

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM:

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

CMA.Nos.2103 & 2104 of 2018
and
CMP Nos.16360 & 16361 of 2018

in CMA.No.2103 of 2018
in
CMA.No. 2104 of 2018

United India Insurance Co. Ltd.,
Sillingi Building, New No.134,
Old No. 40-45, Greams Road,
Chennai 600 006. ... 2nd Respondent/Appellant In Both The
Appeals

-vs-

1. R.Vijay Maheswara

2. Minor Swarna Darsini

3. Minor Amirtha Darsini
Minors rep by their father
and Natural Guardian R.Vijay Maheswara
... Claimants/ Respondents 1 to 3 in CMA.2103/18

4. C.Sreedevi
... 1st Respondent/4th Respondents in CMA No.2103 of 2018

R.Vijay Maheswara ... Claimant/1st Respondent

C.Sreedevi
...1st Respondents/2nd Respondent in CMA No.2104 of 2018

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 05/01/2018 made in MCOP.Nos.3759 and 3835 of 2011, Respectively on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr. S.Arunkumar
(in both the petitions)
For Respondents : Mrs. Ramya V. Rao
for M/s.A.N.Viswanatha Rao
for R1 to 3 in CMA 2103/18
for R1 in CMA 2104/18

Not Ready in Notice
for R4 in CMA.2103/18
R2 in CMA. 2104/2018

C O M M O N J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The Insurance Company, which suffered two awards of payment of compensation for the death of one Anitha and the injuries caused to one Vijay Maheswara, in MCOP Nos.3759 of 2011 and 3835 of 2011, on the file of the Motor Accident Claims Tribunal (Vth Judge, Court of Small Causes), Chennai, is the appellant.

2. The claimants in MCOP No.3759 of 2011, who are the husband and children of the deceased Anitha, sought for a compensation of Rs.1,00,00,000/- and the injured claimant in MCOP No.3835 of 2011, sought for a compensation of Rs.6,00,000/- for the injuries caused in the same accident that occurred on 13.07.2011.

3. The case of the claimants before the Tribunal was that when the claimant in MCOP No.3835 of 2011 and the deceased, who is his wife, were travelling in the motorcycle, bearing Registration No.TN 03 B 6392, the lorry bearing Registration No. TN 21 U 9225, driven by its driver in a rash and negligent manner came from behind and hit against the motorcycle. The deceased fell off of the Motor Cycle and the lorry ran over, resulting in a death. The rider of the Motorcycle suffered grievous injuries resulting in permanent disability.

4. The claim petition was resisted by the Insurance Company by contending that it was the negligence on the part of the Motorcycle rider, who while overtaking the lorry, hit a manhole resulting in the accident. The Insurance Company in fact admitted the involvement of the lorry in the accident and claimed that it was the negligence of the Motorcycle rider which caused the accident. The Insurance Company also contended that the quantum of compensation claimed is highly excessive. It also disputed the age and income particulars of the deceased as well

as the injured claimant.

5. The Tribunal, which heard the original petition, on a consideration of the evidence on record, concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry. In coming to the said conclusion, the Tribunal relied upon the evidence of P.W.1, the injured claimant, and evidence of one Kanimuthu, who was examined as P.W.2, an eye witness. The Tribunal also took note of the fact that the FIR has been lodged by the injured claimant and the fact that the charge sheet has been filed against the driver of the lorry as well as the rider of the two-wheeler. The driver of the lorry was examined as R.W.1. The Tribunal rejected the evidence of R.W.1 and concluded that the accident occurred due to the negligence of the driver of the lorry. The Tribunal also found that the appellant Insurance Company, being the insurer of the lorry, is liable to pay the compensation.

