



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2213 and 2351 of 2006

C.M.A.No.2213 of 2006:-

1.S.Punithavathi

2.S.Vandhana

3.S.Priyavaathini

..Appellants/Petitioners

Vs.

1.V.Vinoth

2.V.Viswanathan

3.The New India Assurance Company Ltd.,

P.B.No.74, Near Town Hall

Kerala 688 001

..Respondents/Respondents

C.M.A.No.2351 of 2006:-

L.Beem Bagadur (died)

cause title accepted vide order of court

dated 2.8.2006 made in M.P.No.1 of 2006

in CMA.Sr.29888 of 2006.

1.B.Madhammal

2.B.Jai Bagadur

3.B.Sheeladevli

..Appellants/Petitioners

Vs

1.V.Vinoth

2.V.Viswanathan

3.The New India Assurance Company Ltd.,

P.B.No.74, Near Town Hall

Kerala 688 001

..Respondents

Prayer in both CMAs. Both Appeals filed against the judgment and decree dated 05.01.2006 passed in M.C.O.P.Nos.417 of 2004 and 265 of 2004 respectively on the file of Motor Accidents Claims Tribunal, Additional District Court cum Fast Track Court No.1, Coimbatore.

For Appellants/claimants : : Mr.C.Veeraraghavan

for 3rd Respondent /Insurance Company

: : Mr.M.B.Gopalan for R3

R1 and R2-Not ready in notice.



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

The above CMAs are filed by the Claimants/Petitioners, challenging the judgment and decree dated 05.01.2006 passed in M.C.O.P.Nos.417 of 2004 and 265 of 2004 respectively on the file of Motor Accidents Claims Tribunal, Additional District Court cum Fast Track Court No.1, Coimbatore.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioners in CMA.No.2213 of 2006 [MCOP.No.417 of 2004] is that on 02.11.2003 at about 6.30 p.m., while the deceased Senthil Prabhu was riding Motor cycle bearing Reg.No.TN-39-7384 in Mettupalayam to Ooty Main Road, while going near Jambu Thoppu Gate around 6.30 p.m., the mini bus bearing Reg.No.KL-02-E-3051 came in the opposite direction at high speed, dashed against the motor cycle causing fatal injuries to the rider and pillion rider on the spot itself. The accident occurred only due to negligence of the driver of the said mini bus belonging to the 2nd respondent and insured with the 3rd respondent. According to the Petitioners, the deceased was aged 20 years and was employed in a private concern earning Rs.4500/- per month. The Petitioners who are the mother and sister of the deceased were depending on the earnings of the deceased. Thus the Petitioners suffered loss of income due to the demise of the bread winner of the family. Thus the Petitioners sought for a sum of Rs.5,00,000/- as compensation from the respondents.

3. The Petitioners in CMA.No.2351 of 2006 [MCOP.No.265 of 2004] states that the deceased Mansingh was traveling as a pillion rider in the motor cycle bearing Reg.No.TN-39-C-7384 driven by the deceased in another claim petition and suffered fatal injuries in the accident that occurred on 02.11.2003 at about 6.30 p.m., and died on the spot. The deceased was aged 19 years and by working as a Nursery Worker, was earning Rs.4500/- per month. The Petitioners who are the parents and brother and sister of the deceased were depending on the earnings of the deceased. Due to sudden demise of the bread winner, they are suffering due to loss of income. Thus, the Petitioners sought for a sum of Rs.6,00,000/- as compensation.

4. On the other hand, opposing the claim of the Petitioners/claimants, by filing counter, the 3rd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioners in both the Petitions. The owner and insurer of the two wheeler involved in the accident were necessary parties but they were not impleaded. The claim of the Petitioners, about the age, avocation and income of both the deceased are denied. There was no negligence



on the part of the 1st respondent driver of the mini bus. The accident occurred only due to negligence of the two wheeler rider, who driven the vehicle at high speed and in a rash and negligent manner. The rider of the two wheeler did not possess valid driving licence. The quantum of the compensation claimed by the Petitioners is highly excessive. Thus, the 2nd respondent Insurance company sought for dismissal of both the Petitions.

