

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.10.2018

Delivered on : 08.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1025 of 2015

1.Thangammal

2.Seerangan

... Appellants/Claimants

Vs

1.R.Dharmalingam

2.Iffco Tokio General Insurance Company Ltd.,
Tulsi Chambers,
III Floor, 195, T.V. Samy Road (West),
R.S. Puram, Coimbatore.

(The 1st respondent remained ex-parte before
the tribunal, hence notice may be dispensed
with for the 1st respondent in this Appeal)

...

Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 23.12.2014 passed in M.C.O.P.No.652 of 2010 on the file of the Motor Accident Claims Tribunal (Principal District Court), Namakkal and enhance the award amount.

For Appellants : Mr.MA.P.Thangavel

For Respondents: Mr.C.R.Krishnamoorthy (for R2)

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O R D E R

Aggrieved by the award dated 23.12.2014 passed by the Tribunal in M.C.O.P.No.652 of 2010, the appellants/claimants have preferred this Civil Miscellaneous Appeal.

2. Brief facts are that on 22.4.2008 at about 7.00 P.M., near Palkara Varthan Thootam, Sukkampatti Var, on the road of Valayapatti to Sukkampatti main road, while the deceased Ganesan @ Sivakumar was riding in a by-cycle on the left side of the

road, a TVS XL Super bearing registration No.TN-28 AC 5407 coming from the opposite direction owned by the first respondent insured with the second respondent driven by its rider in a rash and negligent manner hit the deceased by-cycle. Due to the impact, the deceased sustained grievous injuries on his head and also multiple injuries all over the body. After the accident, the deceased was admitted in Government Hospital, Namakkal where from he was shifted to Balaji Hospital, Namakkal for better treatment and thereafter, shifted to Government Hospital, Namakkal for further treatment and finally succumbed to injuries on 24.7.2008. Regarding the accident, a criminal case in Crime No.171 of 2008 under Section 279 and 338 IPC was registered by Namakkal Police Station. At the time of accident, the deceased was aged 27 years and was earning Rs.10,000/- by working as Mason. The claimants are mother and father of the deceased. Stating that the accident occurred due to rash and negligent driving of the rider of the TVS XL Super bearing registration No.TN-28 AC 5407, the claimants have filed the claim petition claiming compensation of Rs.8,00,000/-.

3. Denying the accident, the second respondent filed counter stating that the petitioner lodged a false complaint as if the first respondent's vehicle was driven by its driver in a negligent manner and in fact, the vehicle TN-28 AC 5407 was not involved in the accident. It is stated that the deceased was not died due to accidental injuries as the accident took place on 22.4.2008 and died on 24.7.2008. The claimants are not entitled for death claim and they only entitled for medical expenses. Without prejudice to the above contentions, the second respondent insurance company denied the age, occupation, monthly income of the deceased and also stated that the compensation of Rs.8,00,000/- claimed by the claimants is excessive.

4. Before the Tribunal, the father of the deceased was examined as P.W.1 and eye-witness to the accident viz., Annamalai was examined as P.W.2. Exs.P1 to P6 were marked. Dr.Jayanthi, who conducted post-mortem was examined as R.W.1 and Dr.Neethidevan, who treated the deceased initially at Government Hospital, Namakkal was examined as R.W.2. Exs.R1 and R2 were marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident happened due to rash and negligent driving of the first respondent's driver and since the first respondent's vehicle was insured with the second respondent insurance company, the Tribunal held that the respondents 1 and 2 are jointly and severally liable to pay the compensation. However, the Tribunal held that the deceased was not died due to the accidental injuries and having regarding to the pathetic condition of the claimants, the Tribunal awarded

Rs.50,000/- towards medical expenses, nature of injuries, pain and suffering and transport etc. Aggrieved by the same, the claimants have preferred this appeal.

6. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the claimants and secondly, none of those findings are under challenge. As against the said finding, no appeal has been preferred by the respondents. This appeal has been preferred by the claimants challenging the quantum of compensation of Rs.50,000/- awarded by the Tribunal for the death of the deceased in a road accident is under challenge.

