

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.943 of 2017  
and  
C.M.P.No.4615 of 2017

M/s.New India Assurance Co.Ltd.,  
Regd and Head Office,  
New India Assurance Building,  
No.87, M.G.Road, Fort,  
Mumbai - 400 001.

... Appellant/R2

Versus

1. Lakshmi
2. Raja
3. S.Kesav

..R1/Petitioner 1  
..R2/Petitioner 2  
..R3/R1

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree passed in M.C.O.P.No.12 of 2014 on 20.01.2016 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Krishnagiri District.

For Appellant : : Mr.J.Chandran

For Respondents: : Mr.M.Selvam for R1 and R2

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree passed in M.C.O.P.No.12 of 2014 on 20.01.2016 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Krishnagiri District.

2. For the sake of convenience, the parties are hereinafter referred to in this judgment as they are arrayed before the Tribunal.

3. The case of the petitioner is that on 23.10.2013 the deceased Suresh and his relative Chakkavarathi were going in a car bearing Regn.No.TN-24-U-7078 and at that time, a Multi Axle Goods vehicle bearing Regn.No.TN-20-BS-1535 belonging to the first respondent and insured with the second respondent stopped suddenly without any signal and due to the impact, the car in which the deceased Suresh was travelling dashed against the

back side of the first respondent's Goods vehicle, resulting in the death of the deceased. The petitioners state that the case was registered against the driver of the Multi Axle Goods vehicle bearing Regn.NoTN-20-BS-1535. At the time of accident, the deceased Suresh was aged 23 years and was earning Rs.10,000/- per month by doing Carpenter work. The petitioners seek compensation for a sum of Rs.15,00,000/- from the owner and insurer of the offending vehicle, who are the respondent herein.

4. On the other hand, the second respondent/insurance company contended that the accident occurred only due to rash and negligent driving of the driver of the car in which the deceased travelled and as such, the respondents cannot be held responsible for the accident. Since the driver of the goods vehicle was not responsible for the accident, the case was registered only against the driver of the car in which the deceased travelled. Hence, the second respondent is not bound to pay any compensation. Further, the driver of the car in which the deceased travelled had no driving licence. The second respondent also disputed the petitioners' claim regarding the age and income of the deceased. Hence the second respondent seeks dismissal of the petition.

5. The petitioner examined before the Trial Court P.W.1 and P.W.2 and produced Ex.P.1 to Ex.P.8 documents. On the side of respondents, neither oral nor documentary evidence was produced. On the basis of available materials, the Trial Court ordered a sum of Rs.7,42,500/- with 7.5% interest as compensation and held the respondents jointly and severally liable to pay compensation to the petitioners.

6. Aggrieved by the same, the second respondent/ insurance company has come forward with the appeal.

7. Heard both sides counsel and perused the materials available on the records.

8. The learned counsel for the second respondent contends that the quantum arrived by the Tribunal is at on the higher side and the same is to be set aside. The fact that the accident occurred only due to rash and negligent driving of the driver of the car in which deceased Suresh travelled was not considered by the Tribunal, the multiplier " 17 " adopted by the Tribunal as well as the income fixed at Rs.6,000/- per month is not correct. Hence, the second respondent seeks to entertain the appeal and set aside the award passed by the Tribunal.

9. On the other hand, the learned counsel for the petitioners contended that the avocation and age of the deceased were clearly established before the Tribunal by oral and documentary evidence and the same has been correctly

appreciated by the Tribunal and the award was passed. Hence, the petitioners seek dismissal of the appeal.

10. The Tribunal fixed the notional income of the deceased Suresh as Rs.6,000/- per month. The deceased, being a bachelor, deducted 50% amount of ie.,Rs.3,000/- towards personal expenses and the loss of income comes to Rs.3,000/- per month and as per II Schedule, multiplier 17 is adopted. Accordingly, the loss of income is calculated as follows:- Rs.3,000/- x 12 x 17 = Rs.6,12,000/- . The details of the compensation awarded by the Tribunal is as follows:-

| Sl. No. | Head                                                       | Amount granted by the Tribunal |
|---------|------------------------------------------------------------|--------------------------------|
| 1       | Loss of dependency of the deceased (Rs.3,000/- x 12 x 17 ) | Rs.6,12,000/-                  |
| 2       | Transport Expenses                                         | Rs.5,000/-                     |
| 3       | Damaged to clothes and articles                            | Rs.2,000/-                     |
| 4       | Medical Expenses                                           | Rs.53,500/-                    |
| 5       | Funeral expenses                                           | Rs.20,000/-                    |
| 6       | Love and Affection                                         | Rs.50,000/-                    |
|         | Total                                                      | Rs.7,42,500/-                  |

Being aggrieved over the quantum of the award passed by the Tribunal as stated above, the 2nd respondent/Insurance Company has come forward with this appeal contending that the accident occurred only due to the negligence of the deceased Chakkravarthy who was driving the vehicle bearing Regn.No.TN-24-U-7078 and the deceased Suresh, accompanied the said Chakkravarthy in the said vehicle, hence, the negligence should be apportioned between the drivers of both the vehicles.