6. On the quantum, the Tribunal held that the deceased was employed as Test Leader in HCL Technologies Limited, Ambattur Ind. Estate, Chennai 94, and drawing a monthly salary of Rs.44,927/-. The Salary Certificate as well as the salary revision orders were filed as Exs.P23 to P30. Ex.P29 and P.30, disclosed that the salary of the deceased was about Rs.35,358/-. The Tribunal fixed the monthly income at Rs.35,358/-. After deducting Income-Tax and adding 40% towards future prospects, the Tribunal fixed the annual income of the deceased at Rs.5,69,612.40. Considering the fact that there are two dependants, the Tribunal deducted 1/3 towards personal expenses of the deceased and arrived at the annual loss of dependency at Rs.3,79,741.60. Considering the fact that the age of the deceased was 31 at the time of the accident, the Tribunal applied the multiplier of 16, as per the judgment of the Hon'ble Supreme Court in Sarla Verma & Ors. V. Delhi Transport Corporation & Anr., reported in 2009 (4) MLJ (SC) 997, and fixed the total loss of dependency at Rs.60,75,865.60. The Tribunal awarded a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In all, the Tribunal worked out the compensation at Rs.61,45,865.60 and rounded off the same to Rs.61,45,900/-.

7. Insofar as the injury case concerned, the Tribunal found that the claimant had suffered a 30% disability and awarded a sum of Rs.2,17,757/- under the following heads.

S.No.	Heads	Amount
1.	Compensation for Disability	Rs. 90,000/-
2.	Pain and sufferings	Rs. 30,000/-
3.	Loss of Income	Rs. 35,528/-
4.	Transport to hospital	Rs. 2,000/-
5.	Extra nourishment	Rs. 5,000/-
6.	Damage to Articles	Rs. 3,250/-
7.	Medical expenses	Rs. 21,979/-
8.	Loss of amenities & Enjoyment of life	Rs. 25,000/-
9.	Attender charges	Rs. 5,000/-
	TOTAL	Rs. 2,17,757/-

The Tribunal rounded off the compensation as Rs.2,17,800/-.

8. We have heard Mr.S.Arunkumar, learned counsel appearing for the Insurance Company and Mrs.Ramya V. Rao, learned counsel appearing for claimants/respondents 1 to 3 in CMA No.2103 of 2018 and the claimant /1st respondent in CMA 2104 of 2018.

9. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal erred in fastening the entire negligence on the driver of the lorry. Taking us through the Accident Registers as well as the Discharge Summaries, Mr.S.Arunkumar would contend that the lorry was not at all involved in the accident. He would also assail the quantum of compensation awarded by the Tribunal as being on the higher side.

10. Contending contra Mrs.Ramya V. Rao, learned counsel appearing for the claimants would contend that from the postmortem Report, it could be seen that the lorry ran over the deceased and the tyre marks found all over the body and this would conclusively establish that the accident was due to the rash and negligent driving of the lorry.

11. We have considered the rival submissions.

12. As rightly contended by the learned counsel for the claimants/ respondents 1 to 3, the fact that the lorry ran over the deceased and she died because of the injuries sustained by such running over has been proved beyond doubt. It is also seen that the two-wheeler hit a manhole and as a result of the impact, the pillion rider who was thrown off the vehicle fell on the right side of the vehicle and the rider fell on the left side, the lorry which was coming from behind ran over the pillion rider. This fact has been specifically admitted by the Insurance Company in its counter filed in MCOP No.3835 of 2011. The driver of the lorry in his evidence has also deposed that

the distance between the two-wheeler and the lorry was at least 15 to 20 feet, if only the driver of the lorry had been cautious, he would have avoided the accident. But at the same time, we cannot rule out the negligence on the part of the rider of the two-wheeler also. We, therefore find that on the proved facts, it is the case of contributory negligence. The rider of the two-wheeler has also contributed to the accident.

13. Considering the evidence of the driver of the lorry, namely R.W.1 who has deposed that there was a distance of at least 15 to 20 feet between the lorry and the two-wheeler, when the two-wheeler skidded on the road and the pillion rider fell on the road. We find that the negligence on the part of the lorry driver should be much more than the negligence on the part of the two-wheeler rider. We therefore apportion the negligence at 70% on the driver of the lorry and 30% on the rider of the two-wheeler.

