

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.04.2018
CORAM
THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
C.M.A. No. 3370 of 2017
and
C.M.P.No.21363 of 2017

M/s.Iffco Tokio General Insurance Company Limited,
No.28, Second Floor,
North Usman Road,
T.Nagar, Chennai-600 017. ...Appellant/2nd Respondent

Vs.

1. K.Nirmala
2. M.Abaranji
3. E.Munusamy
4. S.Suganthi ...Respondents
(R4 set exparte before the
court below)

Prayer: Civil Miscellaneous Appeal under section 173 of Motor Vehicles Act, 1988 as against the decree and judgment dated 15.02.2017 passed in M.C.O.P. No. 1091 of 2011 by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant :: Mr.M.B.Raghavan
For Respondents:: Mr.N.Kamaraj (R1 to R3)
R4 - ex parte

J U D G M E N T

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

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award of Rs.20,57,000/- for the death of one M.Krishnamoorthy aged about 28 years, a painting contractor earning about a sum of Rs.8,000/- per month, in the accident that occurred on 02.08.2010, when the deceased was riding his motor cycle, which was hit by a motor cycle belonging to the fourth respondent and Insured with the appellant/Insurance Company driven rashly and negligently.

2. Heard Mr.M.B.Raghavan, learned counsel for the petitioner as well as Mr.N.Kamaraj, learned counsel for the respondents 1 to 3. The 4th respondent remained ex parte even before the Tribunal.

3. The learned counsel for the Insurance Company Mr.M.B.Raghavan would submit that two vehicles are involved in the accident. Ex.R3-Rough Sketch would show that the deceased drove the vehicle rashly and negligently and hit against a mile stone. Therefore, the negligence was on the part of the deceased. Regarding the quantum, he would submit that as per judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company V. Pranay Sethi & Others reported in 2017 ACJ 2700, the amounts awarded towards Consortium, loss of Love and Affection, Funeral Expenses and Loss of estate have to be reduced.

4. On the other hand, the learned counsel for the respondents 1 to 3 Mr.N.Kamaraj, would support the award passed by the Tribunal.

5. It is evident from the records that the plea taken by Mr.M.B.Raghavan was taken by the appellant, before the Tribunal. Though Ex.R3-Rough Sketch gives a different picture, the Tribunal taking into consideration the registration of F.I.R.- Ex.P1 against the rider of the Vehicle insured with the appellant and considering evidence of P.W. 2 - eye witness to the accident and P.W.3 - eye witness as well as pillion rider of the vehicle driven by the deceased, came to the conclusion that the two wheeler insured with the appellant Insurance Company alone was responsible for the accident. Further, the Tribunal relied upon Ex.P5 - Motor Vehicle Inspector's report, which shows that front indicator light and crash guard on the left side of the appellant insured vehicle got damaged as admitted by P.W.4 and therefore the Tribunal rightly came to the conclusion that the two wheeler insured with the appellant Insurance Company was involved in the accident. The tribunal also noted P.W.4 - SSI of Sidhamoor Police Station was not the investigating officer and he spoke only based on records. That apart, there is no rebuttal evidence on the side of the appellant or the owner of the two wheeler, except the investigator engaged by the Insurance Company who does not have direct knowledge about the accident. Therefore, the finding rendered by the Tribunal is based on evidence and the same cannot be interfered with.

6. The Tribunal took a sum of Rs.8,000/- as a monthly income even in the absence of any proof regarding income. The said amount has to be sustained since the accident occurred on 02.08.2010. In Syed Sadiq and others vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 ACJ 627, the Hon'ble Supreme Court took a sum of Rs.6,500/- as monthly income for the accident that occurred in 2008 and therefore the determination of Rs.8,000/- as monthly income is in consonance with the above Judgment and the same is confirmed. The tribunal took 50% towards future prospects, as the deceased was aged

about 28 years based on the position of law at the time of deciding the case. However, as per the Constitution Bench Judgment stated supra, if the victim is self employed and below 40 years 40% has to be added. Therefore, a sum of Rs.3,200/- has to be added instead of 50% added by the Tribunal. The monthly income along with the future prospects would be Rs.8,000/- + 40% = Rs.11,200/-, The size of the family is 3. Therefore, the Tribunal deducted $\frac{1}{3}$ towards "Personal Expenses" and after deducting $\frac{1}{3}$ "Loss of monthly contribution" would be Rs.7,466.66/- . The multiplier according to the age of the deceased is 17 and therefore "Loss of Income" would be Rs.7,466.666x12x17= Rs.15,23,200/-.

8. A sum of Rs.2,00,000/- is awarded towards "Loss of Consortium" and the same has to be reduced as per Constitution Bench Judgment stated supra. Accordingly the same is reduced to Rs.40,000/-.