5. As both the claims arise out of same accident before the Tribunal, both the claim petitions in MCOP.Nos.417 and 265 of 2004 were taken up together for joint trial. The Petitioners examined P.W.1 to P.W.6 and produced documents Ex.P.1 to Ex.P.19 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. Based on the available materials on record, the Tribunal held that both the vehicle drivers are equally responsible for the accident and passed an award for a sum of Rs.2,41,000/- in MCOP.No.265 of 2004 and Rs.2,67,000/- in MCOP.No.417 of 2004.

7. Being not satisfied with the quantum of the award passed by the Tribunal, the Petitioners/claimants have come forward with the present appeal.

8. Heard both sides and perused the materials available on record.

9. The learned counsel for the appellants/claimants contended that the Tribunal failed to consider the oral evidence of P.W.3 and Ex.P.1 to Ex.P.3 properly and wrongly fixed equal negligence on both the drivers. The Police, after investigation, laid the charge sheet against the 1st respondent only as evidenced by Ex.P.2 and it is clear from Ex.P.3-Rough Sketch that the 2nd respondent Mini bus came to the wrong side of the road and caused the accident. Even assuming that the driver of the two wheeler was not having valid driving licence, liability cannot be fastened on him, in the absence of contra evidence in that regard. The Tribunal failed to consider the evidence let in by the Petitioners/claimants regarding monthly earnings of the deceased. The Tribunal ought to have fixed the notional income at higher level. The multiplier adopted is also not correct. Thus the Petitioners/claimants sought for enhancement of the award amount by entertaining both the appeals.



10. Per contra, the learned counsel for the 3rd respondent/Insurance company contends that the Tribunal has correctly appreciated the evidence on record and as the Petitioners failed to produce the Driving Licence of the two wheeler rider, the Tribunal has correctly fixed the negligence of both the drivers since the vehicle involved in the accident were driven in the opposite direction of the Highway. The Tribunal has correctly assessed the monthly earnings of the deceased and awarded just and fair compensation which requires no interference. Thus the 3rd respondent/Insurance company sought for dismissal of both the appeals.

11. The Petitioners claim that on 02.11.2003 while the deceased Senthil Prabhu was riding his two wheeler, the deceased Mansingh accompanied him as Pillion rider, near Jambu Thoppu Gate, the 1st respondent vehicle bearing Reg.No.KL-02E-3051 came in the opposite direction at high speed, in a rash and negligent manner and dashed against the two wheeler resulting in both the rider and pillion rider succumbed to fatal injuries on the spot. The Petitioners examined P.W.3 eyewitness to the occurrence and he stated about the manner in which the accident occurred. The Petitioners also stated the Police registered Ex.P.1 FIR against the 1st respondent and after completion of investigation, Ex.P.2-Charge sheet was filed against the 1st respondent only. Hence, it is clear from the P.W.3 eyewitness account, contents of Ex.P.1-FIR and Ex.P.2 charge sheet filed against the 1st respondent that the accident occurred due to negligence of the 1st respondent only. However, the Tribunal based on the admission of P.W.2, mother of the deceased Senthil Prabhu in her evidence and also on the basis of the fact that the rider of the two wheeler did not possess valid driving licence at the time of the accident and on the basis of Ex.P.4-MVI report that there was no valid driving licence for the deceased Senthil Prabhu, concluded that both the drivers viz., the deceased Senthil Prabhu and the 1st respondent are equally negligent at each 50% for causing the accident.

12. In the case on hand, the 3rd respondent has not let in any oral or documentary evidence. Pointing it out, the learned counsel for the Petitioners/claimants contends that failure to produce driving licence is not sufficient to fix contributory negligence and that too when the third respondent/contesting respondent has not let in any evidence to prove contributory negligence on the part of the deceased two wheeler rider. In support of the same, the learned counsel for the Petitioners/claimants relied upon the Ruling of the Apex Court reported in 2018 (1) TNMAC 34 SC, [Dinesh Kumar, J. @ Dinesh, J.



