

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.928 of 2018

1. Porkodi
2. N.Subramani Appellants/Petitioners
Vs

1. Sathish
2. Venkataramanappa
3. The Cholamandalam Ms.General Insurance Co.Ltd.
2nd Floor, Dare House,
2nd NSC Bose Road,
Chennai 600 001. Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 26.04.2017 made in M.C.O.P.No.866 of 2014 on the file of the Motor Accident Claims Tribunal (I Additional District and Session Court, Vellore).

For Appellant : Mr.P.Paramasiva Doss

For Respondents : Mr.S.Manohar for R3

R1 & R2 set exparte before Tribunal

J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, I Additional District and Session Court, Vellore in MCOP. No. 866 of 2014 dated 26.04.2017, the appellants herein, who are the petitioners in the above said MCOP, have filed this Appeal.

2. Heard the learned counsel for the appellants and the learned counsel for the Insurance Company.

3. The brief facts of the case are as follows:-

The petitioners are the parents of the deceased Devaviradhan who died in a road accident on 13.02.2013 at about 3:00p.m. While the deceased was riding two wheeler bearing Registration No.TN-23-P-0006 from his native village to

Chittoor, to attend his friend's marriage, near Forest Check post at Iruvaram, Chittoor, on Chennai to Bangalore bye pass road, the lorry bearing Registration No.KA-07-A-1664, owned by the second respondent was driven by its driver viz., the first respondent in a rash and negligent manner and dashed against the deceased and as a result, the two wheeler was thrown away for 15 to 20 feet and due to the accident, the deceased sustained injuries all over the body and died on the spot itself. The accident was reported to traffic police, Chittoor and they have registered a case in Cr.No.14/2013 Under Section 304(A) of IPC. The deceased had completed B.Com., degree and prior to the accident, the deceased was hale and healthy and was working as Manager in leather company and getting a salary of Rs.6,000/- and also doing part time job at Sivakumar school of Nursing as Accountant-cum-computer operator and getting a salary of Rs.6,500/- and in total earning Rs.12,500/- per month. Due to the sudden demise the future life of the petitioners who are the parents of the deceased is fully doomed. Hence the petitioners have filed this petition claiming Rs.30,00,000/- as compensation.

4. On the other hand, the third respondent submitted that the first respondent drove the lorry carefully and not in a rash and negligent manner. According to them the accident occurred only due to the rash and negligent act of the deceased who suddenly crossed the road. Therefore the deceased should also contribute for the negligence on his part to the maximum limit. In the present appeal the appellant raised the following issues:-

1. Whether the 25 % deduction of compensation for not wearing the helmet, by the Tribunal, is just and fair?
2. Whether the compensation fixed by the Tribunal is just and fair?

4.1.1. The tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the first respondent. Therefore, the Tribunal fixed the negligence on the part of the first respondent. In the present appeal there is no challenge on the issue of negligence but only 25% deduction of compensation for not wearing the helmet. Therefore it is not necessary to go into detail on the issue of negligence.

4.1.2. It is an admitted fact that the deceased died due to the accident. Due to the said accident the deceased incurred the following external injuries:-

- " 1. A lacerated injury 4x1 cms over right temporal region
2. A lacerated injury 4x2 cms over occipital region
3. Multiple abrasions around right elbow and over right hand
4. Abrasions over left hand.

5. Abrasion over right ankle.

The Doctor also noted the following internal injuries:-

1. Fracture over occipital bone seen

2. Brain tissues congested with collection of about 150ml in the base of skull.

The Doctor opined the deceased would appear to have died of Cardio-respiratory arrest due to Head injury and internal hemorrhage".

4.1.3. In this regard Ex.P.11 was marked on the side of the petitioners. Petitioners are the legal heirs of the deceased and the legal heir certificate was marked as Ex.P.10.

4.1.4. While the deceased was riding the two wheeler bearing Registration No.TN23B0006 from his native village to Chittoor to attend his friends marriage on Chennai to Bangalore bye pass road, the lorry bearing registration No.KA-07-A-1664 was driven by its driver in a rash and negligent manner had hit the motor cycle driven by the deceased and thereby the deceased sustained injuries all over the body and died on the spot itself. At the time of accident the deceased was not wearing his protective head gear (helmet) in terms of Section 129 of the Motor Vehicle Act 1988. This section clearly mandate the deceased to wear the helmet at the time of riding the motor cycle. It was admitted by both the petitioners and the respondents that the deceased was not wearing the helmet at the time of accident and the same amount to violation of Section 129 of the Motor Vehicles Act, 1988. Post mortem certificate which was marked as Ex.P11 also states that the deceased died due to the head injury.

4.1.5. It was the case of the 3rd respondent that if the deceased had worn the helmet, the death could have been avoided. Therefore the contention of the third respondent is that the compensation should not be awarded for the violation of not wearing the helmet. Considering the submission of the third respondent the Tribunal decided that the claimants had to bear 25% of compensation for the own wrong of the deceased.

