IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Civil Miscellaneous Appeal No.952 of 2018

1.M.Geetha
2.Minor M.Dharshan
rep. by next friend mother M.Geetha ... Appellants

Vs

1.M.Ramesh
(1st respondent remained ex-parte before the Trial Court, notice may be dispensed with in the appeal)

2.United India Insurance Co. Ltd.,
rep. by its Branch Manager,
36, Katpadi Road, Gandhi Nagar,
Vellore, Vellore District. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 16.9.2016 passed in M.C.O.P.No.268 of 2014 by the Motor Accidents Claims Tribunal (I Additional District Judge), Vellore.

For Appellants : Mr.P.Satheesh Kumar

For Respondents: Mr.J.Chadran for R2
R1 - Ex parte

JUDGMENT

Aggrieved by the award of the Tribunal dated 16.9.2016 in M.C.O.P.No.268 of 2014, the appellants have filed this appeal seeking to fix the entire negligence on the respondents and also to enhance the compensation.

2. Brief facts are as follows: On 17.2.2014 at about 3.00 P.M., the deceased Murugan was proceeding in a new TVS Star City two wheeler after dropping his nephew at Pillandhipattu bus stop and when he was trying to cross the road, a Omni car bearing registration No.TN-23 C 3373 driven by its driver in a rash and negligent manner dashed against the deceased. As a result of which, the deceased

sustained grievous injuries. Immediately, he was taken to Vadugathangal Government Hospital for treatment where from he was taken to CMC Hospital, Vellore. Thereafter, he was shifted to Government Hospital, Adukkamparai and in spite of best treatment, he succumbed to injuries on 23.2.2014. Regarding the accident, a criminal case in Crime No.35 of 2014 was registered by K.V.Kuppam Police Station under Section 279, 337 IPC and thereafter altered as Section 304 (A) IPC. The appellants are wife and children of the deceased.

3. At the time of accident the deceased was doing agricultural work and commission business and was earning Rs.6,000/- per month. Stating that the accident occurred due to the rash and negligent driving of the driver of the Onmi car, the appellants have filed the claim petition claiming compensation of Rs.25,00,000/-.

4. Denying the manner of accident, the second respondent filed the counter stating that there was absolutely no information with regard to the accident from the insured viz., owner of the vehicle bearing registration No.TN-73 C 3373 and therefore, they were constrained to take a plea that the vehicle was not insured with them until the contrary was proved. At the time of accident, the driver of the Omni car did not possess valid driving licence. The accident did not occur due to the negligence of the driver of the vehicle bearing registration No.TN-73 C 3373. It is stated that the deceased had no valid driving licence to drove the motorcycle at the time of accident and also the TVS Star City motorcycle had no insurance on the date of accident. The claim petition is devoid of merits and liable to be dismissed.

5. Before the Tribunal, the 1st appellant examined herself as P.W.1 and one Kalpana was examined as P.W.2 and marked Exs.P1 to P9. No oral and documentary evidence was adduced on the side of the contesting second respondent.

6. Upon consideration of the oral and documentary evidence, the Tribunal held that the deceased also contributed the negligence for the accident. Taking the monthly income as Rs.6,000/- and adding 50% for future prospects and deducting one-third towards personal expenses, the Tribunal has calculated the annual income at Rs.72,000/-. Applying multiplier 16, the Tribunal calculated the loss of dependency at Rs.11,52,000/- and deducting 50% towards contributory negligence, the Tribunal awarded Rs.5,76,000/- towards loss of dependency. Adding amounts towards loss of consortium, funeral expenses, love and affection, medical expenses, transport charges, damages

to clothes, the Tribunal awarded total compensation of Rs.9,23,000/-. Aggrieved by the order of contributory negligence on the part of the deceased and also the quantum of compensation, the appellants have filed this appeal.

