal expenses, the monthly loss of dependency would be Rs.10,374/-. The deceased was aged about 30 years at the time of the accident, hence the multiplier of '17' should be applied. Thus worked out the loss of dependency would be

Rs.10,374/- x 12 x 17 = Rs.21,16,296/-.

14. The 2nd claimant/ 2nd respondent the minor daughter of the deceased would be entitled to a sum of Rs.40,000/- towards loss of love and affection. The Tribunal has granted a sum of Rs.25,000/- towards funeral expenses and the same is confirmed. The Tribunal has not granted any amount towards loss of estate and loss of clothing and articles. Hence, we grant a sum of Rs.15,000/- towards loss of estate and Rs.5,000/- towards loss of clothing and articles. The total compensation work out to Rs.22,01,296/-. Since we have held that the rider of the two-wheeler contributed to the accident to an extent of 60%, 60% of Rs.22,01,296/- will be Rs.13,20,777.6/- and the same is rounded off to Rs.13,21,000/-.

15. The Tribunal has granted a sum of Rs.1,00,000/- to the mother-in-law of the deceased. Mother-in-law could be not a dependent of the deceased, more so, when her son is still alive, hence, the minor claimant viz., 2nd respondent herein would be entitled to the entire compensation awarded. The award will carry interest at 7.5% per annum from the date of petition till date of payment. The Insurance Company is directed to deposit the award amount with proportionate interest 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. On such deposit the Tribunal is directed to deposit the entire amount in an interest bearing fixed deposit (Cumulative) till the minor attains majority. We are not allowing the guardian to draw periodical interest from the fixed deposit, inasmuch as her father is very much alive. There will be no order as to costs in this appeal. Consequently, the connected Miscellaneous Petition is closed.

In fine, the appeal is partly allowed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dsa
To

1. The Motor Accident Claims Tribunal,
IV Small Causes Court, Chennai.

2. The Section Officer,
VR Section, High Court, Madras (2 copies)

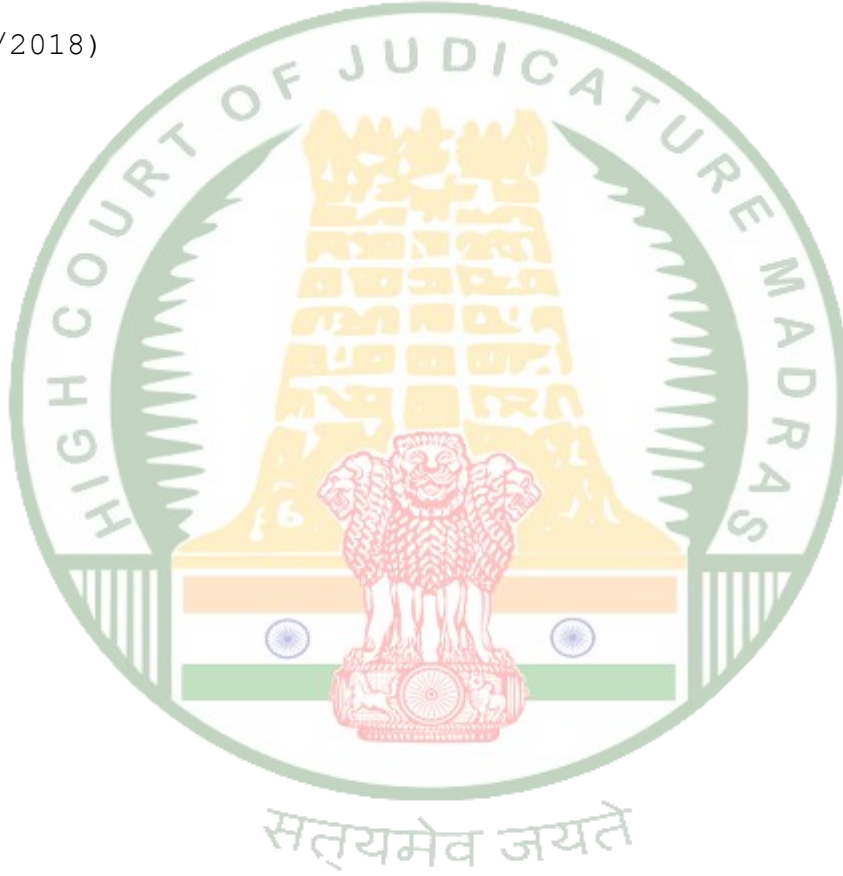
+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.62400

+2cc to Mr.C.Paranthaman, Advocate SR.No.62457

C.M.A. No.2874 of 2017

SSD (CO)

GMV (11/12/2018)



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