"7. Both the tribunal, and in appeal in the High Court, have found fault with the appellant for not having produced his driving licence. The tribunal noted that the appellant had admitted in the course of his cross-examination that the road where the accident took place was a two way road and that on each side, three vehicles could pass at a time. A suggestion was put to the appellant that while trying to overtake another vehicle, he had approached the offending lorry from the right side as a result of which the accident took place. The appellant denied the suggestion. The award of the tribunal indicates that absolutely no evidence was produced by the insurer to support the plea that there was contributory negligence on the part of the appellant.

9.If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he



would be held to be guilty of contributory negligence...

9. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place." 9 In view of the above position, we are of the view that the deduction of forty per cent which was made on the ground of contributory negligence is without any basis. Accordingly, we direct that the appellant shall be entitled to an additional amount of Rs 4.60 lakhs which was wrongly disallowed."

It is clear from the above said Ruling that in the absence of any evidence let in by the respondents to prove contributory negligence on the part of the deceased, mere non production of driving licence will not be a ground to fix contributory negligence on the deceased. Further in the case on hand, as stated earlier, the Police have registered FIR and also charge sheet against the 1st respondent only.

13. On the other hand, the respondents has not produced any investigation report or any oral evidence to show that the accident occurred only due to negligence of the deceased two wheeler rider. It is also pointed out by the learned counsel for the appellants/claimants that as per Ex.P.3-Rough sketch of the occurrence spot, the 1st respondent vehicle alone came to the wrong side of the road and dashed against the two wheeler driven by the deceased . In such circumstances, it is absolutely clear that the accident occurred only due to negligence of the 1st respondent only and therefore, the tribunal is not justified in fixing 50% negligence on the deceased/two wheeler rider, merely because no driving licence was produced. Thus, the conclusion of the Tribunal is not sustainable and on the available evidence, it is concluded that the negligence of the 1st respondent alone caused the accident. Hence, the owner and insurer of the 1st respondent vehicle bearing Reg.No.KL-02-E-3051 viz., the 2nd and 3rd respondents are liable to pay the compensation.

14. Issue of Quantum in CMA.No.2213 of 2006:-

[MCOP.No.417 of 2004] Deceased Name S.Senthil Prabhu:-

The Petitioners/claimants claim that the deceased Senthil Prabhu in MCOP.No.417 of 2004 who was aged 20 years and by working in a private company was earning Rs.4500/- per month. It is clear from Ex.P.14-Ex.P.15 Legal Heir certificate and School Transfer certificate that the date of birth of the deceased Senthil Prabhu was 13.11.1982 and on that basis, his



age was fixed as 21 years. The claimants in order to prove the avocation and income of the deceased produced Ex.P.18 Salary Certificate. It is clear from the said document and oral evidence of P.W.5 that the deceased was employed under him. However, P.W.5 did not produce attendance register or any other document to prove the employment. In such circumstances, considering the fact that the deceased was employed as Production Incharge, it is appropriate to fix monthly income of the deceased Senthil Prabhu at Rs.4000/-. Since the deceased was aged 21 years, 40% of the income has to be added towards future prospects and taking into consideration that he is a Bachelor, 50% of the income has to be deducted towards personal expenses. The correct multiplier to be applied for the deceased is '18'. The loss of dependency to the family of the deceased Senthil Prabhu is calculated as follows:-

Monthly salary - 4000

40% added towards future prospects (1600)

4000 + 1600 = Rs.5600/-

Deduction 50% towards personal expenses (2800)

2800 x 12 x 18 = Rs.6,04,800/- .

