

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.02.2018

Delivered on : 16.04.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.1933 of 2013

and

C.M.P.No.4365 of 2016

1.P.A.Arasudurai

2.K.C.Kalaiselvi

3.G.A.Divya

... Appellants/Petitioner

Vs.

1.R.Ravi

2.N.Ponnusami

3.The National Insurance Company Ltd.,

403, Metur Road, Bhavani. ... Respondents/Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 01.03.2012 in M.C.O.P.No.303 of 2007 pass by the Motor Vehicles Accident Claims Tribunal (Sub-Court) at Gobichettipalayam.

For Appellants : Mrs.S.Jeevitha Ramani for M/s.A.Sivaji

For Respondents : Mr.J.Chandran (For R3)

No appearance for R1 & R2

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JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Questioning the findings rendered by the Motor Vehicles Accident Claims Tribunal (Sub-Court) at Gobichettipalayam, in and by award dated 01.03.2012 in M.C.O.P.No.303 of 2007, in deducting the compensation amount for the 90% negligence on the part the driver of the car, in which the deceased Deepak was travelling, the present appeal has been filed by the appellants.

2.The appellants herein are the claimants before the Tribunal and they are father, mother and sister of the deceased Deepak. It is the case of the claimants that on 11.12.2014 at about 6.15 am, the said Deepak had travelled along with his friends in a Maruti car bearing Reg.No.TN 37 AT 7929, which was driven by one of his friends viz., one Dr.Santhosh, from Coimbatore to Bangalore, on NC47 Road. While the said car was nearing Revathi Spinning Mill at Pallagoundenpalayam, a lorry bearing Reg.No.TN 33 E 2728 owned by the 2nd respondent and insured with the 3rd respondent-Insurance Company, which was proceeding in front of the Maruti car, was suddenly stopped by its driver by applying break, without giving any indication to the vehicle coming behind the lorry; in that process, the Maruti car dashed on the rear side portion of the lorry, as a result of which, the said Deepak died on the spot and three other occupants of the car also died on the spot. It is further case of the claimants that at the time of accident, the said Deepak (deceased) was aged about 25 years and he got an offer of employment at Dubai at the salary of Rs.42,000/- per month and he has also obtained Passport and Visa to go to Dubai and he had to join the job within a week, but unfortunately he died in the accident on 11.12.2004. Hence, the claimants have made a claim for a sum of Rs.25 lakhs as compensation before the Tribunal as against the owner of the lorry and its insurer.

3.The case of the claimants was resisted by the Insurance Company by filing a detailed counter, contending that on 11.12.2004 at 6.15 am, the lorry bearing Reg.No.TN-33-E-2728, was driven by its driver at normal speed following the traffic rules. While the said lorry was nearing Revathi Spinning Mill at Pallagounda Palayam, the driver of the lorry saw a Tata Qualis car bearing Reg.No.KL-AD-4699 parked on the left side of the road and at that time a bus came from opposite direction, since the driver of the lorry felt that it would not be possible to maneuver with the limited space available in between the Qualis car parked on the left side of the road and on coming bus, he stopped the lorry by applying break. At that time, Maruti car which was coming behind the lorry at hectic speed without leaving sufficient space hit the lorry on the rear side of the lorry and thus, it got involved in the accident. Therefore, the driver of the lorry cannot be held responsible for the accident. Thus, the Insurance Company sought for dismissal of the claim petition.

4.Before the Tribunal, in order to prove their case, on the side of the claimants, the 1st claimant/father of the deceased examined himself as P.W.1, besides examining one Madhavan as P.W.2, who was an eye witness to the accident, and marked 17 documents as Ex.P.1 to Ex.P.17. On the side of the Insurance

Company, three witnesses were examined as R.W.1 to R.W.3 and four documents were marked as Ex.R.1 to Ex.R.4.

5.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident is the result of contributory negligence on the part of driver of the car and the lorry and thus, fixed 90% negligence on the part of the driver of the car and 10% negligence on the part of the driver of the lorry. By coming to such a conclusion, the Tribunal has made the calculation under different heads and arrived at a sum Rs.20,40,000/- as total compensation and deducted 90% amount towards contributory negligence and awarded a sum of Rs.2,05,500/- as compensation for the claimants. Aggrieved over the same, the present appeal has been filed by the appellants/claimants.

6.It is the contention of the learned counsel for the appellants/claimants that the deceased Deepak was only an occupant of the car and the accident is the result of composite negligence. Therefore, the claimants are entitled to make claim as against one of the tortfeasors. Therefore, for the negligence of the driver of the car, 90% amount cannot be deducted from the compensation amount, since the deceased Deepak had travelled in the car only as an occupant and not as a driver.

7.With regard to the loss of income, the learned counsel for the appellants/claimants would submit that deceased Deepak was a M.C.A. Degree holder and he had been selected to the post of Marketing Manager in a company in Dubai, in the pay scale of Rs.3,500/- dennar (equal to Rs.40,000/- in Indian money). The appointment order was marked as Ex.P.7 through P.W.1, 1st claimant/father of the deceased. But, the Tribunal without considering the said evidence, by taking a lesser sum of Rs.20,000/- as monthly income, made the calculation for the loss of income, which resulted in awarding an inadequate compensation. Thus, the learned counsel for the appellants/claimants prayed that by fixing a higher sum as monthly income of the deceased, the compensation amount awarded by the Tribunal could be enhanced.