4.1.6. Though the accident occurred not due to the negligence of the deceased, the Tribunal has fixed to bear the claimant about 25% of compensation for not wearing the helmet, which is in violation of Section 129 of Motor Vehicles Act, 1988.

4.1.7. From the findings of the Tribunal and from the submissions of the respondents, this Court comes to the conclusion that there was clear violation of Section 129 of Motor Vehicles Act 1988, by the deceased. Now the moot question to be decided here is that for the violation of the provision of

the Section 129 of the Motor Vehicles Act (herein after called as Act) is it just and fair on the part of the Tribunal to deduct 25% of the compensation of the claimants.

4.1.8. In Section 129 of the Act there is no penalty/punishment clause. However, in the State Government Rules the State Government fixed some fine for not wearing the helmet.

4.1.9. The issue cannot be come to an end, as in the present case due to not wearing the helmet the deceased incurred head injuries and consequently he died. So, therefore here is not the question of paying the fine but to save the human life.

4.1.10. On the indepth perusal of the Section 129 of the Motor Vehicles Act, mandates the rider of the two wheeler compulsorily to wear the helmet. When the law mandates certain things and the deceased being citizen of India, is it not his duty to abide the law of land. If he is not abiding the law is it necessary for the Court to award compensation for a non law abiding citizen. At this point of time, this Court also take a judicial notice that the Motor Vehicles Act dealing with the compensation is a benevolent legislation and not a penal one. Therefore this Court cannot ignore completely for avoiding the compensation for the claimant merely because of non-compliance of provision of Section 129. But at the same time, it is the duty of this Court to order certain amount of penalties for non compliance of provisions of the Act. Though the Motor Vehicles Act is a benevolent legislation, this Court cannot provide complete benefit available under the Act to a person who is not following the law of land strictly.

4.1.11. Therefore this Court decides to fix 10% of compensation which will be deductible from the total compensation awarded to the claimant as agreed by both parties due to non wearing the helmet by the deceased instead of 25% fixed by the Tribunal. सत्यमेव जयते

4.2.1. On behalf of petitioner PW1 was examined. The transfer certificate of the deceased was marked as Ex.P6. There was no contra evidence on the part of the third respondent to disprove the date of birth mentioned in the transfer certificate. In the T.C. the date of the birth was mentioned as 06.05.1984. Therefore, at the time of accident deceased age was 28 years 9 months 7 days. Since, he crossed the age of 28, the tribunal fixed the age as 29 for the purpose of determining the compensation. Further PW1 deposed as follows:-

" The PW1 deposed the deceased was working as Manager in Florind leather factory and get salary of Rs.6,000/- at the time of accident and

also doing part time job at Sivakumar School of Nursing and get salary of Rs.6,500/- per month and total earning was Rs.12,500/- per month. The PW1 admitted the salary from leather factory credited into his bank account. The Ex.R.1 statement of account of deceased issued from S.B.I Chompers Road, Chennai and wherein credited Rs.5,699/- was credited into the deceased saving account towards his salary. Therefore, it is decided the deceased get salary of Rs.5,699/- as salary income from leather factory.

16. The PW1 further deposed that the deceased do part time job at Sivakumar School of Nursing and get salary of Rs.6,500/- and the salary was paid by cash. The deceased completed B.Com., degree. The deceased also studied M.Com., degree. The perusal of above documents proved the deceased was qualified person for Accountant post. The PW2 deposed that he was running the Sivakumar school of Nursing and the deceased was working as part time employee as Accountant and paid salary of Rs.6,500/- per month. The Ex.X1 is the copy of appointment letter for deceased. The Ex.X.2 is the salary certificate and wherein it is clearly stated the deceased was paid Rs.6,500/- for part time job as Accountant. Therefore, it is decided the deceased get salary of Rs.5,699/- from leather factory and get Rs.6,500/- through part time job and all together the deceased earned Rs.12,199/- per month".

4.2.2. Therefore the Tribunal fixed a sum of Rs.12,199/- as the income of the deceased. We also concur with the findings of the Tribunal in this regard.

5. Future prospects:-

The Tribunal decided by referring the judgment of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, that the deceased is not entitled to future prospects. However we cannot agree with the findings of the Tribunal on the aspect of future prospects. Therefore we fix the future prospects based on the Apex Court judgment of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, in which the Hon'ble Apex Court has held that if the deceased was having fixed salary and below the age of 40 years, 40% of the monthly income to be added as future prospects.

6. Now with regard to the multiplier, the Hon'ble Apex

Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC held that if the person having the age of 26 to 30 years the multiplier of "17" to be taken into account for calculating the loss of dependency. Hence we take the multiplier of '17' for the purpose of calculating the loss of earning of the deceased. Further, in order to calculate the personal expenses the Hon'ble Apex Court in the case of Sarla Verma (cited supra) has observed that if the deceased is a bachelor, 50% of the total income to be deducted towards the personal expenses of the deceased. Therefore, we decided to deduct 50% of the total annual income of the deceased.