7. Challenging the quantum, the learned counsel for the appellants submitted that the finding of the Tribunal that death not due to injuries is unsustainable as in the post-mortem certificate, the Doctor who conducted post-mortem clearly stated that there was fracture in head and blood also clotted. The learned counsel would submit that in his evidence though R.W.2-Doctor admitted that X-ray has been taken for the head injuries, he had failed to advise to take C.T. Scan, which is very much available on the date of accident in the Government Hospital. If C.T. Scan was taken on the advice of R.W.2, he would be in a position to know about the nature of injuries sustained by the deceased at the time of accident.

8. The learned counsel further submitted that the deceased was treated by R.W.2-Doctor and had given only antibiotic treatment and there was improper treatment by the Doctor who treated the deceased at the time of accident.

9. The learned counsel next submitted that as per post-mortem certificate, there was head-skull fracture, occipital bone fracture, blood clot seen over the brain on occipital region. Therefore, the claimants have proved that due to head injuries, the deceased died and without considering all these facts, the Tribunal erred in awarding only Rs.50,000/-. The learned counsel would further submit that since the deceased was working as Mason at the time of accident and was earning Rs.10,000/- per month, the Tribunal ought to have awarded more than Rs.10,00,000/- for the death of the deceased.

10. Per contra, the learned counsel for the second respondent insurance company submitted that the Tribunal was right in holding that the deceased was not died due to accidental injuries. When the Tribunal came to the conclusion that the deceased was not died due to accidental injuries, it ought not to have awarded Rs.50,000/- towards medical expenses and prayed for setting aside the same.

11. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

12. The points arise for consideration are:

- (i) Whether the Tribunal was right in holding that the deceased had not died due to the injuries caused in the accident?
- (ii) Whether the compensation of Rs.50,000/- awarded by the Tribunal needs enhancement?

13. According to the appellants, the deceased died due to head injuries sustained in the accident. On the other hand, it is the say of the second respondent that the deceased had not died due to accidental injuries.

14. To prove that the deceased has not died due to accidental injuries, the second respondent insurance company examined R.W.1 and R.W.2-Doctors. As stated supra, R.W.1-Doctor conducted autopsy on the dead body of the deceased on 25.7.2008. In her evidence, R.W.1 stated that she had conducted post-mortem over the dead body of Ganesan @ Sivakumar on 25.7.2008 and issued Ex.P2-post-mortem certificate. Admittedly, in Ex.P2-post-mortem certificate, there was no mention about the cause of death.

15. R.W.1-Doctor examined the deceased on 22.4.2008 and he found certain injuries and issued Ex.R1-wound certificate, certifying that injuries (i) and (ii) mentioned therein are simple in nature and injury (iii) is grievous injury.

16. In his evidence, R.W.1-Dr.Neethidevan deposed that on 22.4.2008, he had examined the deceased and had taken X-ray, from which he found that there was no fracture. R.W.1 further deposed that the deceased was referred to Ortho and Dentist, who examined and certified that there was no fracture. Though R.W.1 stated that there was no fracture, nothing prevented him in advising the deceased to take C.T. Scan, which was very much available in Government Hospital at the time of accident when the deceased was complained of head injury sustained in the accident. If R.W.1 advised the deceased to take C.T. Scan, the injuries sustained by the deceased would have been clearly came light. In the present case, R.W.1-Doctor has failed to do so. Moreover, R.W.1 also failed to refer the deceased to Neuro.

17. The evidence of R.W.1-Dr.Jayanthi is to the effect that the deceased would have died due to Septicaemia and he was not taken neurological treatment and particularly, the cause of death was due to Septicaemia as a result of head injury. In her cross-examination, R.W.1 deposed as under:

"சாலை விபத்தில் தலையில் சிடி. ஸ்கேன் எடுத்துப்பார்த்தால் தலையின் உள்புறமுள்ள காயத்தின் தன்மை தெரியும் என்றால் சரி அவருக்கு சிடி.ஸ்கேன் எடுக்கப்பட்ட விவரம் எனக்கு தெரிய வாய்ப்பில்லை. தலையில் ஏற்பட்ட ரத்தக்கட்டிக்கு சிகிச்சை அளிக்காததால் மற்றும் தலையில் ஏற்பட்ட எலும்பு, முறிவு, காயங்களுக்கு சிகிச்சை அளிக்காததால் தலையில் Septicaemia வால் இறந்திருக்கலாம் என்றால் வாய்ப்புண்டு."

