IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 12.01.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.Nos.712 & 3336 of 2012
and
M.P.No.1 of 2012 in C.M.A.No.3336 of 2012

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai-600 014 ... Appellant in C.M.A.No.712/2012/
2nd Respondent
... 5th respondent in C.M.A.No.3336/2012

Vs.

1. J.Veena
2. S.V.Yaashvin (minor)
(rep. by mother & Next Friend 1st respondent)
.. Respondents 1 to 3/Petitioners 1 to 3

3. Mrs.Kamala
4. K.N.Jayabalan .... Respondents 4/1st Respondent

5. The Managing Director,
Andhra Pradesh State Road
Transport Corporation,
Hyderabad. ..... R5 in C.M.A.No.712/2012
...... Appellant in C.M.A.No.3336/2012/
3rd Respondent

Prayer:-

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 10.11.2011 in M.C.O.P.No.1688 of 2006 passed by the Motor Accident Claims Tribunal (Principal District Judge) at Krishnagiri.

Appearance_
Ms.C.Harini for Mr.N.Vijayaraghavan, for appellant in C.M.A.No.712 of 2012 & for 5th respondent in C.M.A.No.3336 of 2012

Mr.K.Prasanna for Mr.Mukund R.Pandiyan, for R1 to R3 in both the appeals

Ms.G.V.Shoba for appellant in C.M.A.No.3336 of 2012 and for R5 in C.M.A.No.712 of 2012

COMMON JUDGMENT

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

Civil Miscellaneous Appeal No.712 of 2012 has been filed by the Insurance Company challenging the award dated 10.11.2011 made in M.C.O.P.No.1688 of 2006 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Krishnagiri.

2.As against the same award, the Andhra Pradesh State Road Transport Corporation at Hyderabad has also filed the appeal in C.M.A.No.3336 of 2012 questioning the liability of 20% fixed on the part of the driver of the Transport Corporation bus in causing the accident.

3.Since both the above appeal arose out of the same award, they are disposed of by way of this common judgment. For the purpose of convenience, hereinafter the parties will be referred to as per the rankings in C.M.A.No.712 of 2012.

4.The brief facts which are necessary to dispose of these appeals are as follows_ The respondents 1 to 3 herein are the claimants before the Tribunal. They are the wife, minor son and mother of the deceased Dr.A.Saravana Babu. It is stated that on 15.08.2005 at 9.15 hours, while the said Dr.A.Saravana Babu was travelling in the bus bearing Reg.No.AP 11 Z 3557 belonging to Andhra Pradesh State Road Transport Corporation, from Krishnagiri to Kuppam, an Ashok Leyland Lorry bearing Reg.No.KA-01-AE-9796 belonging to one K.N.Jayabalan (4th respondent herein) and insured with the appellant in C.M.A.No.712/2012 viz., M/s.Royal Sundaram Alliance Insurance Company Ltd., came from opposite direction in a rash and negligent manner without sounding horn and without minding the rules of the road and dashed at the right side center portion of the bus. In the said accident, the said Saravana Babu, who was sitting near the window side in the bus sustained grievous injuries and died on the spot. Hence, the claimants have filed the claim petition before the Tribunal seeking a sum of Rs.75 lakhs as compensation.

5.In order to prove their claim before the Tribunal, on the side of the claimants, the 1st claimant/wife examined herself as P.W.1 besides examining three other witnesses as P.W.2 to P.W.4 and marked twenty four documents as Ex.P.1 to Ex.P.24. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1, but no documentary evidence was produced on their side. On the side of the Insurance Company, no evidence was produced before the Tribunal.

6.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident is the result of the rash and negligent driving of the drivers of both the vehicles involved in the accident and fixed 80% negligence on the driver of the lorry bearing Reg.No.KA-01-AE-9796 insured with the appellant-Insurance Company and fixed 20% negligence on the part of the driver of the bus bearing Reg.No.AP 11 Z 3557 belonging to the 5th respondent-Transport Corporation. Thereafter, the Tribunal by calculating the compensation under different heads has passed an award for a total compensation amount of Rs.58,97,000/- and directed the Insurance Company as well as the Transport Corporation to pay the compensation at the rate of 80% and 20% respectively.