7. Accordingly, the monthly income of the deceased would be Rs.12,119/-. Adding a component of 40% for future prospects, the income would stand at Rs.16,966/-. Deducting half of the amount towards personal expenses, the loss of dependency per month works out to Rs.8483/- (16966 - 8483). Applying the multiplier of '17' the total loss of income would work out to Rs.17,30,532/- [(Rs.12119/- + 40% of Rs.12119) - (50% of Rs.16966/-) x 12 x 17]. Further the Tribunal awarded Rs.1,00,000/- towards loss of love and affection and the same is confirmed. The Tribunal awarded Rs.5,000/- towards "Transportation" and the same is confirmed. The Tribunal awarded a sum of Rs.50,000/- towards "loss of estate" and as per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the same is reduced to Rs.15,000/-. Under the head "Funeral expenses" this Court is inclined to reduce the amount from Rs.25,000/- to Rs.15,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India. The Tribunal awarded a sum of Rs.2,000/- towards "damages to cloths and articles" and the same is confirmed.

8. Hence the total compensation payable to the claimants is as hereunder.

Head	Amount (Rs.)
Loss of Dependency	Rs.17,30,532/-
Transportation	Rs.5,000/-
Loss of love and affection to the 1 st claimant/mother	Rs.50,000/-
Loss of love and affection to the 2 nd claimant/father	Rs.50,000/-
Loss of estate	Rs.15,000/-
Damages to cloth and articles	Rs.2,000/-
Funeral expenses	Rs.15,000/-

Head	Amount (Rs.)
Total	Rs.18,67,532/-

As held earlier for not wearing the helmet this Court decided to deduct the 10% of the total compensation awarded to the claimants. 10% of total compensation is Rs.1,86,753/-

The total amount of compensation awarded to the claimants after deduction is Rs.16,80,779/- = (18,67,532 - 1,86,753)

9. The total amount of compensation shall be shared by the claimants 1 & 2 herein, in the following manner:-

10. The mother of the deceased who is the first appellant herein shall receive a sum of Rs.8,80,779/-, and the father of the deceased who is the second appellant herein shall receive a sum of Rs.8,00,000/-.

11. The Insurance Company is directed to deposit the entire amount awarded by this Court with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of one week thereon. The claimants are directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

12. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.11,15,300/- is enhanced to Rs.16,80,779/-. No costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

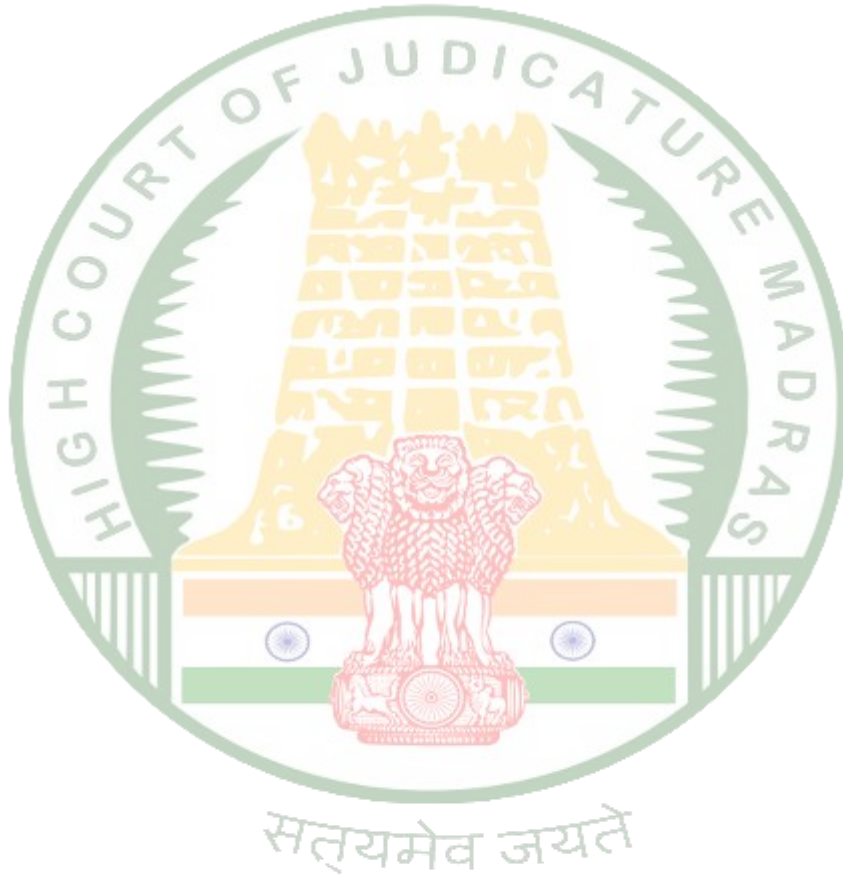
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To
The Motor Accident Claims Tribunal
(I Additional District and Session Court, Vellore)

+lcc to Mr.J.PRADEEP, Advocate, S.R.No. 43306

C.M.A.No.928 of 2018

KJ(CO)
TR(27/08/2018)



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