8.Countering the submission made by the learned counsel for the appellants/claimants, it is contended by the learned counsel for the 3rd respondent/Insurance Company that in the claim petition, the claimants have not impleaded the owner of the car in which the deceased was travelling and that to determine the extent of the composite negligence, the owner of the car and its insurer are also necessary parties. Since the owner of the car and its insurer were not impleaded as parties to the claim petition, the Tribunal ought to have dismissed the

claim petition in toto. However, the Tribunal has fixed 10% negligence on the part of the driver of the lorry and awarded a sum of Rs.2,05,500/- for the 10% negligence of the part of the driver of the lorry. Thus, according to the learned counsel for the 3rd respondent/Insurance Company, the findings rendered by the Tribunal in fixing 90% negligence on the part of the driver of the car need not be interfered with by this Court.

9. With regard to the quantum of compensation, it is submitted by the learned counsel for the Insurance Company that though it is claimed by the claimants that the deceased Deepak was selected as Marketing Manager in a company in Dubai, only a copy of the appointment order was marked as Ex.P.7, through P.W.1 and that such a letter cannot be given any credence as the author of the document was not examined. Thus, the learned counsel for the Insurance Company sought for dismissal of the appeal.

10. Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

11. It is the contention of the learned counsel for the appellants/claimants that at the time of the accident, the said Deepak (deceased) was travelling in the Maruti car bearing Reg.TN37-AT-7929 owned by one Dr. Abilesh and the said car was driven by one of his friends viz., one Dr. Santhosh. The deceased Deepak was only an occupant of the car and he was not driving the car at the time of accident. As the accident is the result of composite negligence, the claimants are entitled to sue both or any one of the joint tortfeasors, for compensation. In the present case, the claimants have made their claim as against the owner and insurer of the lorry. In this regard, it would be appropriate to place a reference in the recent decision of the Hon'ble Supreme Court reported in (2015) 9 SCC 273 [Khenyei Vs. New India Assurance Co. Ltd], wherein it has been held as follows—

22. What emerges from the aforesaid discussion is as follows:-

22.1. 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.

22.2. 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.

22.3. 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.

22.4. 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."

In the light of the above said dictum laid down by the Hon'ble Supreme Court, We are of the opinion that since the deceased had travelled only as an occupant in the car insured with the 3rd respondent/Insurance Company, the deduction made by the Tribunal by fixing 90% negligence on the part of the driver of the car is not legally sustainable. Hence, the claimants, who are the parents and sister of the deceased Deepak, are entitled to the entire compensation amount. Hence, the deduction of 90% amount made by the Tribunal from the compensation amount is hereby set aside.

12. So far as the quantum of compensation is concerned, from the materials available on record it is seen that except the copy of the appointment letter-Ex.P.7 said to have been issued by a foreign company, no other sufficient evidence was produced on the side of the claimants to prove the income earned by the deceased Deepak. However, considering the qualification of the deceased Deepak, who was an M.C.A. Degree holder, We are of the opinion that by fixing a sum of Rs.10,000/- as monthly income of the deceased, the calculation could be made to arrive at a just and proper compensation under the head of loss of

income. If a sum of Rs.10,000/- is taken as monthly income and 40% amount is added towards future prospects, then the total monthly income works out to Rs.14,000/-. Since the deceased was a bachelor at the time of accident, 50% amount is liable to be deducted towards personal expenses and if so deduced, the monthly loss of contribution to the family would come to Rs.7,000/-. Then, the annual loss of contribution to the family works out to Rs.84,000/-. The deceased Deepak was aged 25 years at the time of accident. Therefore, the correct multiplier that has to be applied in this case is 17. If the multiplier 17 is applied, the total loss of income works out to Rs.14,28,000/- (84,000 x 17), which would be a reasonable compensation.

13. That apart, it is the Tribunal has awarded only a meagre sum of Rs.10,000/- for love and affection, hence, the same is hereby enhanced to Rs.30,000/-. Similarly, the Tribunal has awarded only a sum of Rs.5,000/- for funeral expenses, which is on the lower side. Hence, considering the cost of living, another of Rs.10,000/- (totally Rs.15,000/-) is hereby awarded for funeral expenses. Further, it is seen that the Tribunal has not awarded any amount for loss of estate and for transportation. Hence, a sum of Rs.12,000/- is hereby awarded under the head of loss of estate and a sum of Rs.15,000/- is awarded for transportation. Thus, the total compensation amount awarded by the Tribunal is modified and enhanced to Rs.15 lakhs. The break up details of the modified/enhanced compensation amount are as follows—

Loss of Income	=Rs.14,28,000/-
Loss of love and affection	=Rs. 30,000/-
Loss of estate	=Rs. 12,000/-
Funeral expenses	=Rs. 15,000/-
Transportation	=Rs. 15,000/-

Total =Rs.15,00,000/-

14. In the result, the appeal is partly allowed and the compensation amount awarded by the Tribunal is modified and enhanced to Rs.15 lakhs. As stated supra, since no amount needs to be deducted from the compensation amount for the 90% negligence fixed on the part of the driver of the car, the Insurance Company is directed to deposit the entire compensation amount of Rs.15,00,000/- with interest at the rate of 7.5% per

annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants 1 & 2 are entitled to withdraw Rs.7 lakhs each with proportionate interest and the 3rd claimant is entitled to withdraw the balance amount with proportionate interest, by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No Costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssv
To,

The Sub Judge,
The Motor Accident Claims Tribunal
(Sub-Judge) at Gobichettipalayam.

Copy to

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

+1cc to M/s.A.Sivaji, Advocate Sr.28191
+1cc to Mr.J.Chandran, Advocate Sr.28503

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and
C.M.P.No.4365 of 2016

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