

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
AND  
THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.626 of 2018

1. K.Bannarisamy
  2. B.Vijayalakshmi
- ... Appellants/Petitioners

-Vs-

1. Anbalagan  
S/o Vadivel
  2. Suganthi
  3. Royal Sundaram Aliance  
Insurance Company Ltd.,  
1st Floor, Sri Krishna Plaza  
No.1, Natchiappa Street  
Erode 638 001
- ... Respondents/Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the order and decretal order dated 27.7.2017 made in M.C.O.P.No.450 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub Court), Sathyamangalam.

For Appellants :: Mr.Ma.P.Thangavel

For Respondents :: Mr.S.Manohar for R3

JUDGMENT

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

The appeal has been preferred by the claimants aggrieved over the grant of Rs.25,000/- towards no fault liability by the Tribunal in the claim petition filed by them for the death of their son B.Vigneswaran, a 23 year old third year B.E., student studying at Vel's University, Chennai in the accident occurred on 8.6.2012.

2. Heard Mr.Ma.P.Thangavel, learned counsel for the appellants and Mr.S.Manohar, learned counsel for the third respondent Insurance Company.

3. The case of the appellants/claimants was that when the victim was riding the two-wheeler bearing Registration No.TN-36-Z-7814 on the Sathyamangalam to Mysore Road on 8.6.2012 at about 22.15 hours, at that time, the lorry belonging to the second respondent bearing Registration No.TN-52-1751 driven by the first respondent and insured with the third respondent, coming from Gobi to Mysore road, in a rash and negligent manner, hit the victim and caused the accident. The learned counsel for the claimants would submit that even though the First Information Report, Ex.P-1 was stated to be given by P.W.2, P.W.2 has categorically stated in his evidence that the police obtained his signature in blank papers and he did not know what were the contents. When that is the position, the Tribunal should not have relied upon the First Information Report, Ex.P-1 and the closure report, Ex.P-7. He would also point out that taking into consideration the filing of First Information Report against the victim, the parents viz., the appellants already gave a complaint to the higher police authorities through Ex.P-9 and that was not considered by the Tribunal properly. Therefore, he seeks to set aside the finding regarding negligence.

4. On the other hand, Mr.S.Manohar, learned counsel for the third respondent Insurance Company would submit that the finding of the Tribunal regarding negligence is based on evidence. When the First Information Report, Ex.P-1 was given by P.W.2, the version stated in the First Information Report is further confirmed by R.W.1, the driver of the lorry. He would also rely upon the rough sketch, Ex.P-6 to show that the two-wheeler came in the wrong direction and hit against the right rear side of the lorry. Hence, he would support the award of the Tribunal.

5. We have heard learned counsel for the parties and perused the records very carefully.

6. It is admitted by both parties that the two-wheeler was coming from Sathyamangalam road to Mysore road and the lorry was coming from Gobi to Mysore road and it was a junction. Though both the parties took a contra stand regarding the manner of accident, P.W.2, who was travelling as a pillion-rider, has categorically stated in his evidence that the driver of the lorry was responsible for the accident. Even R.W.1, the driver of the lorry admitted in his evidence that there was a traffic in that area and both the lorry as well as the two-wheeler were moving very slow. Moreover, the accident occurred in the junction of three roads. Though it is claimed by the Insurance Company that the rider/driver of the respective vehicle was responsible for the accident, considering the location of the accident spot and the slow moving of the vehicles due to traffic jam at the time of accident, negligence could be attributed on

the part of both the rider of the two-wheeler viz., the deceased as well as the driver of the lorry, as this Court cannot expect P.W.2, the pillion-rider as well as R.W.1, the driver of the lorry to give evidence against themselves, since they are all interested witnesses.

7. As already observed, considering the location of the accident spot and also the slow movement of the vehicles, this Court comes to the conclusion that the accident occurred due to the negligence on the part of the rider of the two-wheeler as well as the driver of the lorry. Therefore, liability is fastened equally on both the rider of the two-wheeler and the driver of the lorry.

