IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No. 1283 of 2016
and CMP.No. 9921 of 2016

National Insurance Company Limited
Divisional Office, No.II, Jerome Building,
1st Floor, Fort Station Road,
Tiruchi-2 .. Appellant/2nd Respondent

Vs.

1. Solai
2. Govindaraj
3. Jayapal
4. Kala ...Respondents/Petitioners 1 to 4
5. T.K. Prabu .. 5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.10.2015 made in M.C.O.P.No. 530 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mrs.N.B. Surekha

For Respondents : Mr. T. Gobinath - for R1 to R4
R5-No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 30.10.2015 made in M.C.O.P.No. 530 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

2.The appellant is 2nd respondent in 530 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur. The claim petition was filed by the claimants for the death of one Muthammal, who died on the accident that occurred on 27.02.2011. The claimants filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.7,16,000/- as compensation. Aggrieved by the said quantum and liability, the insurance company has come out with the present appeal to set aside and judgment and decree passed by the tribunal.

3.The learned counsel appearing for the appellant/insurance company contended that the the tribunal erred in holding that the accident had taken place only due to the negligence of the driver of the motorcycle bearing Reg.No.TN48-L-9514 and failed to see that the accident had taken place while passing both the TVS-50 and motor cyle each other on the opposite direction had dashed on a head on collision manner. Therefore, the rider of the TVS-50 and the motorcycle are equally responsible for the accident. Further contended that the tribunal erred in fixing liability upon the appellant herein and failed to see the evidence of two RTO Officials where the riders of both TVS-50 and motor cycle resided. It is also contended that the rider of the motorcycle bearing Reg.No.TN48-L-9514 did not hold any driving licence to drive the vehicle. But the tribunal had not given any finding on that aspect and wrongly held that insurer is liable for payment of compensation to the claimants. The tribunal ought to have exonerate the insurer from its liability in payment of compensation to the claimants since the insured had violated the terms and conditions of the policy by allowing an unlicenced driver to driver the vehicle at the time of the accident. The compensation awarded by the tribunal under various head are also stated as excessive and awarded without any basis. Hence prayed to set aside the judgment and decree passed by the tribunal.

4. Per contra, the learned counsel appearing for the claimants/respondents 1 to 4 herein contended that the Tribunal after analyising the evidence and documents has awarded compensation under various heads, which are very much reasonable and proper and need not be modified.

5.Heard both sides and perused the documents available on record.

6. From the materials available on record, it is seen that the tribunal fixed the negligence on the driver of the first respondent's vehicle/4th respondent herein and fixed liability on the part of the insurance company/appellant herein being insurer of the said vehicle. The tribunal has

also analysed the loss caused to the claimants by the death of the deceased who was 55 years. The claimants also claimed that the deceased was earning rupees five thousand per month. Hence the tribunal by considering all the aspects, has awarded a sum of Rs.7,16,000/- as compensation to the claimants under various heads.

7. The appellant herein has vehemently contended that when there is sufficient evidence placed before the tribunal that the rider of the two wheeler was not in possession of valid driving licence at the time of the accident, the tribunal ought to have exonerated this appellant from its liability. In this regard, it is seen from the award, the tribunal has observed that from the evidence of RWs 1 & 2 it is clear that the rider of the two wheeler had valid insurace coverage with the 2nd respondent/appellant herein at the time of accident. The appellant herein has not proved before the tribunal with reliable evidence that the rider of the two wheeler has no valid driving licence at the time of accidence and hence the evidence of RW1 & RW2 has not taken into consideration by the tribunal and the tribunal hold that the accident happened due to rash and negligent riding of the rider of the 1st respondent/4th respondent herein. Ex.P7 is the copy of the registration certificate, Ex.P8 is the copy of insurance policy wherein it has been stated that the 1st respondent's vehicle had valid insurance coverage at the time of accident and hence the owner and insurer of the two wheeler 4th respondent and appellant herein respectively are liable to compensate the petitioner. It is also seen from the award that though the tribunal has held that both rider and insurer are liable to compensate the petitioners, directed the insurance company to pay the compensation as the alleged two wheeler is insured with them at the time of the accident, which is not proper. Since the there is sufficient proof that the rider of the two wheeler did not possess driving licence, this Court is of the opinion that the liability also to be fixed on the part of the 1st respondent's rider.