7.Aggrieved over the same, the present appeals have been filed before this Court.

8.When the matter is taken up today, the learned counsel appearing for the Insurance Company submitted that when the Tribunal has come to the conclusion that the accident is the result of the contributory negligence, it ought to have fixed at least 50% negligence on the part of the driver of the Transport Corporation bus. Whereas the Tribunal has fixed only 20% negligence on the part of the driver of the Transport Corporation bus. Thus, it is submitted by the learned counsel appearing for the Insurance Company that by fixing 50% negligence on the part of the driver of the Transport Corporation Bus, the award passed by the Tribunal has to be modified.

9.That apart, the learned counsel appearing for the Insurance Company submitted that it is the case of the claimants that the deceased Saravana Babu was an Anaesthetist by avocation and he was earning a sum of Rs.18,000/- per month by working in P.E.S.Hospital at Kuppam and he was also doing private practice and earning substantial income. But, in order to prove that he was doing private practice by attending private institutions, no evidence was produced on the side of the claimants. But, the Tribunal without considering these aspects, has fixed a sum of

Rs.18,000/- as salary from P.E.S.Hospital and a sum of Rs.10,000/- from attending private clinics and another sum of Rs.5,000/- from private practice and thus, the Tribunal has fixed a sum of Rs.33,000/- as monthly income of the deceased and calculated the compensation on that basis, which has resulted in awarding an exorbitant sum of Rs.58,56,000/- under the head of loss of income. Therefore, according to the learned counsel for the Insurance Company, by fixing a sum of Rs.18,000/- as monthly income of the deceased, the compensation amount awarded by the Tribunal has to be recalculated.

10.The learned counsel for the Transport Corporation submitted that at the time of accident, the lorry bearing Reg.No.KA-01-AE-9796 insured with the appellant-Insurance Company came at an hectic speed and dashed at the right front side of the bus and therefore, even 20% negligence cannot be fixed on the part of the driver of the bus. In fact, in all the other connected claim petitions, the Tribunal has fixed the entire liability on the part of the Insurance Company alone and the Insurance Company has also not filed any appeal as against those awards. Under such circumstances, according to the learned counsel for the Transport Corporation, even 20% negligence fixed by the Tribunal on the part of the Transport Corporation is liable to be set aside.

11.The learned counsel for the claimants made his submissions supporting the award passed by the Tribunal.

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

13.With regard to the negligence aspect, it is the submission of the learned counsel for the Insurance Company that when the Tribunal has come to the conclusion that there is contributory negligence on the part of the driver of the bus belonging to the Transport Corporation, it ought to have fixed at least 50% liability on the part of the Transport Corporation.

14.But, We find that except the instant claim petition, in all other connected claim petitions the Tribunal has come to the conclusion that the lorry bearing Reg.No.KA-01-AE-9796 insured with the appellant/Insurance Company alone is responsible for the accident. In this regard, the learned counsel for the Transport Corporation has also produced a copy of the award passed in some of the connected claim petitions. It is also admitted by the learned counsel for the Insurance Company that they satisfied with the award passed by the Tirbunal in other connected cases. Having accepted the award in the other connected claim petitions, now the Insurance Company cannot say that the Tribunal ought to have fixed 50% liability on the part of the Transport Corporation. Therefore, the 20% negligence fixed by the Tribunal on the part of the driver of the bus belonging to the Transport Corporation is hereby set aside, holding that the driver of the lorry bearing Reg.No.KA-01-AE-9796 insured with the appellant Insurance Company is responsible solely for the accident.

15.So far as the quantum of compensation is concerned, from a perusal of the materials available on record, We find that as contended by the learned counsel for the Insurance Company that the salary certificate (Ex.A.20) and Salary Details (Ex.P.22) issued by the P.E.S.Hospital would show that the deceased was receiving only a sum of Rs.18,000/- per month from P.E.S.Hospital. As per the evidence of P.W.2, an employee in P.E.S.Hospital, the deceased would have got regular increment at the rate of 20% hike in his salary. But, no document was produced on the side of the claimants to show that the deceased was earning income by doing private practice and by attending private institutions. Therefore, considering the qualification of the deceased, who was an Anaesthetist by avocation, We are of the opinion that by fixing Rs.28,000/- as monthly income, instead of Rs.33,000/- fixed by the Tribunal, the compensation amount awarded by the Tribunal has to be modified to arrive at a just and proper compensation.

