

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 29.08.2018	Delivered on 17.09.2018
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CORAM:

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

C.M.A.No.697 of 2018
and 1801 of 2017

CMA.No.697 of 2018:

1. R.Vasanthi
2. Minor.R.Kalaivanan
3. Minor. Nithyashree Ranuga
(Minor petitioners rep. by their Mother/
Guardian R.Vasanthi)
4. S.Vajiravelu
5. V.Vanamail ... Appellants/Petitioners

-vs-

1. C.P.Prabakaran
2. Bajaj Allianz General Insurance Company Ltd.,
Prince Towers,
4th Floor, No.25/26, College Road,
Nungambakkam,
Chennai - 600 006. ... Respondents/Respondents

CMA.No.1801 of 2017:

1. Bajaj Allianz General Insurance Company Ltd.,
Prince Towers,
4th Floor, No.25/26, College Road,
Nungambakkam,
Chennai - 600 006. ... Appellant/2nd Respondent

-vs-

1. R.Vasanthi
2. Minor.R.Kalaivanan
3. Minor. Nithyashree Renuga
Minor petitioners rep. by their Mother/ Guardian R.Vasanthi
4. S.Vajiravelu
5. V.Vanamail ... 1 to 5 Respondents/Petitioners
6. C.P.Prabakaran ... 6th Respondent/1st Respondent

PRAYER IN BOTH THE CMAs: Civil Miscellaneous Appeal filed under

Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 17.02.2017 made in M.C.O.P.No. 271 of 2012 on the file of the Motor Accident Claims Tribunal, (I Additional District and Sessions Court) Vellore.

For Appellants : Mr.K. Suriyanarayanan in CMA.No.697 of 2018
Mr.S.Manohar in CMA.No.1801 of 2017

For Respondents: Mr.K. Suriyanarayanan of R1 to 5 in CMA.No.1801 of 2017

Mr.S.Manohar for R2 in CMA.No.697 of 2018

J U D G M E N T

R.SUBRAMANIAN,

These appeals have been filed challenging the award of the Motor Accident Claims Tribunal (I Additional District and Sessions court) Vellore dated 17.02.2017 made in M.C.O.P.No. 271 of 2012. While the appeal in C.M.A.No.1801 of 2017 was filed by the Insurance Company challenging the award on the ground of liability as well as the quantum. CMA.No.697 of 2018 has been filed by the claimants seeking enhancement.

The case of claimants before the Claims Tribunal was as follows:-

2. On 22.05.2012 at about 5:15 PM the deceased was travelling as a passenger in the car bearing Registration No.TN-23-BA-0690 which was driven by the 1st respondent C.P.Prabakaran in a rash and negligent manner hit against the partition wall of the main road and turned turtle. As a result of the accident, the deceased Ranganathan suffered grievous injuries and succumbed to the said injuries. It is also contended that the 1st respondent namely, C.P.Prabhakaran who had driven the car taking advantage of the fact that he suffered only simple injuries gave a false complaint to the police and attempted to escape from the criminal charges.

3. The 1st claimant gave a detailed complaint to the police subsequently, narrating the actual events. The claimant contended that the deceased was working as an Assistant Executive Engineer in the Tamil Nadu Electricity Board drawing a salary of Rs.60,000/- per month and the sudden death has caused a great pecuniary loss to the family. The 1st claimant, wife, and the claimants 2 and 3, minor children of the deceased have also lost consortium and love and affection. On the above contentions, the claimants sought for a compensation of Rs.1,68,00,000/-.

4. The claim petition was resisted by the Insurance

Company contending that the driver, vehicle bearing registration No.TN-22-BA-0690 was not responsible for the accident. The Insurance Company contended that as per the First Information Report recorded by the Vellore police in Crime No. 475 of 2012 a unidentified lorry hit against the car and therefore, it is a case of hit and run by an unidentified lorry. It was also pointed out that the police had filed an untraceable report regarding the lorry.

5. On the quantum of compensation claimed, the Tribunal on a consideration of the evidence on record concluded that the accident occurred due to the collision between the unidentified tipper lorry and the car in which the deceased was travelling. Therefore, the Tribunal concluded that both the car driver and the driver of the tipper lorry had contributed to the accident equally. It fixed the Contributory negligence on the part of the car driver at 50%.