Thus, from the evidence of R.W.2, it is clear that there is every possibility of the deceased died due to Septicaemia as a result of the head injury. Further, it is clear that Septicaemia was sufficient to cause death in ordinary course of nature.

18. Though the second respondent contended that the deceased has not died due to accidental injuries, nothing has been produced to prove the same. According to the second respondent, the claimants have failed to prove continuous treatment record of the deceased. When the second respondent admitted the accident and death of the deceased, the non-production of continuous medical treatment records of the deceased would not be fatal to the case of the claimants. When the post-mortem doctor found the death due to Septicaemia, the Tribunal erred in coming to the conclusion that the deceased has not died due to accidental injuries. Nothing has been produced by the second respondent to show that the claim made by the claimants is fake. When the accident was admitted by the second respondent and the claimants are able to prove that the deceased died due to Septicaemia, the presumption is the deceased died due to injuries sustained in the accident.

19. In case death has been caused due to Septicaemia on account of injuries sustained in an accident, in my considered opinion, unless there is evidence to the contrary on record to establish any other reason for cause of septicaemia, the death can be held to be directly attributable to injuries sustained in the accident. Merely because the victim of the accident dies after a time gap and there is evidence on the record to demonstrate that during this period he was continuously undergoing treatment of the injuries sustained in the accident and there is no other reason available on record to which death can be attributed, the second respondent will not be absolved from its responsibility merely on the ground that death has occurred after a time gap from the accident. In such circumstances, the argument advanced by learned counsel for the second respondent cannot be countenanced.

20. Moreover, the evidence of R.W.1-Dr.Jayanthi supports the case of the claimants. In the present case, the claimants are aged parents and they have not been properly advised by the Doctor who initially treated the deceased to take C.T. Scan to know the gravity of the injuries sustained on his head and also

the blood clot. Upon appreciation of the oral and documentary evidence adduced, this Court is of the view that the claimants have established that the deceased died due to injuries sustained in the accident.

21. The claimants have claimed compensation of Rs.8,00,000/- by contending that the deceased was aged 27 years at the time of accident and was earning Rs.10,000/- per month by doing Mason work. Admittedly, no document has been produced by the claimants to prove the same. The accident is of the year 2008. During 2008, a person doing Mason work would have earned at least Rs.200/- per month i.e., Rs.6,000/- per month. Thus, it would be appropriate to take the monthly income of the deceased at Rs.6,000/- per month.

22. As stated supra, at the time of accident, the deceased was aged 27 years. He would have earned more income, if he alive. Considering the age of the deceased and also the avocation, it would be appropriate to give 40% addition of salary towards future prospects. Taking the monthly salary of the deceased at Rs.6,000/- and giving 40% addition, the monthly income of the deceased is calculated at Rs.8,400/- (Rs.6,000/- + Rs.2,400/-) and the annual income of the deceased is calculated at Rs.1,00,800/-.

23. As far as deduction towards personal expenses is concerned, since the deceased was a bachelor, it would be appropriate to deduct 50% towards personal and living expenses. Deducting 50%, the annual contribution to the family would come to Rs.50,400/-.

24. Admittedly, the deceased was a bachelor at the time of accident. The claimants are mother and father of the deceased. The learned counsel for the appellants submitted that while determining the compensation, the age of the deceased has to be taken into consideration.

25. In a catena of decisions, the Hon'ble Supreme Court as well as this Court held that choice of multiplier would depend upon age of the deceased or age of the claimant whichever is higher.

26. In the case on hand, the deceased was aged 27 years at the time of accident. The first claimant, mother of the deceased was aged 50 years and the second claimant, father of the deceased was aged 60 years at the time of accident. Since the deceased was a bachelor, it would be appropriate to take the age of the mother for adopting multiplier. For the age group 46 - 50, the proper multiplier to be adopted is "13". Adopting multiplier "13", the loss of dependency is calculated at Rs.6,55,200/-.