7. The learned counsel for the appellants submitted that the Tribunal ought to have fixed the entire negligence on the respondents especially when they have not produced any documentary or oral evidence to establish their vague defence. He would submit that the Tribunal erred in fixing contributory negligence solely based on the counter filed by the second respondent especially when the FIR and the evidence of P.Ws.1 and 2 clearly spell that the negligence was on the part of the driver of the Omni car. The learned counsel submitted that the reason for fixing contributory negligence are unreasonable and the same is liable to be set aside.

8. Per contra, the learned counsel appearing for the second respondent insurance company reiterated the contentions raised before the Tribunal and prayed for dismissal of this appeal.

9. I have heard Mr.P.Satheesh Kumar, learned counsel for the appellants and Mr.J.Chandran, learned counsel for the 2nd respondent and also perused the materials available on record.

10. The points arise for consideration are:

(1) Whether the Tribunal was right in fixing contributory negligence on the rider of the motorcycle?

(2) Whether the compensation awarded by the Tribunal is just and reasonable?

11. Point No.1:

The case of the appellants is that on 17.2.2014 at about 3.00 P.M. when the deceased Murugan was returning in his new TVS Star City motorcycle after dropping his nephew at Pillandhipattu bus stop and was trying to cross the road, the Omni car insured with the second respondent driven by its driver in a rash and negligent manner dashed against the deceased and caused injuries. Despite treatment, Murugan succumbed to injuries on 23.2.2014. According to the appellants, the accident occurred due to rash and negligent driving of the driver of the Omni bus and therefore, the second respondent insurance company who is the insurer of the car is liable to pay the compensation.

12. On the other hand, it is the say of the second respondent insurance company that since the deceased

suddenly crossed the road, he contributed the negligence. Believing the version of the second respondent, the Tribunal held that the deceased also contributed negligence for accident. In her evidence, P.W.2 deposed that after dropping her, the deceased was returning to home and when he tried to cross the road, the first respondent drove the car in a rash and negligent manner and dashed against the deceased.

13. Admittedly, in the counter filed by the second respondent, they have not taken the plea of contributory negligence. Nobody was examined on the side of the second respondent to prove that the accident occurred due to contributory negligence of the deceased. In fact, after investigation, the police has filed the charge sheet against the first respondent and the same was not denied by the second respondent insurance company. The second respondent has not filed the rough sketch to show that violating the road rules, the deceased crossed the road and invited the accident.

14. It is settled that while dealing with the claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal stricto sensu is not bound by the pleadings of the parties, its function is to determine the amount of fair compensation.

15. Some discrepancies in the evidence of the claimant witnesses might have occurred but the core question before the Tribunal as well as before this Court is as to whether the Omni car in question was involved in the accident or not. The appellants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

16. In the present case, nothing has been produced by the second respondent to show that the accident occurred only due to the negligence of the deceased. In the absence of proof, the Tribunal ought not to have held that the deceased had contributed the negligence. By way of Ex.P4-Motor Vehicle Inspector's report, the appellants have proved that on the date of accident, the offending vehicle was insured with the second respondent. Based on the oral and documentary evidence adduced on the side of the appellants, this Court is of the view that the accident occurred only due to rash and negligent driving of the driver of the Omni car bearing registration No.TN-73 C 3373 and that the second respondent, who is the insurer of the Omni car is liable to pay the compensation. Therefore, I am of the view that the Tribunal erred in fixing

contributory negligence on rider of the motorcycle i.e., the deceased Murugan and Point No.1 is answered in favour of the appellants.

17. Point No.2:

The appellants claimed that at the time of accident, the deceased was aged 33 years and was earning Rs.6,000/- per month by doing self employment. The appellants have produced Ex.P6-post mortem certificate, wherein the age of the deceased was mentioned as 34 and considering Ex.P6-post mortem certificate, the Tribunal has fixed the age of the deceased as 34. Since there was no direct evidence for age proof of the deceased, the Tribunal was right in fixing the age of the deceased as 34 based on Ex.P6-post mortem certificate.

