

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2018
Delivered on : 21.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal Nos.2745 and 2599 of 2015
and
M.P.No.1 of 2015

C.M.A.No.2745 of 2015:

- 1.Shanthi
 - 2.Minor Vignesh
 - 3.Minor Anitha
Minors rep. by Guardian/NF
Mother Shanthi.
 - 4.Marayee
 - 5.Ramasamy
- ...Appellants/Petitioners

Vs

1. V.Natesan
2. ICICI Lambard Motor Insurance Co. Ltd.,
1st Floor, Union Bank Upstairs,
Near Arputham Super Market,
Trichy Main Road,
Namakkal Town and District.
3. The Inspector of Police,
Namakkal Police Station. ... Respondents
(Third respondent suo motu impleaded as per
order dt. 5.9.2018)

C.M.A.No.2599 of 2015:

- ICICI Lambard Motor Insurance Co. Ltd.,
1st Floor, Union Bank Upstairs,
Near Arputham Super Market,
Trichy Main Road,
Namakkal Town and District. ...Appellant/2nd Respondent

Vs

1. Shanthi
2. Minor Vignesh
3. Minor Anitha
Minors 2 & 3 are rep. by guardian/mother
Shanthi.
4. Marayee
5. Ramaswamy

6. V. Natesan

7. The Inspector of Police,
Namakkal Police Station. ... Respondents
(Seventh respondent suo motu impleaded as per
order dt. 5.9.2018)

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the order made in M.C.O.P. No.474 of 2012 dated 25.11.2013 on the file of the Motor Accident Claims Tribunal (Additional District Court), Namakkal.

For Appellants : Mr. MA. P. Thangavel
in CMA.No.2745/2015
and respondents
1 to 5 in
CMA.No.2599/2015

For Respondent No.2 : Ms. R. Srividya
in CMA.2745/2015
and appellant in
CMA.No.2599/2015

For Respondent No.3 : M/s. Venkatesah
in CMA.No.2745/2015

COMMON JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.9,81,000/- awarded by the Tribunal in M.C.O.P.No.474 of 2012 dated 25.11.2013 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Namakkal, the claimants have preferred C.M.A.No.2745 of 2015. Questioning the liability and quantum, the insurance company has preferred C.M.A.No.2599 of 2015.

2. Since the appeals arise out of the same award, both the appeals were taken up together and disposed of by this common judgment.

3. For the sake of convenience, the parties are referred to as per their array in the claim petition.

4. Brief facts are that on 12.6.2011 at about 6.45 P.M. at near Reddipatti bus stop on Namakkal - Thuraiyur main road, the deceased Nallusamy was riding TVS XL Super bearing registration No.TN-28 L 0562 in a careful manner on the left side of the road towards east to west direction. At that time a Hero Honda bearing registration No.TN-47 X 3088 was coming from opposite direction, owned by the first respondent, insured with the second respondent, driven by its rider in a rash and negligent manner dashed against the deceased vehicle. Due to the impact, the deceased sustained multiple injuries and died on the spot. Regarding the accident, a criminal case in Crime No.900/2011 under Sections 279, 338 and 304(A) IPC was registered by the Namakkal Police. At the time of accident, the deceased was aged 43 years and was earning Rs.8,000/- per month by doing agriculture coolie work. Stating that the accident occurred due to rash and negligent driving of the rider of Hero Honda motorcycle, the claimants who are wife, children and parents have filed the claim petition claiming compensation of Rs.10,00,000/-.

5. Resisting the claim petition, the second respondent insurance company filed counter stating that the accident was happened only due to rash and negligent driving of the driver of the unknown lorry and TN-28 L 0562 TVS XL Super motorcycle driver/deceased. It is stated that the rider of the 1st respondent motorcycle drove the same with all care and caution and its proper side at slow speed. The deceased alone did not observe the Motor Vehicle Rules and hit against the TN-47 X 3088 Honda Shine motorcycle. Due to the negligence of unknown lorry driver and the deceased, the accident occurred. It is stated that FIR was registered against the unknown lorry driver for his rash and negligent act. Therefore, owner and insurance company of unknown lorry alone are liable to pay compensation and the claim petition is liable to be dismissed as against the respondents 1 and 2. It is also stated that when the driver of unknown lorry and the rider of the motorcycle bearing TN-28 L 0562 TVS XL were responsible for the accident, no relief can be asked for against the respondents 1 and 2 and they are unnecessary parties. Without prejudice to the above, the second respondent denied the age, occupation, monthly income of the deceased and that the total compensation claimed by the claims is also excessive.

6. Before the Tribunal, the 1st claimant Shanthi was examined as P.W.1 and one Nallusamy was examined as P.W.2. Exs.P1 to P6 were marked. On the side of the second respondent, the Sub Inspector of Police Thiru.Subramanian was examined as R.W.1 and the Legal Officer of the second respondent Thiru.Manimaran was examined as R.W.1 and R.W.2 and Ex.R1-final report was marked.

7. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the rider of the first respondent's motorcycle and the second respondent being the insurer of the offending motorcycle is liable to pay compensation to the claimants. The Tribunal awarded total compensation of Rs.9,81,000/-.

8. Pending appeal, the claimants have filed M.P.No.1 of 2015 seeking to enhance the claim from Rs.10,00,000/- to Rs.15,00,000/-. By an order dated 29.4.2015, M.P.No.1 of 2015 came to be allowed and the claim was amended to Rs.15,00,000/-.

9. Challenging the quantum of compensation, the learned counsel for the claimants submitted that the Tribunal ought to have consider that at the time of accident the deceased was working as agricultural coolie and was earning Rs.8,000/- per month. But the Tribunal erred in taking Rs.5,000/- as monthly income instead Rs.8,000/-. He would submit that as per the pronouncement of the Hon'ble Apex Court, in the year 1994 itself, it was taken Rs.4,500/- per month. Since in the instant case accident happened in 2011, the Tribunal ought to have taken the monthly income of the deceased at Rs.8,000/-.

10. The learned counsel further submitted that the Tribunal ought to have awarded compensation towards transport charges and ought to have awarded Rs.2,00,000/- each to the parents towards loss of love and affection instead of Rs.50,000/- granted to the minor children as well as the parents of the deceased. Further, the learned counsel submitted that the compensation towards funeral expenses and loss of consortium granted by the Tribunal is very low. Thus, the learned counsel prayed for further enhancement of Rs.5,00,000/-.

11. The learned counsel for the second respondent insurance company submitted that the Tribunal failed to note that the accident was caused due to the rash and negligent driving of the driver of the unknown lorry and the claim petition was bad for non-joinder of the owner and the insurer of the unknown lorry. He would submit that the Tribunal erred in holding that the driver of Honda Shine motorcycle bearing registration No.TN-47 X 3088 was at fault without properly appreciating the sequence of

events and evidence made available. The learned counsel then contended that the Tribunal failed to note that the deceased fell down on the road due to collision with unknown lorry coming on the same direction. The FIR was registered against the unknown lorry driver for his rash and negligent act and the Tribunal failed to appreciate the evidence of R.W.1. Thus, the driver of the unknown lorry and the deceased were responsible for the accident. He would submit that the award of the Tribunal is liable to be modified by holding that the lorry was guilty of negligence to the tune of total negligence.

12. I have considered the submissions of the learned counsel appearing on either side and also perused the materials available on record.

13. The points arise for consideration are:

(1) Whether the Tribunal was right in fastening the liability on the 1st respondent's motorcycle bearing registration No.TN-47 X 3088?

(2) Whether the total compensation of Rs.9,81,000/- awarded by the Tribunal is just and reasonable?

14. Point No.1:

According to the claimants, on 12.6.2011 at about 6.45 P.M., the deceased was riding his motorcycle bearing registration No.TN-28 L 0562 and while he was nearing Reddipatti bus stop, a Hero Honda motorcycle bearing registration No.TN-47 X 3088 coming on the opposite direction driven by its rider in a rash and negligent manner dashed against the motorcycle of the deceased. Due to the impact, the deceased Nallusamy sustained multiple grievous injuries and died on the spot.

15. On the other hand, it is the say of the second respondent that the accident occurred due to rash and negligent driving of the driver of unknown lorry and the deceased himself. Therefore, the second respondent insurance company is not liable to pay the compensation and the Tribunal erred in fastening the liability on the second respondent.

16. To prove that the accident occurred due to rash and negligent riding of the rider of the Hero Honda motorcycle bearing registration No.TN-47 X 3088, the claimants have examined one Nallusamy as P.W.2, eye-witness to the accident. In his evidence, P.W.2 deposed that on 12.6.2011 at 9.20 P.M. while he was talking with known person near Reddipatti bus stop on Namakkal-Thuraiyur main road, the deceased Nallusamy was riding his TVS XL Super bearing registration No.TN-28 L 0562 on

the left side of the road. At that time, a Hero Honda motorcycle bearing registration No.TN-47 X 3088 was coming on the opposite direction driven by its rider in a rash and negligent manner dashed against the deceased motorcycle. Due to dashing of Hero Honda motorcycle, the deceased Nallusamy sustained fatal injuries and died on the spot.

17. In her evidence, P.W.1, wife of the deceased deposed that while her husband Nallusamy was riding the motorcycle bearing registration No.TN-28 L 0562 on Namakkal-Thuraiyur Main road and while he was nearing Reddipatti, a Hero Honda motorcycle bearing registration No.TN-47 X 3088 driven by its rider in a rash and negligent manner dashed against her husband's motorcycle and her husband died on the spot.