16.If the sum of Rs.28,000/- is taken as monthly income of the deceased, then the annual income works out to Rs.3,36,000/-. During the year year 2005, the basic slab for exemption from payment of income tax was upto Rs.1,00,000/-. If it is so, for the balance amount of Rs.2,36,000/-, 10% amount has to be deducted towards income tax. If so deducted, the balance amount comes to Rs.3,12,400/- (3,36,000 - 23,600). 50% amount has to be added toward future prospects and if so added, the total comes to Rs.4,92,200/- (3,36,000 + 1,56,200). 1/3rd amount has to be deducted towards personal expenses and if so deducted, the balance amount comes to Rs.3,28,133/- (4,92,200 - 1,64,066), which could be taken as annual loss of income. Considering the age of the deceased, who was 32 years old at the time of accident, the correct multiplier that has to be applied in this case is 16. If multiplier 16 is applied, then the total loss of income works out to Rs.52,50,128/- (3,28,133 x 16), which could be awarded compensation under the head of loss of income.

17.That apart, We find that the Tribunal has awarded only a sum of Rs.15,000/- under the loss of consortium, which is on the lower side. Hence, the is hereby enhanced to Rs.40,000/-. As the sum of Rs.20,000/- awarded by the Tribunal towards loss of estate appears to be on the higher side, the same is hereby reduced to Rs.15,000/-. The Tribunal has not awarded any amount for loss of love and affection. Hence, a sum of Rs.20,000/- each to the claimants 2 and 3 is hereby awarded for the loss of love and affection. The Tribunal has awarded only a sum of Rs.6,000/- under the heads of transportation and funeral expenses, which appears to be on the lower side. Hence, a sum of Rs.7,000/- is hereby awarded for transportation and a sum of Rs.8,000/- is hereby awarded for funeral expenses. Thus, the total compensation amount of Rs.58,97,000/- awarded by the Tribunal is hereby modified/reduced to Rs.53,60,128/-. The break up details of the same are as follows_

Loss of income	:	Rs.52,50,128/-
Loss of consortium	:	Rs. 40,000/-
Loss of Love and affection	:	Rs. 40,000/-
Loss of estate	:	Rs. 15,000/-
Transportation	:	Rs. 7,000/-
Funeral Expenses	:	Rs. 8,000/-
Total		Rs.53,60,128/-

18.In fine, the Appeal in C.M.A.No.3336 of 2012 filed by the Transport Corporation is allowed and the Appeal in C.M.A.No.712 of 2012 is partly allowed. Total compensation amount of Rs.58,97,000/- awarded by the Tribunal is hereby modified/reduced to Rs.53,60,128/- and the appellant/Insurance Company is liable to pay the entire compensation amount. From the total compensation amount, the 1st claimant is entitled to Rs.25 lakhs, the 2nd claimant/minor son is entitled to Rs.23 lakhs and the 3rd claimant is entitled to the balance amount. The Insurance Company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date claim petition till the date of deposit, after deducting the amount if any already deposits, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st claimant/wife and 3rd claimant/mother are permitted to withdraw their share amount with proportionate accrued interest, by making necessary application before the Tribunal. So far as the share amount of the minor son/2nd claimant is concerned, the same shall be deposited in any one of the nationalised banks till he attains majority and the 1st claimant is permitted to withdraw interest accrued thereon once in every three months.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssv

To,

1. The Motor Accident Claims Tribunal
(Principal District Judge) at Krishnagiri.

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

+2ccs to G.V.Shoba, Advocate, S.R.No.2859 & 2860
+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.3264
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.3875

C.M.A.Nos.712 & 3336 of 2012
and
M.P.No.1 of 2012 in C.M.A.No.3336 of 2012

MR(CO)
CS/02/03/18