6. On the quantum, the Tribunal took note of the salary certificate produced and assessed the income of the deceased at Rs.62,516/- per month. The Tribunal added 30% towards future prospects after deducting income tax of Rs.82,441/-, the Tribunal arrived at the annual income at Rs.8.68,076/-. The Tribunal deducted 1/4th towards personal expenses of the deceased and the annual loss of dependency was fixed at Rs.6,51,075/-. Considering the age of the deceased at 46 years, the Tribunal applied multiplier of '13' and calculated the total loss of dependency at Rs.84,63,975/-. The Tribunal also awarded a sum of Rs.1,00,000/- towards loss of consortium and Rs.2,00,000/- towards loss of love and affection. The Tribunal awarded Rs.25,000/- towards funeral expenses, Rs.5,000/- towards transport expenses and Rs.2,000/- towards damages to cloths and other articles. In all, the Tribunal arrived at the total compensation of Rs.87,95,975/-, it was rounded off to Rs.87,96,000/-. Inasmuch as the Tribunal has held that the car driver was responsible for the accident only to an extent of 50%. The Tribunal held that the Insurance Company is liable only to a sum of Rs.43,98,000/- being 50% of the total compensation arrived at.

7. It is this award that is challenged by both the claimants as well as the Insurance Company. While the Insurance company would claim that the Tribunal was not justified in concluding that the driver of the car was responsible for the accident to an extent of 50% and that the quantum of compensation is awarded is excessive, the challenge by the claimants is on the ground that this being a case of composite negligence and the claimant being a passenger in the car he can choose any one of the joint Tort-feasors seeking compensation and the Insurance company would be liable fully for the

compensation payable de hors the fact that two vehicles were involved. The claimants would also contend that the compensation awarded is just and reasonable.

8. We have considered the rival submissions. The first issue to be answered is the question relating to the liability of the Insurance Company to pay the entire award. Admittedly, the deceased was a passenger in the car and hence a 3rd party. It is a case of composite negligence and not contributory negligence. He was entitled to sue the insurer of the car claiming entire compensation.

9. Mr.K.Suryanarayanan learned counsel appearing for the Claimant/Appellant in C.M.A.No.697 of 2018 would draw our attention to the judgment of the Honourable Supreme Court in Khenyei vs New India Assurance Company Ltd., reported in 2015 1 TN MAC 801, wherein the Hon'ble Supreme Court had considered the question on composite negligence and concluded that in cases of composite negligence, the Claimant is entitled to file a claim against both or anyone of the joint Tort-feasors. If both joint Tort-feasors made parties to the claim petitions, the Tribunal will have to decide on apportionment of the compensation otherwise the Tribunal has to make an award against the impleaded Tort-feasor leaving it open to impleaded joint tort-feasor, to sue the other in independent proceedings, after satisfying the award, if so desired. While doing so, the Honourable Supreme Court observed as follows :

This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of Policy conditions by the owner when the Insurer asked to pay the Compensation fixed by the Tribunal and the right to recover the same was given to the Insurer in the Executing Court concerned if the dispute between the Insurer and the owner was the subject-matter of determination of the Tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the Joint Tort-feasor is joint and several.

In the instant case, there is determination of inter se liability of Composite Negligence to the extent of negligence of 2/3rd & 1/3rd of respective drivers. Thus, the vehicle Trailer-Truck, which was not insured with the Insurer, was negligent to the extent of 2/3rd. It would be open to the Insurer being Insurer of the

bus after making payment to Claimant to recover from the owner of the bus after making payment to Claimant to recover from the owner of the Trailer-Truck the amount to the aforesaid extent in the Execution proceedings. Had there been no determination of the inter se liability for want of evidence or other Joint Tort-feasors had not been impleaded, it was not open to settle such a dispute and to recover the amount in Execution proceedings but the remedy would be to file another Suit or appropriate proceedings in accordance with law. What emerges from the aforesaid discussion is as follows:

(i) In the case of Composite Negligence, Plaintiff/Claimant is entitled to sue both or any one of the Joint-feasors and to recover the entire Compensation as liability of Joint Tort-feasors is joint and several.

(ii) In the case of Composite Negligence, apportionment of Compensation between two Tort-feasors vis-vis the Plaintiff/Claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the Joint Tort-feasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of Composite Negligence of the drivers. However, determination of the extent of negligence between the Joint Tort-feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the Plaintiff/Claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in main case one Joint Tort-feasor can recover the amount from the other in the Execution proceedings.

