

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2517 of 2017 and
2662 of 2018

C.M.A.No.2517 of 2017

The Manager,
Bajaj Allianz General Insurance Company Limited,
Prince Towers, IV floor
No.25/26, college road
Nungambakkam,
Chennai.

.. Appellant / 2nd Respondent

vs.

1.Jeyarani
2.Krishnamoorthy ..1st&2nd Respondents / Petitioner
3.Shakilaa ..3rd Respondents / 1st Respondent
R3 Exparte before Tribunal

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.02.2017 made in M.A.C.T.O.P.No.178 of 2016 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Tiruvannamalai.

For Appellant : Mr.J.Michael Visuvasam
For R1 and R2 : Mr.F.Terry Chella Raja

C.M.A.No.2662 of 2018

1.Jeyarani
2.Krishnamoorthy .. Appellant / Petitioner

Vs.

1. Shakilaa
(Since R1 remained exparte before the Tribunal
her presence may be dispenses with)

2. The Manager,
Bajaj Allianz General Insurance Company Limited,
Prince Towers, IV floor

No.25/26, college road
Nungambakkam,
Chennai.

.. Respondents/Respondents

R1-Exparte before Tribunal

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.02.2017 made in M.A.C.T.O.P.No.178 of 2016 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Tiruvannamalai.

For Appellants : F.Terry Chella Raja
For R2 : Mr. J.Michael Visuvasam

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

C.M.A.No.2517 of 2017 is filed by the Insurance Company against the award dated 17.02.2017 made in M.A.C.T.O.P.No.178 of 2016 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Tiruvannamalai.

C.M.A.No.2662 of 2018 is filed by the claimants for enhancement of compensation granted by the award dated 17.02.2017 made in M.A.C.T.O.P.No.178 of 2016 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Tiruvannamalai.

2. Both the appeals are arising out of the same accident and award and hence, they are disposed of by this common judgment. The parties are referred to as per their ranks in the claim petition for the sake of convenience.

3.The claimants filed the claim petition in M.A.C.T.O.P.No.178 of 2016 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Tiruvannamalai, claiming a sum of Rs.20,00,000/- as compensation for the death of their son viz., Sudharsan, who died in the accident that took place on 21.11.2013.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place due to the rash and negligent driving by the driver of Mahindra Bolero Maxi Truck belonging to the first respondent and directed the second respondent/Insurance Company to pay the compensation at first instance and recover the same from the first respondent and awarded a sum of Rs.9,97,600/- as compensation to the claimants.

5. Against the said award dated 17.02.2017 made in M.A.C.T.O.P.No.178 of 2016, the second respondent/Insurance Company has filed C.M.A.No.2517 of 2017 challenging the liability as well as quantum of compensation.

6. Not being satisfied with the award amount granted by the Tribunal, the claimants have filed C.M.A.No.2662 of 2018 seeking enhancement of compensation.

7. The learned counsel appearing for the second respondent/Insurance Company contended that the accident occurred only due to the rash and negligent driving by the deceased. At the time of accident, the deceased did not possess any driving license. Three persons travelled in the two wheeler and even as per the claim petition, the deceased could not control the vehicle and caused the accident. The Tribunal without appreciating the facts properly, has fixed entire negligence on the part of the driver of the vehicle belonging to the first respondent insured with the second respondent. The deceased was unemployed and only to get enormous compensation from the second respondent/Insurance Company, the claimants have claimed that the deceased was a mason and was earning a sum of Rs.15,000/- per month. The notional income fixed by the Tribunal and the amounts awarded by the Tribunal under various heads are excessive and prayed for setting aside the award of the Tribunal. In support of his contentions, he relied on the following judgment of this Court reported in 2018 (2) TN MAC 302 (DB) (Reliance General Insurance Company Limited, Chennai vs. B.Chithra and others):

"17. Though there is no rebuttal evidence on the side of the appellant/Insurance company, there is a specific stand taken by the appellant/insurance company, which has been incorporated in the award of the Tribunal as follows:

"(9) The second respondent contested the claim but the accident is not disputed. According to the second respondent, the deceased did not possess driving license and insurance and the deceased with over load had driven the auto in a rash and negligent manner with two persons sitting on either side of the deceased and further the deceased had suddenly turned the auto from Poonamallee High Road to Noombal Road and capsized at the turning point but to substantiate the same no oral or documentary evidence has been produced on the second respondent side.

