

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2865 of 2018

and

C.M.P.No.21828 of 2018

The United India Insurance Co. Ltd.,
No.134, Greams Road,
Chennai - 600 006.

.. Appellant / 2nd Respondent

Vs.

1.N.Selvambal

2.N.Selvi

3.N.Selvaganesh

4.N.Shakila

.. Respondents / Petitioners

5.K.S.Karthick

.. Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.04.2018 made in M.C.O.P.No.6925 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Chennai.

For Appellant : Mr.C.Paranthaman

For R1 to R4 : Mr.T.G.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the liability and quantum of compensation granted by the award dated 07.04.2018 made in M.C.O.P.No.6925 of 2015 on the file of Motor Accidents Claims Tribunal, Chief Court, Chennai.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant/Insurance Company is second respondent in M.C.O.P.No.6925 of 2015 on the file of Motor Accidents Claims Tribunal, Chief Court, Chennai. The respondents 1 to 4/claimants filed the above said claim petition claiming a sum of Rs.64,00,000/- as compensation for the death of one Nagarajan, who died in the accident that took place on 10.05.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the rider of the motorcycle bearing Registration No.TN 22 BE 8646 belonging to the fifth respondent and directed the appellant/Insurance Company being the insurer of the said vehicle, to pay a sum of Rs.16,60,408/- as compensation to the respondents 1 to 4/claimants.

5.Against the said award dated 07.04.2018 made in M.C.O.P.No.6925 of 2015, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

6.The learned counsel appearing for the appellant contended that the deceased was not a pillion rider in the motorcycle bearing Registration No.TN 22 BE 8646. On the other hand, he was riding the motorcycle bearing Registration No.TN 16 B 7732 and due to his negligence, he fell down and sustained injuries and died. F.I.R. was originally registered against one Balaji and the same was altered and final report was filed to the effect that the deceased was the rider of the motorcycle. The Tribunal ought to have relied on the final report filed by the Police and dismissed the claim petition. The respondents 1 to 4/claimants have not filed the Accident Register and wound certificate. P.W.2 to P.W.5/eye witnesses have stated before the Police that the deceased was riding the motorcycle at the time of accident. In view of the same, F.I.R. was altered and final report was filed. The objection filed by the respondents 1 to 4/claimants is still pending and final report was not set aside. In any event, the quantum of compensation awarded by the Tribunal is excessive. The Tribunal has erred in adding 15% towards future prospects. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

7.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that P.W.2 to P.W.5 are eye-witnesses. On oath, they have stated before the Tribunal that

the deceased was a pillion rider in the vehicle bearing Registration No.TN 22 BE 8646 at the time of accident. No eye-witness was examined by the appellant to dis-prove the evidence of P.W.2 to P.W.5. The claimants have filed protest petition against the final report of the Police. The Tribunal considering all the materials on record, held that the deceased was only a pillion rider in the motorcycle bearing Registration No.TN 22 BE 8646 and the accident occurred only due to rash and negligent driving by the rider of the motorcycle bearing Registration No.TN 22 BE 8646. The amounts awarded by the Tribunal are not excessive and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well the respondents 1 to 4 and perused all the materials available on record.

9.From the materials on record, it is seen that P.W.3, eye-witness has lodged a complaint stating that the deceased was a pillion rider and one Balaji drove the motorcycle in a rash and negligent manner and caused the accident. Subsequently, during investigation by the Police, their statement under Section 161 C.R.P.C. was recorded by the police, wherein it has been stated that the deceased was riding the motorcycle. It is seen from the materials on record that the eye witnesses were examined as P.W.2 to P.W.5 before the Tribunal on oath. They have deposed that the deceased was a pillion rider in the motorcycle bearing Registration No.TN 22 BE 8646. The Tribunal has noted that in the cross examination by the appellant/Insurance Company, nothing has been elicited from P.W.2 to P.W.5 to dis-prove their statement on oath. The Tribunal has accepted the evidence of P.W.2 to P.W.5 given on oath before the Tribunal instead of statement given before the Police under Section 161 C.R.P.C. and held that the deceased was only a pillion rider in the motorcycle bearing Registration No.TN 22 BE 8646. It is well settled that the Tribunal has to decide the negligence based on the evidence let in before the Tribunal and the criminal proceedings is not binding on the Tribunal. It is pertinent to note that the respondents 1 to 4 have filed protest petition against the final report filed by the Police and the same is pending. Admittedly, at the time of hearing of the claim petition and even now, the protest petition is not disposed of by the Criminal Court. When the final report is under the challenge, the contention of the learned counsel appearing for the appellant that the Tribunal ought to have relied on the final report is without merits.

10. As far as quantum of compensation is concerned, it is seen from the averments made in the claim petition that the deceased was a farmer, oil mill owner and thereby he was earning a sum of Rs.50,000/- per month. He was aged 52 years at the time of accident. The Tribunal considering the age, avocation and other documents filed by the respondents 1 to 4, fixed notional income of the deceased at Rs.10,000/- per month and awarded compensation towards loss of income. As per the judgment reported in 2017(2)TNMAC 609 (SC) (National Ins. Co. v. Pranay Sethi), only 10% should be added for future prospects. The Tribunal has erred in granting 15% towards future prospects and the same is hereby reduced to 10%. The notional income of the deceased is arrived at Rs.8250/- per month i.e. (10,000 + 1000 (10% of 10000) - ¼ of 11000) by deducting 1/4th towards his personal expenses. Thus, the amount awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.8250} \times 12 \times 11 = \text{Rs.10,89,000/-}$$

The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same are hereby confirmed. 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	11,38,500/-	10,89,000/-	reduced
2.	Loss of consortium	40,000/-	40,000/-	confirmed
3.	Loss of Estate	15,000/-	15,000/-	confirmed
4.	Funeral Expenses	15,000/-	15,000/-	confirmed
5.	Medical Bills	4,51,908/-	4,51,908/-	confirmed
	Total	16,60,408/-	16,10,908/-	Reduced by Rs.49,500/-

11. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.16,60,408/- awarded by the Tribunal is hereby reduced to Rs.16,10,908/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first respondent, being the wife of the deceased, is entitled to a sum of Rs.10,00,000/-

and the respondents 2 to 4 are entitled to a sum of Rs.2,03,636/- each. The respondents 1 to 4/claimants are permitted to withdraw their respective shares with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.6925 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Court, Chennai, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj/krk

To

- 1) The Chief Judge,
Motor Accidents Claims Tribunal
Chennai.

Copy to: The Section Officer,
VR Section,
High Court, Madras (2 copies)

+2 ccs to Mr.C.Prakasam, Advocate, S.R.No.85739

+1 cc to Mr.T.G.Ravichandran, Advocate, S.R.No.85742

C.M.A.No.2865 of 2018
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VGI (CO)
SSM(18/02/2019)

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