IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1072 & 2120 of 2015
and M.P.No.1 of 2015

C.M.A.No.1072 of 2015:

1.G.Jothi
2.M.Selvanayaki
3.G.Sivanandhini .. Appellants/ Petitioner

Vs.

1.A.Srinivasan
2.T.R.S.Balamurugan
3.M.Shanmugam

4.The Manager,
United India Insurance Co., Ltd.,
Erode. .. Respondents/ Respondents

C.M.A.No.2120 of 2015:

United India Insurance Company Ltd.,
Rep by its Manager,
Erode. (Policy No.170600/31/08/01/0001)
17-11-2008 to 16-11-2009 .. Appellant / 4th Respondent

Vs.

1.G.Jothi
2.M.Selvanayaki
3.G.Sivanandhini ...Petitioners
4.A.Srinivasan ...1st Respondent
5.T.R.S.Balamurugan ...2nd Respondent
6.M.Shanmugam ...3rd Respondent

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 23.12.2014 made in M.C.O.P.No.39 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Bhavani.

In C.M.A.No.1072 of 2015
For Appellants : Mr.N.S.Suganthan
for Mr.N.Manoharan
For R4 : Mr.D.Bhaskaran
For R1 & R3 : No Appearance

In C.M.A.No.2120 of 2015

For Appellant : Mr.D.Bhaskaran
For RR1 to 3 : Mr.N.S.Suganthan
for Mr.N.Manokaran
For RR5 & 6 : No Appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the award dated 23.12.2014 made in M.C.O.P.No.39 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Bhavani.

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

3.The appellants in C.M.A.No.1072 of 2015 are claimants in M.C.O.P.No.39 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Bhavani. They filed the above claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Gopal (husband of the 1st appellant and father of the 2nd and 3rd appellants) who died in a motor vehicle accident that took place on 16.04.2009.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by both the deceased as well as the driver of the Tractor with Trailer, of which the Tractor belongs to the 2nd respondent and the Trailer belongs to the 3rd respondent and directed the 4th respondent being insurer of the said Trailer to pay 50% of the award amount i.e., a sum of Rs.2,92,000/- as compensation to the appellants/claimants and recover the same from the respondents 1 to 3.

5.Challenging the 50% contributory negligence fixed on the deceased and not being satisfied with the award amount granted by the Tribunal, the claimants have come out with C.M.A.No.1072 of 2015. Questioning the 50% liability fastened on the 4th respondent/Insurance Company by award dated 23.12.2014 made in M.C.O.P.No.39 of 2010, the 4th respondent-Insurance Company has come out with C.M.A.No.2120 of 2015.

6.The learned counsel appearing for the 4th respondent-Insurance Company contended that the Tribunal having observed that the accident occurred while the two wheeler driven by the deceased came from behind and tried to overtake the tractor-trailer, hit the rear portion of Trailer, erred in holding that the driver of the tractor also contributed negligence to the accident. He further submitted that the Tribunal failed to consider the rough sketch, F.I.R and final report filed in the case. The Tribunal ought to have held that the deceased was a tort-feaser and the driver of the tractor was not responsible for the accident. He would also submit that the Tribunal failed to consider the evidence properly and failed to adjudicate the issue of liability properly. The Tribunal also failed to consider that the tractor was not insured with the 4^{th} respondent at the time of accident. According to the learned counsel, without tractor, the trailer would not have caused the accident and the Tribunal failed to consider that the 4^{th} respondent/Insurance Company is not entitled to indemnify the owner of the Tractor as the same was not insured with appellant. In any event, the compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal and dismissing C.M.A.No.1072 of 2015 filed by the claimants.

7.Per contra, the learned counsel appearing for the claimants contended that the Tribunal ought to have fixed the entire negligence on the part of the 1^{st} respondent, the driver of the tractor in question instead of fixing 50% negligence on the part of the deceased. The deceased was doing Engineering Works and Real Estate Business and was earning a sum of Rs.20,000/- per month. To prove the same, the claimants filed Ex.P10/miscellaneous credit receipt issued by the Panchayat. The Tribunal erred in fixing a meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 45 years at the time of accident but the Tribunal has not granted any amount enhancement towards future prospects. The amount granted by the Tribunal for loss of consortium is also meagre. The amounts awarded by the Tribunal under different heads are meagre and prayed for dismissal of C.M.A.No.2120 of 2015 filed by the Insurance Company and for allowing C.M.A.No.1072 of 2015, filed by the claimants seeking enhancement of compensation and setting aside 50% contributory negligence fixed on the deceased. In support of his contention, the learned counsel appearing for the claimants relied on the decision of this Court reported in 2015 2 Supreme Court Cases 180 in Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and Another:

> "13.With regard to the apportionment made by the Tribunal and the High Court, we are of the view, after considering the facts, evidence produced on record and circumstances of the case on hand, that there was no negligence on the part of the deceased. The Courts below have failed to examine the facts of the case on hand with respect to the opinion of this Court given in Jiju Kuruvila v. Kunjujamma Mohan.
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> 14.From the evidence produced on record, the two-wheeler of the deceased was dragged up to a stretch of about 20-25 ft on the road after the collision with the offending truck. We are of the considered view, that to be able to create this

kind of enormous effect on the two-wheeler of the deceased, the offending truck must have been travelling at a fairly high speed and that its driver did not have sufficient control over his vehicle. The driver of the offending truck should have been aware that he was driving the heavy motor vehicle and taken sufficient caution. We do not see any direct evidence that shows negligence on the part of the deceased that led to the accident. Therefore, as per the principles laid down by this Court in the case referred to above in this aspect, the contributory negligence apportioned by the Courts below on the part of the deceased is set aside."