18. When such a stand was taken, the claimants should have exhibited the driving licence of the deceased. The non-marking of driving licence of the deceased would show that he was not possessed with valid and effective driving licence. It has become a routine that almost about 50% of the drivers drive the vehicles without any valid and effective driving license and cause many accidents, resulting in loss of precious lives and injuries to many persons. Therefore, in an attempt to deprecate this kind of practice of driving vehicles without any valid and effective driving licence, 10% of the amount awarded towards compensation is deducted. If 10% is deducted, the compensation amount comes to Rs.17,60,400/- (Rs.19,56,000/- (-) 10% of Rs.19,56,000/-)."

8. Per contra, the learned counsel appearing for the claimants contended that the Tribunal erred in fixing the monthly income of the deceased at Rs.6,500/- and ought to have fixed Rs.15,000/- as notional income of the deceased, as P.W.1 and P.W.2 have deposed to that effect. The Tribunal considering the evidence let in by the parties, has rightly fixed entire negligence on the part of the driver of the vehicle belonging to the first respondent and F.I.R was lodged only against the driver of the vehicle belonging to the first respondent. The Tribunal ought to have added 50% enhancement towards future prospects instead of 30%. The Tribunal ought to have awarded more compensation under different heads. In support of his contentions, he relied on the following judgments:

With regard to negligence:

(i) 2018 (1) TN MAC 34 (SC) (Dinesh Kumar, J alias Dinesh, J. Vs. National Insurance Co.Ltd & others):

"8. Insofar as the judgment of the High Court is concerned, the Division Bench has placed a considerable degree of importance on the fact that there was no visible damage to the lorry but that it was the motor cycle which had suffered damage and that there was no eye-witness. We are in agreement with the submission, which has been urged on behalf of the appellant that plea of contributory negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was contributory negligence on the part of the appellant is held to be without any basis, the second aspect which weighed both with the Tribunal and the High Court, that the appellant had not produced the driving licence, would be of no relevance. This aspect has been

considered in a judgment of this Court in Sudhir Kumar (supra), where it was held as follows :

"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.

10. The matter might have been different, if by reason of his rash and negligent driving, the accident had taken place.""

(ii) 2013 (4) CTC 252 (Jiju Kuruvila & Othes Vs. Kunjuamma Mohan & Others):

"24.The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

26. ... we, therefore, hold that the Tribunal and the High Court erred in concluding that the said accident occurred due to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises."

(iii) 2015 (2) TN MAC 490 (DB) (National Insurance Co.Ltd Vs. Vimala and others):

"15. At this juncture, this Court opines that the finding of the Claims Tribunal in the common award to the effect that the motorcycle riders were contributorily negligent for the accident was without any basis and materials on record. In view of the fact that PW4 (Eyewitness) had in a crystalline fashion deposed that the accident in question had occurred because of the negligent driving of the driver of the offending vehicle of the ninth respondent/first respondent's Tata Vica car and therefore, this Court to prevent an aberration of justice, sets aside the finding of the Tribunal on 10% contributory negligence on the part of the rider and three pillion riders of the motorcycle."

With regard to license:

(iv) 2012 ACJ 982 (Haryana Glue Works Vs. Kapoor Singh and Others);

"4. ... There could be no presumption that a minor or a person who did not have a valid driving licence could be presumed to be a tortfeasor."

With regard to income:

(v) 2015 (1) TN MAC 161 SC (Neeta vs. Divisional Manager, MSRTC, Kolhapur);

"9. Further, in the case of Vimal Kanwar & Ors. v. Kishore Dan & Ors. 2013 (1) TN MAC 641 (SC), this Court has held as under:-

"31. In New India Assurance Co. Ltd., this Court noticed that the High Court determined the compensation by granting 100% increase in the income of the deceased. Taking into consideration the fact that in the normal course, the deceased would have served for 22 years and during that period his salary would have certainly doubled, upheld the judgment of the High Court...."

Taking the principle laid down in the aforesaid case, the deceased would have served another 25 years, during that period their salary would have certainly doubled, which is the view taken by this Court in the case of New India Assurance Co. Ltd. v. Gopali & Ors. 2012 (2) TN MAC 656 SC, Keeping in view the aforesaid statement of law laid down

in the aforesaid cases and monthly income of the deceased, who were doing the skilled job of carpentry and added to that income, the income that was derived from the agricultural occupation from their agricultural land and future prospects as held by this Court in the above case, it would be just and proper for this Court to assess their monthly income at Rs.12,000/- p.m. each for the purpose of computation of loss of dependency. Further, in view of the law laid down by this Court in the case of Santosh Devi v. National Insurance Company Ltd. & Ors. (2012) 2 TN MAC 1 SC, this Court has ruled that even in the case of private employment, the future prospects can be taken into consideration to determine the loss of dependency. Having regard to the age of the deceased, the same shall be added to the annual income of the deceased to determine the just and reasonable compensation under the heading of the loss of dependency."