14. On the quantum, we find that the Tribunal has relied upon valid documentary evidence to fix the monthly income. It has added 40% towards future prospects, based on the judgment of the larger Bench of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331, and has applied the correct multiplier after deducting 1/3 towards personal expenses. We therefore, do not find any error on the part of the Tribunal, assessing the quantum of compensation, insofar as the death of Anitha, in MCOP No.3759 of 2011. Therefore, the award of the Tribunal on the quantum of compensation in MCOP No.3759 of 2011 is confirmed.

15. We have held that the rider of the two-wheeler has also contributed to the accident. The insurer of the two-wheeler was not made a party to the claim petition. Insofar as the pillion rider of the two-wheeler is concerned, namely the deceased Anitha, it is a case of composite negligence not a contributory negligence. The Hon'ble Supreme Court while considering the composite negligence in Khenyei vs New India Assurance Company Ltd. and Others, reported in 2015 (9) SCC 273; has held that if the joint Tort-feasor is a party to the claim proceedings, the Tribunal can apportion the compensation. In cases where the joint Tort-feasor or the insurer of the joint Tort-feasor not made a party the insurer who is made a party, should pay the compensation and liberty should be given to the insurer who is made liable to pay the compensation to take appropriate proceedings against the Joint Tort-feasor and recover the share of the compensation so determined. While doing so, the Hon'ble Supreme Court has observed as follows:

22.(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the

entire compensation as liability of joint tortfeasors is joint and several.

22.(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.(iii) In case all the joint tortfeasors 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 tortfeasors 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 tortfeasor can recover the amount from the other in the execution proceedings.

22.(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 impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.

16. In view of the above pronouncement of the Hon'ble Supreme Court, we direct the appellant Insurance Company to pay the compensation, as fixed by the Tribunal to the claimants 2 & 3 in MCOP No.3759 of 2011 (respondents 2 and 3 in CMA No.2103 of 2018). The 1st claimant in MCOP No.3759 of 2011/ 1st respondent in CMA No.2103 of 2018 being a joint Tort-feasor himself will not be entitled to any share in the compensation awarded. The compensation awarded by the Tribunal is apportioned between the claimants 2 and 3/respondents 2 & 3 in CMA 2103 of 2018, equally. Since they are minors, the Tribunal is directed to deposit the share of the minors, namely the claimants 2 & 3/respondents 2 & 3, in an interest earning cumulative fixed deposit in any one of the Nationalised Banks till they attain majority. We do not allow the 1st respondent father to withdraw interest from the fixed deposit, inasmuch as he continues to earn and he can maintain the minors out of his own earnings.

17. Insofar as the case of injury (CMA No.2104 of 2018) is

concerned, in view of our conclusion that injured claimant himself was responsible for the injuries caused to him and the injuries caused to him were only out of the fall from the two-wheeler and the lorry was not involved, we find that he will not be entitled to any compensation from the insurer of the lorry. Therefore, the award in MCOP No.3835 of 2011 deserves to be set aside and the same is accordingly set aside.

18. In fine, the CMA No.2103 of 2018 is partly allowed, fixing the negligence on the part of the lorry driver at 70% and the negligence on the part of the two-wheeler rider at 30%. Since, we have found that the two-wheeler rider is also a joint Tort-feasor and it is a case of composite negligence, we give liberty to the appellant Insurance Company to recover 30% of the compensation paid by it from the insurer of the two-wheeler, by taking appropriate proceedings, as directed by the Hon'ble Supreme Court in Khenyei's, cited supra.

19. In fine, the appeal in CMA No.2103 of 2018 is partly allowed. The appeal in CMA 2104 of 2018 is allowed, setting aside the award of the Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jv

To

1.The Motor Accidents Claims Tribunal,
V Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section, High Court,
Madras.(2 Copies)

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 74971

+4cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No. 74561, 74562

CMA.Nos.2103 & 2104 of 2018
and CMA Nos.16360 & 16361 of 2018

SJ(CO)
GN(22/01/2019)