Further, by following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], under conventional heads Rs.15,000/- towards "Funeral expenses" and Rs.15,000/- towards "loss of estate", is awarded by this court. In view of the foregoing discussion, the modified award amount in CMA.NO.2213 of 2006 [MCOP.No.417 of 2004] is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of dependency	2,52,000/-	6,04,800/-
2.	Loss of love and affection	10,000/-	---
3.	Funeral expenses	5,000	15,000/-
4.	Loss of estate	---	15,000/-
	Total	2,67,000/-	6,34,800/-

Accordingly, CMA.No.2213 of 2006 is Partly Allowed. The award amount is enhanced to Rs.6,34,800/- from 2,67,000/-. The apportionment of the award amount is as under:-

1st claimant-50%; 2nd and 3rd claimants - 25% each.

15. Issue of quantum in CMA.NO.2351 of 2006:-

[MCOP.No.265 of 2004] Deceased Name.B.Man Singh.

The Petitioners claim that the deceased was aged 19 years, earning Rs.4500/- by working as Nursery Worker in a private nursery. The Petitioners produced Ex.P.10 and Ex.P.11 SSLC



Certificate and Transfer Certificate of the deceased Mansingh wherein his Date of Birth is mentioned as 03.06.1984. As the accident occurred in 2003, the correct age of the deceased will be fixed at 19. Even though the Petitioners claim that the deceased was earning Rs.4500/- per month, there is no acceptable proof for the same. As such, it will be appropriate to fix the monthly income of the deceased at the rate of Rs.100/- per day, as such, Rs.3000/- per month. As the deceased was aged 19 years, 40% of the income should be added towards Future Prospects. As he was a Bachelor, 50% of the income is deducted towards his personal expenses. The Multiplier to be applied is '18'. The calculation for the loss of dependency is as follows:-

Monthly salary - 3000

40% added towards future prospects (1200)

3000 + 1200 = Rs.4200/-

Deduction 50% towards personal expenses (2100)

2100 x 12 x 18 = Rs.4,53,600/-.

Further, by following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], under conventional heads Rs.15,000/- towards "Funeral expenses" and Rs.15,000/- towards "loss of estate", is awarded by this court. In view of the foregoing discussion, the modified award amount in CMA.No.2351 of 2006 [MCOP.No.265 of 2004] is as follows:-

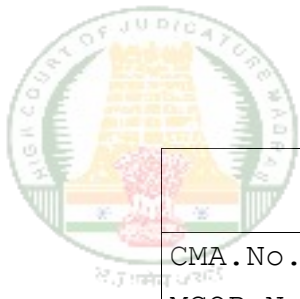
Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of dependency	2,16,000/-	4,53,600/-
2.	Loss of love and affection	20,000/-	20,000/-
3.	Funeral expenses	5,000	15,000/-
4.	Loss of estate	---	15,000/-
	Total	2,41,000/-	5,03,600/-

In the result, CMA.No.2351 of 2006 is Partly allowed and the award amount is enhanced to Rs.5,03,600/- from Rs.2,41,000/-. The apportionment of the award amount to the claimants is as under:-

1st claimant /mother -40%

2 and 3 claimants - 30% each.

16. The Civil Miscellaneous Appeals are Partly Allowed. The award amount enhanced by this court in both appeals is as under:-



Sl.No.	Amount awarded by the Tribunal	Amount Awarded by this Court
CMA.No.2213/2006 MCOP.No.417/2004	2,67,000/-.	Rs.6,34,800/-
CMA.No.2351/2006 MCOP.No.265/2004	Rs.2,41,000/-.	Rs.5,03,600/-

(ii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iii) The 3rd respondent/Insurance company is directed to deposit the entire enhanced award amount in each CMA along with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount if any already deposited.

iv) The Claimants in each CMA are entitled to withdraw the award amount along with accrued interest in the apportionment as stated above. The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accidents Claims Tribunal,
Additional District Court cum Fast Track Court No.1,
Coimbatore.

2. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.M.B.Gopalan, Advocate SR.No.40093

+2cc to Mr.C.Veera Raghavan, Advocate SR.No.39461, 39460

C.M.A.No.2213 and 2351 of 2006

PVS (CO)
GMY (21/06/2019)