(vi) 2003 1 M.L.J. 489 (DB) (Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Division I) Limited, Coimbatore, formerly Cheran Transport Corporation, Coimbatore;

"11. We are concerned as to whether such action of the individuals is permissible under law. The motor cycle and any other two wheelers are meant only for two persons, the rider and a pillion rider. If more than two persons are travelling in a motor cycle or any other two wheeler, undoubtedly such action of the individual would become illegal and unauthorised. It is an awful sight when we come across three persons travelling in a motor cycle. They are sitting in such a cramped manner that the rider of the motor cycle almost sitting on the petrol tank or at the front edge of the seat. When he was sitting in such a position, naturally because of the restricted movement of his legs, he cannot have the complete control over the brake. The movements of his hands also so restricted. When that be so, this court is of the opinion that definitely the rider of the two wheeler cannot have full control over the vehicle.

12. Apart from that, when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to loose his control over the vehicle. Even though such

travelling of three persons in a motor cycle is contrary to the statute, still the enforcement wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing, such travelling of three persons in the two wheelers has become a regular sight. Even though the highway patrolling is available but it is a rare sight to see a highway patrolling vehicle. The travelling of three persons has become rampant in the mofussils and in the City; especially among the youngsters like the college students. When that be the case, the enforcing authority is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the Rules and Regulations of the statute in the minds of those who are using the vehicles."

(vii) 2016 (1) TN MAC 789 (DB) (Branch Manager, Iffco Tokyo General Insurance Co. Ltd., office at Thiripura Arcade, 3rd floor, No.75, Trivandrum road, Palayamkottai, Tirunelveli) vs. Samuthiravel and others);

"14. In Bimla Devi and others v. Himachal RTC, 2009 (1) TN MAC 700 (SC) : 2009 (13) SCC 530, the Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants 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. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

15. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required."

(viii) 2009 (1) TN MAC 407 (SC) (Sudhir Kumar Rana vs. Surinder Singh and others);

"8. 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 which was being driven 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."

(ix) 2014 SCC online Mad 12110 (The National Insurance Company Limited, I floor, represented by the Branch Manager, Branch office, Karthikeya complex, No.403-B-10, Mettur main road, Bhavani, Erode, Tamil Nadu, Pincode:636 302;

"6.It is admitted by both parties that three persons had travelled in the two-wheeler in question. The very nomenclature "two-wheeler" means that only two persons can travel in the said vehicle. Even as per the act, it is so. However, in the case on hand, in violation of the provisions of law, three persons have travelled and this Court, cannot ignore the contention of the learned counsel for the appellant that due to overloading, the rider of the two-wheeler would also have contributed to the occurrence of the accident. Ex.A1, FIR, also speaks about the travel of three persons in the two-wheeler. Though the Tribunal found that three persons travelled and also noted that the middle portion of the lorry got damaged, as per Ex.R1, it just ignored the said aspect stating that it is not sufficient to come to the conclusion of negligence on the part of the rider of the two-wheeler. Though entire negligence cannot be fastened on the two-wheeler, yet, on account of travel by three persons in the two-wheeler, contributory negligence could be attributed to the rider of the two-wheeler. Further, mere because the driver of the lorry was not examined, it would not automatically prove that the driver of the lorry alone was responsible for the accident. Therefore, this Court fixes 25% contributory negligence on the part of the rider of the two-wheeler."

9. Heard the learned counsel appearing for the claimants as well as the second respondent/Insurance Company and perused the materials available on record.

10. The contention of the learned counsel appearing for the second respondent/Insurance Company is that the Tribunal erred in not considering the fact that three persons were travelling in the motor cycle at the time of accident and erred in not fastening the negligence on the part of the deceased, who was driving the motor cycle, has considerable force. As per the claim petition and evidence of P.W.2, eye witness, admittedly three persons were traveling in the motor cycle at the time of the accident. The Tribunal did not fix any contributory negligence on the part of the deceased, who was riding the motor cycle, on the ground that no evidence was let in that the deceased could not control the motor cycle and the accident has occurred at that time. The said finding is erroneous. This issue was considered by this Court as well as the Honourable Apex Court in the judgments referred to above and the judgment of this Court reported in 2003 (1) MLJ 489 (Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Division I) Limited, Coimbatore Vs. Abdul Salam and others). In the said judgment, this Court has held that if three persons travelled in a motor cycle, contrary to statute, 50% contributory negligence on the part of the rider of the motor cycle is to be fixed. In the said judgment, exception is granted to husband and wife travelling along with children in a two wheeler. The same issue was considered by this Court in the judgment reported in (2014) SCC Online Madras 12110 (National Insurance Company Limited Vs. Pattulakshmi and Others). In the said judgment, this Court has fixed 25% contributory negligence on the part of the rider of the motor cycle. Considering the fact that the driver of the car belonging to the first respondent dashed against the motor cycle from behind, 20% contributory negligence is fixed on the part of the deceased, who was a rider of the motor cycle with two persons in the pillion. In the said judgment as well as in the judgment reported in 2003 1 M.L.J. 489 (DB) (Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Division I) Limited, Coimbatore, formerly Cheran Transport Corporation, Coimbatore, it has been held that three persons travelling in two-wheeler is unauthorised and illegal. In the judgment, the Division Bench of this Court held that when three persons travel in a two-wheeler, the rider of the two-wheeler almost sits on the petro tank and his position is so cramped that his movements are restricted and he cannot have complete control over the brake. In both the judgments, this Court fixed contributory