11. The petitioners produced Ex.P.1 Copy of FIR in Cr.No.724 of 2013 on the file of Krishnagiri Police and therefore, it is evident from the same, that the accident occurred due to the negligence of the driver of the offending vehicle viz., goods vehicle bearing Regn.No.TN-20-BS-1535. It is also apparent from the evidence of P.W.1 and P.W.2 and the documents produced by the petitioners that the vehicle bearing Regn.No.TN-20-BS-1535 is involved in the accident. The petitioners further stated that this petition is filed under Section 163 A of the Motor Vehicles Act and as such, the Tribunal is not bound to decide the issue as to whose negligence caused the accident, but the Tribunal has to find out whether the 1st respondent vehicle was involved in the accident or not. Relying upon the Ruling reported in 2013 ACJ 2304 [ Branch Manager, United India Insurance Co.Ltd., Vs.Lalitabai and others] and 2015 ACJ 2539 [ Rfyana Ishaque Kazi and others Vs.Pushpa R.Sheva and another], it is contended that



even if the accident occurred due to the negligence of the person who died in the accident, as the claim is made under Section 163 of the Motor Vehicles Act, the petition is maintainable and only the respondents are liable to pay compensation.

12. On verification of records, it is clear that the vehicle owned by the 1st respondent is involved in the accident. Admittedly, the vehicle was owned by the 1st respondent and insured with the 2nd respondent. As stated earlier, it is clear that the accident was caused only by the negligence of the 1st respondent vehicle driver and as the owner and insurer of the offending vehicle, the respondents are liable to pay compensation.

13. The petitioners in M.C.O.P.No12 of 2014 stated that the deceased Suresh was aged 23 years and he was a carpenter and was earning a sum of Rs.10,000/- per month. It is evident from Ex.P.2 Post Mortem Report that the deceased was aged 23. Hence, the age of the deceased Suresh is fixed at 23. The petitioners have not produced any oral or documentary evidence regarding the income of the deceased Suresh. In such circumstances, even though the Tribunal fixed Rs.6,000/- as monthly income of the deceased, this court, in the absence of any substantial evidence in proof of the income of the deceased Suresh, is of the view that as the deceased Suresh was a Carpenter, definitely, his annual income contributions to his family would not be less than Rs.40,000/-. As such, the annual income of the deceased is taken as Rs.40,000/-. The deceased Suresh being a bachelor, 50% of his income is to be deducted towards his personal expenses. The age of the deceased as stated above is taken as 23 and therefore, the correct multiplier to be applied is " 17 " . Thus, the loss of pecuniary benefits to the family of the deceased is calculated as under:-

Annual income of the deceased : Rs.40,000/-

Rs.40,000/- - 50% deduction = Rs.20,000/-

Rs.20,000/- x 17 = Rs.3,40,000/-

Thus, this court is inclined to grant Rs.3,40,000/- under the head " Loss of dependency of the deceased". Accordingly, the compensation granted by the Tribunal is modified as follows:-

| Sl. No. | Head                               | Amount granted by the Tribunal | Amount granted by this Court |
|---------|------------------------------------|--------------------------------|------------------------------|
| 1       | Loss of dependency of the deceased | Rs.6,12,000/-                  | Rs.3,40,000/-                |
| 2       | Transport Expenses                 | Rs. 5,000/-                    | Rs.15,000 /-                 |
| 3       | Damaged to clothes and articles    | Rs. 2,000/-                    | ..                           |

| Sl. No. | Head               | Amount granted by the Tribunal | Amount granted by this Court |
|---------|--------------------|--------------------------------|------------------------------|
| 4       | Medical Expenses   | Rs.53,500/-                    | Rs.53,500/-                  |
| 5       | Funeral expenses   | Rs.20,000/-                    | Rs.15,000/-                  |
| 6       | Love and Affection | Rs.50,000/-                    | ...                          |
|         | Total              | Rs7,42,500/-                   | Rs.4,23,500/-                |

14. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs7,42,500/- awarded by the Tribunal dated 20.01.2016 in M.C.O.P.No.12 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Krishnagiri District is reduced to Rs.4,23,500/-. The second respondent/insurance company/appellant is directed to deposit the entire award amount of Rs.4,23,500/- (Rupees Four lakhs twenty three thousand and five hundred only) with interest at the rate of 7.5% p.a., from the date of filing the claim petition till the date of depositing the entire award amount within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited. On such deposit, the petitioners/claimants are entitled to 50% each from the entire award amount. The petitioners are permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. Since this award amount is reduced by this court, the appellant/Insurance company is permitted to withdraw the excess amount if any lying in the deposit. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

vv  
To

1. The Special District Judge  
The Motor Accident Claims Tribunal  
Special District Judge,  
Krishnagiri District.

2. The Section Officer, VR Section,  
High Court, Madras.

+1 CC to Mr.J. Chandran, Advocate sr 5906.

+1 CC to Mr.M. Selvam, Advocate sr 5739.

C.M.A.No.943 of 2017

SP(13/04/2018)



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