18. The appellants claimed that the deceased was doing agricultural and retail rice business and was earning Rs.6,000/- per month. In her evidence, P.W.1 deposed that her husband was doing retail rice business apart from doing agricultural work. In 2014, even a person doing agricultural coolie would have earned minimum Rs.200/- per day. Though there was no proof to show that the deceased was doing retail rice business, in order to live, a person has to earn minimum Rs.200/- per day. Taking note of the socio-economic condition forced to any individual to earn at the rate of Rs.200/- per day for his living, the Tribunal has fixed the monthly income of the deceased at Rs.6,000/-, which in the considered opinion of this Court warrants no interference.

19. By relying upon the decision of the Hon'ble Supreme Court in Rajesh and others v. Rajbir Singh and others, reported in 2013 (2) TN MAC 55 (SC), the Tribunal has given 50% addition towards future prospects, which in my opinion is reasonable and the same is maintained. Taking the monthly salary at Rs.6,000/- and giving 50% addition of actual salary, the monthly income of the deceased is calculated at Rs.9,000/- and the annual income is calculated at Rs.1,08,000/-.

20. As per the decision of the Hon'ble Supreme Court in Sarla Verma and others v. Delhi Transport Corporation and others, reported in 2009 (2) TN MAC 1 (SC), if the family members are 2 - 3, the deduction towards personal expenses would be one-third. In the present case, the dependents is 2 and hence, the Tribunal has rightly deducted one-third towards personal expenses. Deducting one-third from the annual income of Rs.1,08,000/-, the contribution to the is calculated at Rs.72,000/-.

21. Since the deceased was aged 34 years at the time of accident, as per the decision of Sarla Verma, supra, for the age group 31 - 35, the multiplier to be applied is "16", which the Tribunal has rightly taken. Adopting multiplier "16", the loss of dependency is calculated at Rs.11,52,000/-.

22. The Tribunal awarded Rs.1,00,000/- towards loss of consortium; Rs.25,000/- towards funeral expenses; Rs.2,00,000/- towards loss of love and affection; Rs.10,000/- towards medical expenses; Rs.10,000/- towards transport charges and Rs.2,000/- towards damages to cloths and articles.

23. Considering the facts and circumstances of the case, Rs.1,00,000/- awarded by the Tribunal for loss of consortium is reduced to Rs.40,000/-. Like wise the compensation of Rs.2,00,000/- awarded by the Tribunal for loss of love and affection is reduced to Rs.30,000/- and the funeral expenses of Rs.25,000/- is also reduced to Rs.15,000/-. The Tribunal awarded Rs.10,000/- towards transport charges and the same is maintained.

24. In the light of the above mentioned discussion, the total sum of Rs.9,23,000/- awarded by the Tribunal is enhanced to Rs.12,47,000/- as under:

Heads	Rs.
Loss of dependency	11,52,000.00
Loss of consortium	40,000.00
Loss of love and affection	30,000.00
Funeral expenses	15,000.00
Transport charges	10,000.00
Total	12,47,000.00

25. In the result, the Civil Miscellaneous Appeal is partly allowed. The total compensation of Rs.9,23,000/- awarded by the Tribunal is enhanced to Rs.12,47,000/-. The second respondent is directed to deposit the enhanced compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within period of eight weeks from the date of receipt of a copy of this order. The second respondent is directed to deposit the entire compensation as per the mode stated by the Tribunal. The appellants 1 and 2 are entitled for equal

share with accrued interest. The share in respect of minor 2nd appellant is directed to be deposited in a nationalised bank till the minor attains majority and the 1st appellant is entitled to receive the accrued interest once in three months directly from the bank. No costs.

vs

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
I Additional District Judge,
Vellore.

+1cc to Mr.P.Satheesh Kumar , Advocate SR.No. 57968

Civil Miscellaneous Appeal No.952 of 2018

ASK(12/12/2018)