8. Further, this Court cannot take the version in the First Information Report, as the complainant himself retracted stating that his signature alone was obtained in the blank papers. It is further confirmed by the action of the claimants in sending a complaint to the higher authorities informing that the First Information Report has been wrongly registered against the victim and the said complaint was also accepted as Ex.P-9. In our considered opinion, the claimants could only send a complaint and it is for the higher authorities to act upon. If the higher authorities fail to act upon, that cannot be employed against the claimants, who are already suffering the loss of their son. Therefore, no credence can be given to the First Information Report and the rough sketch, which have not been corroborated fully by any evidence, except the interested witnesses.

9. Since the Tribunal held that the accident occurred because of the rash and negligent driving of the rider of the two-wheeler viz., the deceased, it only granted Rs.25,000/- towards no fault liability.

10. However, it was proved before the Tribunal through Ex.P-12, the Degree certificate that the deceased already completed the Bachelor of Science Degree in Computer Science with First Class and subsequently joined the engineering college as a lateral entry student and was pursuing his third year course at the time of accident, as proved by Ex.P-13, the Transfer and Conduct Certificate issued by the college. Since the deceased was a student, only notional income can be fixed. A Division Bench of this Court in C.M.A.Nos.2655 & 2844 of 2015 dated 24.4.2018 (Royal Sundaram Alliance Insurance Company v. Chinthamani and two others), following the earlier judgment of the Division Bench in Royal Sundaram Alliance Insurance Company Limited v. S.Lakshmi and two others reported in 2016 (1) TN MAC 490, determined the income at Rs.15,000/- per month, as the deceased was a first year B.E., student in that case. Though in

this case the monthly income of Rs.15,000/- is opposed by Mr.S.Manohar, learned counsel for the Insurance Company, this Court is bound to follow the earlier judgments. Therefore, the monthly income of the deceased is determined at Rs.15,000/-.

11. As per the judgment of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% of the income is to be added towards future prospects. As the deceased was aged about 23 years, if 40% of income is added towards future prospects i.e., Rs.15000+6000, the monthly income comes to Rs.21,000/- . Out of the said amount, 50% has to be deducted towards personal expenses. If 50% of Rs.21,000/- is taken into account, the income would be Rs.10,500/- per month. Since the age of the deceased was 23 at the time of accident, the proper multiplier is 18. Accordingly, the compensation is arrived at Rs.22,68,000/- i.e.,  $\text{Rs.10500} \times 12 \times 18 = \text{Rs.22,68,000/-}$ .

12. Further, since the parents lost their only son, a sum of Rs.75,000/- each i.e., Rs.1,50,000/- is awarded to the appellants/claimants towards loss of love and affection. Towards funeral expenses, a sum of Rs.30,000/- is awarded and for transportation, a sum of Rs.10,000/- is awarded. Thus, the total compensation is arrived at Rs.24,58,000/-. Since this Court determines the contributory negligence on the part of the deceased at 50%, the appellants/claimants are entitled to a compensation of Rs.12,29,000/-, which shall carry interest at the rate of 7.5% per annum from the date of petition till realisation.

13. The third respondent Insurance Company is directed to deposit the entire amount of enhanced compensation i.e., Rs.12,29,000/-, after deducting the amount, if any, already deposited, together with interest at the rate of 7.5% per annum within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the entire compensation awarded including interest in equal proportion to the respective bank account of the appellants/claimants through RTGS within a week therefrom.

14. The claimants are further directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which the enhancement made by this Court shall be automatically deleted. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the decree itself.

15. With this direction, the civil miscellaneous appeal is allowed in part. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ss/ay

To  
1. The Subordinate Judge,  
Motor Accidents Claims Tribunal  
Sathyamangalam.

+2cc to Mr.P.THANGAVEL, Advocate, S.R.No.55451  
+1cc to Mr.S.MANO HAR, Advocate, S.R.No.55411  
+1cc to the Government Pleader, S.R.No.55413

C.M.A.No.626 of 2018

KK(CO)  
TR(30/08/2018)



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