8.Though notice has been served on the respondents 1 to 3 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

9.Heard the learned counsel appearing for the claimants as well as 4th respondent-Insurance Company and perused the materials available on record.

10.From the materials available on record, it is seen that the accident had occurred in the middle of the road. In view of the same, the Tribunal has rejected the contention of the claimants that the driver of the tractor while overtaking the motorcycle driven by the deceased on the left hand side, caused the accident. The Tribunal, considering the Ex.P1/FIR, Ex.P3/observation magazar, Ex.P7/final report, evidence of P.W.s 2 and 3 held that probably the deceased while trying to overtake the Tractor-Trailor would have hit the Trailor and considering the fact that the deceased was dragged to 15 feet by trailer during accident, held that both the driver of tractor as well as the deceased are equally responsible for the accident. Further, it is admitted by the 4th respondent/Insurance Company that the trailer was insured with 4th respondent/Insurance Company. They are denying the liability to pay the compensation on the ground that the trailer was attached to a tractor which was not insured with the 4th respondent/Insurance Company. The Tribunal considering the evidence of RW1 and Ex.R1, rejected the contention of the 4th respondent/Insurance Company on the ground that the 4th respondent/Insurance Company has received a premium of Rs.550/- separately for insuring the tractor. The accident had occurred when the deceased fell down when the tractor and trailer hit the motorcycle and the trailer dragged the deceased to 15 feet during the accident. The finding of the Tribunal that the 4th respondent/Insurance Company is liable to pay compensation is valid and legal. The Tribunal considering the entire materials on record held that the Trailer was attached to the tractor and directed the 4th respondent/Insurance Company to pay the compensation at the first instance and recover the same from the respondents 1 to

3 for violation of policy. There is no error in the said finding of the Tribunal warranting interference by this Court. The Judgment relied on by the learned counsel for the claimant is not applicable to the facts of present case as from the impugned award it is seen that there is evidence to show that the deceased has also contributed negligence.

11.As far as the quantum of compensation is concerned, P.W.1/wife of the deceased has deposed before the Tribunal that the deceased was doing Engineering Works and Real Estate Business and earning a sum of Rs.20,000/- per month. They failed to prove the income of the deceased. In the absence of any material evidence, the Tribunal fixed monthly income of the deceased at Rs.4,500/-. The Tribunal has not granted any enhancement for future prospects. The accident is of the year 2009 and the deceased was aged 45 years at the time of accident. In the considered opinion of this Court, the amount fixed by the Tribunal as monthly income of the deceased is meagre. Therefore, a sum of Rs.6,500/- per month is fixed as the notional income of the deceased. The claimants are entitled to 25% enhanced towards 'future prospects'. Accordingly, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.9,10,000/- (Rs.6,500/- + Rs.1,625/- (25% of Rs.6,500/-) X 12 X 14 X 2/3). The Tribunal has awarded a sum of Rs.20,000/- towards loss of consortium to the 1st appellant/claimant and the same is hereby enhanced to Rs.40,000/-. The amount granted by the Tribunal for loss of love and affection to claimants 2 and 3 and funeral expenses are just and reasonable hence, the same are confirmed. The Tribunal has granted a sum of Rs.15,000/- towards loss of love and affection to the 1st appellant which is not proper and hence, the same is set aside. The Tribunal has not granted any amount towards loss of estate and hence a sum of Rs.15,000/- is awarded towards loss of estate. 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	5,04,000	9,10,000	enhanced
2.	Loss of consortium to the 1st appellant	20,000	40,000	enhanced
3.	Funeral expenses	15,000	15,000	confirmed
4.	Loss of estate	-	15,000	granted

5.	Loss of love & affection to appellants 2 & 3	30,000	30,000	confirmed
6.	Loss of love & affection to 1st appellant	15,000	-	Set aside
	Total	Rs.5,84,000/-	Rs.10,10,000/-	
	50% of the award amount	Rs.2,92,000/-	Rs.5,05,000/-	Rs.2,13,000/-

12.In the result, C.M.A.No.2120 of 2015 filed by the Insurance Company is dismissed and C.M.A.No.1072 of 2015 is partly allowed and the total compensation of Rs.5,84,000/- awarded by the Tribunal is hereby enhanced to Rs.10,10,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal fixed 50% negligence on the part of the driver of the tractor trailer and 50% negligence on the part of the deceased. In view of the same, the 4th respondent/Insurance Company is directed to pay 50% of the amount enhanced. The 4th respondent-Insurance Company is directed to deposit 50% of the enhanced award amount i.e., Rs.5,05,000/- now determined by this Court along with proportionate interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the respondents 1 to 3. On such deposit, the claimants 1 to 3 are permitted to withdraw their share of the award amount on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount already withdrawn if any. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Sub-Judge,
Motor Accidents Claims Tribunal,
Bhavani.

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

1 cc to Mr.N. Manokran, Advocate, Sr. 104651
1 cc to Mr.D. Bhaskaran, Advocate, Sr. 104450

C.M.A.Nos.1072 & 2120 of 2015
and M.P.No.1 of 2015

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