(iv) It would not be appropriate for the Court/Tribunal to determine the extent

of Composite negligence of the drivers of two vehicles in the absence of impleadedment of other Joint Tort-feasors. In such a case, impleaded Joint Tort-feasor should be left, in case he so desires, to sue the other Joint Tort-feasor in independent proceedings after passing of the Decree or Award.

10. In view of the above said pronouncement by the Honourable Supreme Court, we do not think that the Tribunal was right in concluding that the Insurance Company/Appellant in C.M.A.No.1801 of 2017 is liable only to the extent of 50%. We are, therefore, constrained to interfere with the award on the said ground.

11. On the quantum of compensation, Mr.S.Manohar learned counsel appearing for the Insurance Company/Appellant in C.M.A.No.1801 of 2017 would contend that the compensation awarded under the heads of loss of consortium, loss of love and affection are on the higher side. The Tribunal has adopted future prospects at 30%. The deceased was aged 45 years at the time of the accident, he was employed in the Tamil Nadu Electricity Board as an Assistant Executive Engineer. As per the judgment of the Honourable Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 1 LW 331, the future prospects suggested by the Honourable Supreme Court in case of the deceased being aged 41 to 50 years who is employed in a permanent job is 30%. We, therefore, see no error in the adoption of 30% on the future prospects by the Tribunal. However, we find that the compensation awarded on the conventional heads is on the higher side. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium which could not be above Rs.40,000/- therefore, the same is reduced to Rs.40,000/- The Tribunal has awarded a sum of Rs.2,00,000/- towards loss of love and affection. The deceased has left behind two minor children and parents apart from the wife. We find that a sum of Rs.40,000/- each to the minor children and the parents towards loss of love and affection would be just and reasonable. Therefore, a sum of Rs.1,60,000/- is awarded towards loss of love and affection. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, Rs.5,000/- towards transport expenses, Rs.2,000/- towards damage to clothes and articles, the said awards are sustained. The Tribunal has not awarded any amount for loss of estate and hence, we grant a sum of Rs.15,000/- towards loss of estate. Therefore, the total compensation payable will be as follows:

Loss of dependency

-

Rs.84,63,975/-

Loss of Consortium

- Rs.40,000/-

Loss of love and affection

- Rs.1,60,000/-

Loss of estate

-

Rs.15,000/-

Funeral expenses

- Rs.25,000/-

Transport expenses

- Rs.5,000/-

Damage to clothing and articles

- Rs.2,000/-

Total

Rs.87,10,975/-

the same is rounded off to Rs.87,11,000/-. The award will carry interest at 7.5% per annum.

12. We have already held that the Insurance Company/Appellant in C.M.A.No.1801 of 2017 is liable to pay the entire amount, the award is apportioned as follows:

(i) The Claimant/1st appellant in C.M.A.No.697 of 2018 will be entitled to Rs.30,00,000/- with proportionate interest and entire cost.

(ii) The claimants namely, appellants 2 and 3 in C.M.A.No.697 of 2018 would be entitled to Rs.25,00,000/- each with proportionate interest.

(iii) The mother of the deceased namely, the 5th Appellant in C.M.A.No.697 of 2018 would be entitled to Rs.5,00,000/- with proportionate interest.

(iv) The father of the deceased namely 4th Appellant would be entitled to Rs.2,11,000/- with proportionate interest.

13. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of eight (8) weeks from the date of receipt of a copy of the order. On such deposit, the major claimants, namely, the Appellants 1,4 and 5 in C.M.A.No. 697 of 2018 will be entitled to withdraw their respective shares of the compensation. The Tribunal is directed to deposit the share of the minors in an interest earning Fixed Deposit in any one of the Nationalized

Banks till they attain majority and the mother namely the 1st appellant in C.M.A.No.697 of 2018 would be entitled to withdraw quarterly interest from the fixed deposit for the maintenance of the minors.

14. In fine, the appeal in C.M.A.No.697 of 2018 is partly allowed with cost and the appeal in C.M.A.No.1801 of 2017 is dismissed. It is made clear that it will be open to the Insurance Company to proceed against the Joint Tort feasor. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

kkn

To

The Motor Accident Claims Tribunal,
(I Additional District and Sessions Court)
Vellore.

+1cc to Mr.S.Manohar, Advocate SR.No.64205

+2cc to M/s.K.Suriyanarayanan, Advocate SR.No.64388

+2cc to M/s.Sai Bharath, Advocate SR.No.64259

C.M.A.No.697 of 2018
and 1801 of 2017

SJ(CO)

GMV (01/11/2018)

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