27. As far as conventional damages are concerned, since the claimants have lost their son (deceased) at the age of 27 years, it would appropriate to award a sum of Rs.40,000/- towards loss of love and affection. Considering the nature of injuries and also the treatment undergone by the deceased for nearly three months, it would be appropriate to award a sum of Rs.10,000/- each towards funeral expenses and transport charges; Rs.20,000/- towards medical expenses and Rs.30,000/- towards loss of estate. Thus, total compensation of Rs.7,65,200/- is awarded to the claimants as under:

Heads	Rs.
Loss of dependency	6,55,200.00
Loss of love and affection	40,000.00
Transportation	10,000.00
Funeral expenses	10,000.00
Medical expenses	20,000.00
Loss of estate	30,000.00
Total	7,65,200.00

28. As stated supra, at the time of accident, the offending vehicle was insured with the second respondent insurance company. Therefore, the second respondent insurance company is liable to pay compensation of Rs.7,65,200/- with interest at the rate of 7.5% per annum.

29. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.50,000/- awarded by the Tribunal is enhanced to Rs.7,65,200/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit excluding the default periods mentioned in the impugned award by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment. The appellants/claimants are directed to pay Court fee for the enhancement of compensation amount as awarded by this Court. On payment of Court fee, the decree should be made ready. The appellants/claimants are entitled to get equal share. On such deposit, the appellants/claimants are permitted to withdraw their respective shares with accrued interest on filing application before the Tribunal.

vs

08.01.2019

This Civil Miscellaneous Appeal having been listed on Friday, the eleventh day of January 2019 under the caption for clarification in pursuance of the earlier order dated 08.01.2019 made herein and upon hearing the arguments of Mr.MA.P.Thangavel,

Advocate for the appellant herein and Mr.C.R.Krishnamoorthy, advocate for the 2nd Respondent this court made the following order:

Today this Civil Miscellaneous Appeal is listed under the caption for clarification.

Earlier this Court by an order dated 08.01.2019 partly allowed the appeal in which the relevant paragraph no. 26 is reproduced hereunder for the issue raised under clarification:

26. In the case on hand, the deceased was aged 27 years at the time of accident. The first claimant, mother of the deceased was aged 50 years and the second claimant, father of the deceased was aged 60 years at the time of accident. Since the deceased was a bachelor, it would be appropriate to take the age of the mother for adopting multiplier. For the age group 46-50, the proper multiplier to be adopted is "13". Adopting multiplier "13", the loss of dependency is calculated at Rs.6,55,200/-.

Based on the age of the mother of the deceased, the multiplier 13 has been adopted for loss of dependency.

After passing the Judgment, the learned counsel for the appellants mentioned that as per the orders of Supreme Court, reported in (2018) 3 Supreme Court Cases 18 in the case of Sube Singh and another Versus Shyam Singh (Dead) and others, the appellants were justified in insisting on applying multiplier 18 in respect of the dependents of the deceased. The relevant paragraph of the Judgment is extracted hereunder:

5. Considering the aforementioned principle expounded in Sarla Verma³, which has been affirmed by the Constitution Bench of this Court in National Insurance Co. Ltd v. Pranay Sethi⁸, the appellants are justified in insisting for applying multiplier 18.

On seeing the the Judgment supra, it is a fit case to enhance the award amount by apply the multiplier 17. Therefore, this Court is inclined to apply multiplier 17 instead of 13 based on the age of dependents. Accordingly, Rs.8,56,800/- (Rupees eight lakhs fifty six thousand and eight hundred only) is awarded under the head Loss of dependency. The learned counsel for the respondents also made no objection for applying the multiplier 17 for dependents. Except the above modification, amount awarded towards other heads remains unaltered.

Thus the modified enhanced total compensation of Rs.9,66,800 is awarded to the claimants as under:

Heads	Rs.
Loss of dependency (8400X12X(1/2)X17)	8,56,800
Loss of love and affection	40,000
Transportation	10,000
Funeral Expenses	10,000
Medical expenses	20,000
Loss of estate	30,000
Total	9,66,800

Total enhanced compensation of award is Rs.9,66,800/- (Rupees nine lakhs sixty six thousand and eight hundred only)

Except the above modification, the order dated 08.01.2019 remains unaltered. Accordingly, the issued is clarified. Registry is directed to issue the modified copy of the order to the parties concerned.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Principal District Court,
Namakkal.

To be Substituted to
the order already
despatched on
11.01.2019.

+lcc to Mr.C.R.Krishnamoorthy, Advocate sr.no.1742

+lcc to Mr.MA.P.Thangavel, Advocate sr.no.3352.

C.M.A.No.1025 of 2015

RGN(CO)
NR 10/01/2019
SP(21/02/2019)