negligence on the part of the rider of two-wheeler. Further, in the judgment reported in (2014) SCC Online Madras 12110 (National Insurance Company Limited Vs. Pattulakshmi and Others), this Court held that when three persons travel in a two-wheeler, 20% contributory negligence has to be fixed on the rider of two-wheeler. The ratio in the two judgments are squarely applicable to the facts of the present case and 20% contributory negligence on the part of deceased is fixed as stated above.

11.As far as quantum of compensation is concerned, the claimants have not substantiated their claim that the deceased was a mason and was earning Rs.15,000/- per month. On the failure on the part of the claimants to substantiate their claim, the Tribunal following the judgment of the Honourable Apex Court reported in 2014 (1) TN MAC 459 (SC) (Syed Sadiq etc., vs. Divisional Manager, United India Insurance Company Limited), fixed notional income of the deceased at Rs.6,500/- per month, which is proper. The contention of the learned counsel for the claimants that the Tribunal ought to have added 50% enhancement towards future prospects is contrary to the judgment of the Honourable Apex Court. The Tribunal has awarded 30% enhancement towards future prospects. As per the judgment of the Honourable Apex Court reported in 2017(2)TNMAC 609 (SC) in (National Insurance Company v. Pranay Sethi), the claimants are entitled to 40% enhancement towards future prospects. The deceased was aged 20 years at the time of accident and the Tribunal applied correct multiplier 18. The deceased was a bachelor and the Tribunal deducted 50% towards his personal expenses. Thus, the amount awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.6,500} + 2600 \text{ (40\% of 6500)} \times 12 \times 18 \times 1/2 = \text{Rs.9,82,800/-}$$

12.As per the above judgment, the claimants are entitled only for a sum of Rs.70,000/- under the conventional heads. However, the Tribunal has granted a sum of Rs.85,000/- under conventional heads. Therefore, the claimants are not entitled for any further amount under conventional heads. The claimants are entitled only 80% of the amount awarded by this Court as 20% negligence is fixed on the part of the deceased. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	9,12,600	9,82,800	enhanced
2.	Loss of love and affection	60,000	60,000	confirmed
3.	Funeral expenses	25,000	25,000	confirmed
	Total	9,97,600	10,67,800	Enhanced by Rs.70,200/-

13. Though the owner of the vehicle has not appeared before the Tribunal, the Tribunal considering the contention of the learned counsel for the second respondent/Insurance Company that the driver of the vehicle belonging to the first respondent was not having valid endorsement, pay and recovery was ordered. The said contention is without merits. The Hon'ble Apex Court in the judgment reported in 2017 (2) TNMAC 145 Supreme Court (Mukund Dewangan vs. Oriental Insurance Company), held that when the driver has a valid driving license to drive light motor vehicle, he can drive all the types of vehicle in the said category and endorsement or badge is not necessary. Therefore, the said portion of the award is set aside. Both the respondents 1 and 2 are directed to pay the compensation to the claimants, jointly and severally.

14. In the result, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.9,97,600/- is hereby enhanced to Rs.10,67,800/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimants are entitled to 80% of the said award amount, as 20% negligence is fixed on the part of the deceased. Therefore, the claimants are entitled to a sum of Rs.8,54,240/-. Both the respondents 1 and 2 are directed to deposit the award amount of Rs.8,54,240/- jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment.

On such deposit, the claimants are permitted to withdraw the award amount of Rs.4,27,120/- each along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kj

To

The Motor Accidents Claims Tribunal/
Special Subordinate Judge,
Tiruvannamali District .

copy to: The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.J.Michael Visuvasam, Advocate, S.R.No.80293

+2ccs to M/s.M.Malar*, Advocate, S.R.No.80363 & 80364

C.M.A.Nos.2517 of 2017 and
2662 of 2018

MP (CO)
SSM(28/03/2019)

सत्यमेव जयते

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