9. For the "loss of Love and Affection" a sum of Rs.2,00,000/- has been awarded by the Tribunal for the respondents 2 and 3. However, this Court awards a sum of Rs.50,000/- to each of them, since the deceased was the only child who died at a young age of 28 years and the expectation of the parents that their child would look after them in the evening of their life is lost. Therefore a sum of Rs.1,00,000/- is awarded totally to second and third respondents.

10. A sum of Rs.15,000/- towards "Funeral Expenses", and a sum of Rs.15,000/- towards "Loss of Estate" are awarded as per the Constitution Bench Judgment and a sum of Rs.10,000/- is awarded towards "Transportation". Hence, the total compensation payable to the appellants is as hereunder:

Loss of Income ::	Rs.15,23,200/-
Loss of consortium ::	Rs. 40,000/-
Loss of Love and Affection ::	Rs. 1,00,000/-
Funeral Expenses ::	Rs. 15,000/-
Loss of Estate ::	Rs. 15,000/-
Transportation ::	Rs. 10,000/-
Total ::	Rs.17,03,200/-
(rounded off to Rs.17,00,000)	

The interest @ 7.5% per annum is confirmed. The wife of the deceased is entitled to a sum of Rs.12,00,000/- and the parents are entitled each to a sum of Rs,.2,50,000/-.

11. It is represented that the entire compensation was deposited before the Tribunal and therefore the tribunal is directed to transfer the compensation as per the ratio fixed by this Court ,along with proportionate interest and costs to the

account of the respective respondents through RTGS. The balance amount is directed to be returned to the appellant within a period of one week thereafter.

12. In the result, this Civil Miscellaneous Appeal is partly allowed, reducing the amount awarded by the Tribunal from Rs.20,57,000/- to Rs.17,00,000/-. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

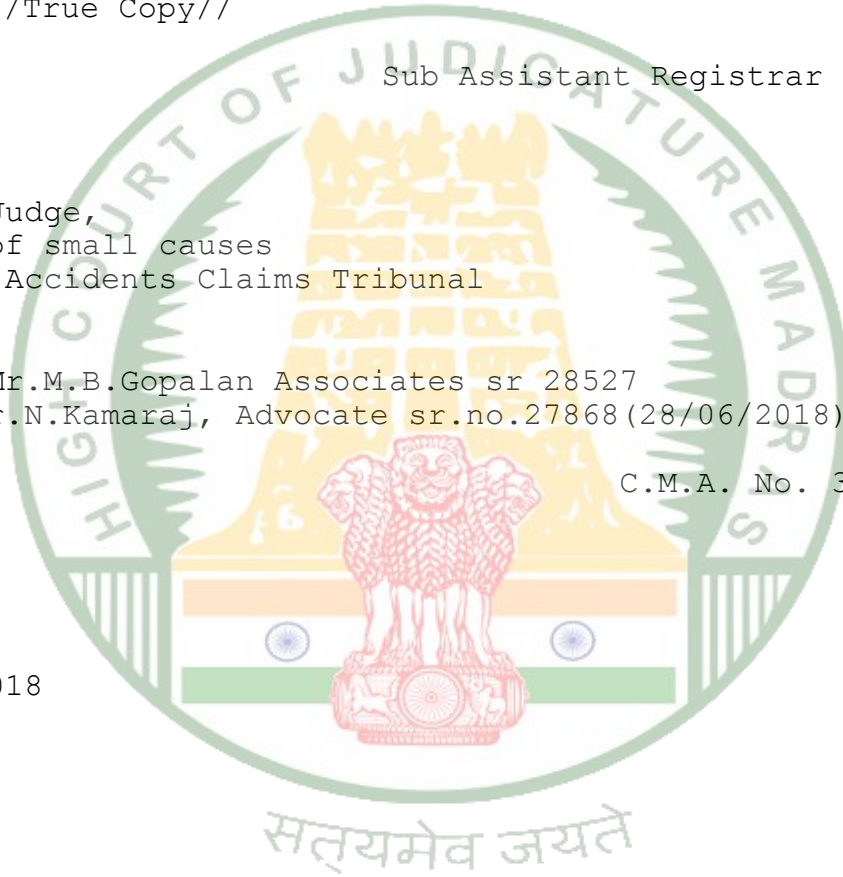
arr
To

1.The IV Judge,
IV court of small causes
The Motor Accidents Claims Tribunal
Chennai

+1 cc to Mr.M.B.Gopalan Associates sr 28527
+1cc to Mr.N.Kamaraj, Advocate sr.no.27868(28/06/2018)

C.M.A. No. 3370 of 2017

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