8. The learned counsel for the appellant has also relied upon the judgment of this Court reported in 2018 (2) TNMAC 168 (DB) in the case of National Insurance Co.Lotd and Others Vs. Thangadurai and Others with regard to fixing contributory negligence. The relevant portion is extracted below;

> “7. A specific plea has been taken by Ms.R.Sree Vidhya, learned counsel appearing for the insurance company that the victim did not possess any two wheeler licence to ride the two wheeler and he was having licence only to drive heavy vehicles. However,

the Tribunal did not take into consideration the said contention made by the insurance company. A perusal of Ex.P.10, driving licence of the claimant would reveal that the victim was having licence only to drive LMV and Heavy vehicles and there is no endorsement with regard to the two wheeler. By relying upon Ex.P.10-driving licence, the insurance company is justified in making such plea. Therefore, there is a contributory negligence on the part of the claimant and accordingly 20% negligence is fixed on the claimant."

9. The observation made in the said judgment of this Court is squarely applicable to the present case on hand, hence by observing the same, this Court fix the contributory negligence on the part of the onwer of the two wheeler/4th respondent herein and 80% on the appellant/insurance company.

10. As far as quantum of compensation is concerned, the tribunal has taken the monthly income of the deceased at Rs.6000/- and by applying multiplier method, has calculated the loss of income at Rs.5,94,000/- which is meagre. Hence this Court is inclined to take monthly income at Rs.6,500/- and by adding 10% of the income towards Future prospects, deducting ¼ of the income towards personal expenses, applying proper multiplier 12, calculates the loss of income at Rs.7,07,850/-. It is seen that the tribunal has awarded Rs.50,000/- towards Loss of consortium, the same is reduced to Rs.40,000/-. Considering the claimants 2 to 3 who are the children of the deceased who lost their mother, a sum of Rs.25,000/- each for the claimants 2 to 3 (Rs.75,000/- in total) is awarded, modifying the sum granted by the tribunal at Rs.50,000/-. It is seen that the tribunal has not awarded any amount towards loss of estate, hence a sum of Rs.15,000/- is granted under the head 'Loss of estate'. In addition to that, the Tribunal has awarded a sum of Rs.10,000/- towards Funeral expenses, Rs.10,000/- towards Transportation and Rs.2,000/- towards Property loss. Since the sum awarded under those head are proper and reasonable, the amount under the said heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount modified by this Court (Rs)
1.	Loss of Income	5,94,000	Rs.7,07,850
2.	Consortium	50,000	40,000

3.	Loss of love and affection	50,000	75,000/- (Rs.25,000/- each to the respondents 2 to 4)
4.	Funeral expenses	10,000	10,000
5.	Loss of Estate	...	15,000
6.	Transportation	10,000	10,000
7.	Property loss	2,000	2,000
	Total	Rs.7,16,000/-	Rs.8,59,850/-

11. Though this Court enhances the compensation awarded by the tribunal, since this Court already fixed the contributory negligence on both the owner and insurer of the alleged vehicle, the claimants/respondents 1 to 4 herein are entitled to only 80% of the enhanced compensation i.e Rs.6,87,880/-.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs. 7,16,000/- is hereby reduced to Rs.6,87,880/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

13. The appellant /Insurance Company is directed to deposit a sum of Rs. 6,87,880/- together with 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. On such deposit, the claimants / respondents 1 to 4 are permitted to withdraw the amount, along with interest and costs as apportioned by the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

ak

To

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

+1cc to Mrs.N.B.Surekha, Advocate, S.R.No.76816
+1cc to Mr.T.Gobinath, Advocate, S.R.No.76953

C.M.A.No.1283 of 2016
and CMP.No. 9921 of 2016

PM(CO)
CB(28/08/2020)