18. Thus, the categorical evidence of P.W.1 and P.W.2 is to the effect that the accident occurred due to rash and negligent riding of the rider of 1st respondent motorcycle bearing registration No.TN-47 X 3088.

19. In his evidence, R.W.1-the Sub Inspector of Police deposed that in the FIR, it has been stated as unknown vehicle and from the investigation, they were not able to find out the vehicle and therefore, they filed RCS.No.52 of 2012 that the accident occurred only on the fault of the driver of the lorry.

20. The Legal Officer of the second respondent insurance company was examined as R.W.2, who deposed that while the deceased Nallusamy was trying to overtake the lorry which was proceeding in front of him, came extreme right and dashed against the first respondent motorcycle which was coming on the left side of the road and fell down and thereafter, the unknown lorry ran over the head of the deceased and he died. Thus, according to the second respondent insurance company, while the deceased was trying to over take the lorry, dashed against the first respondent's motorcycle which was coming on the opposite direction and fell down and in the course of accident, an unknown lorry driven by its driver in a rash and negligent manner ran over the deceased and died on the spot.

21. The Tribunal, after analysing the oral and documentary evidence, held that the rider of the 1st respondent taking advantage of the unconsciousness of the deceased, lodged a false complaint against the driver of the lorry. The aforesaid finding of the Tribunal is sustainable on the ground that if really the lorry caused the accident, the general public in and around present would have stopped the lorry as the accident place was near Reddipatti bus stop. Moreover, the general public gathered in the occurrence spot would have noted the lorry number. Nothing has been produced by the second

respondent to show that the accident was solely on the negligence of the driver of the unknown lorry as well the deceased as alleged by them.

22. Mere filing of Ex.R1-final report by Namakkal Police closing the case, it cannot be said that the accident was due to the fault of the unknown lorry driver. Though R.W.1 stated that after examining the witnesses only the case was closed in R.C.S.No.52 of 2012, the same would not in anyway affect the claim made by the claimants. Moreover, the statement recorded by the Investigating Officer during the course of criminal investigation cannot be used in a motor accident cases. When the Investigation Officer himself has not come to the correct conclusion of the accident, he cannot close the case stating that the accident occurred due to the negligence of the driver of the unknown lorry. Moreover, in the present case, Ex.P1-FIR was registered based on the complaint lodged by the rider of the offending motorcycle. In order to escape from the offence only, the rider of the offending motorcycle had lodged the complaint. However, in the present case, the evidence of P.W.2-eye witness is to the effect that the accident occurred due to rash and negligent driving of the rider of the 1st respondent's motorcycle. To disprove the evidence of eye-witness, the second respondent has not produced any materials.

23. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal *stricto sensu* is not bound by pleadings of the parties, its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of the rider of the motorcycle.

24. The claimants have established their case on the touchstone of preponderance of probability. Further, there is no basis to assume that the deceased was driving the motorcycle on the wrong side of the road at the time of accident. The oral evidence produced by the second respondent insurance company does not indicate that the motorcycle was being driven by the deceased on the wrong side of the road at the time when the offending motorcycle dashed it. Therefore, in a situation of this nature, the Tribunal has rightly arrived at a conclusion that the accident occurred due to rash and negligent riding of the rider of the 1st respondent motorcycle.

25. According to the claimants, at the time of accident the 1st respondent's motorcycle was insured with the second respondent insurance company. The said fact has not been denied by the second respondent. To show that at the time of accident, the offending Hero Honda motorcycle was insured with the second respondent insurance company, the claimants have

produced Ex.P4-copy of policy. To disprove Ex.P4, the second respondent has not produced any materials. Thus, it is clear that at the time of accident the 1st respondent's motorcycle was insured with the second respondent insurance company and therefore, the Tribunal was right in directing the second respondent insurance company to pay the compensation to the claimants. In view of the above, Point No.1 is answered accordingly.

26. Point No.2:

The claimants have claimed compensation of Rs.15,00,000/- for the death of deceased in the accident. The Tribunal awarded Rs.9,81,000/- as total compensation by taking the monthly income of the deceased at Rs.5,000/- and deducting one-fourth towards personal expenses and adopting multiplier 15. But, on a careful perusal of the impugned award, this Court finds that though the Tribunal intended to deduct one-fourth towards personal expenses, it had not actually deducted and without deducting any sum towards personal expenses, the Tribunal calculated the loss of dependency at Rs.9,00,000/- as under:

$$"5000 \times 12 \times 15 \times \frac{1}{4} = \text{Rs.}9,00,000/-"$$

The said calculation appears to be incorrect and if we calculate $5000 \times 12 \times 15 \times \frac{1}{4}$, and amount after deduction would come to Rs.6,75,000.00

27. According to the claimants, at the time of accident, the deceased was aged 43 years and was earning Rs.8,000/- per month by doing agricultural coolie work. To prove the age of the deceased, the claimants have produced Ex.P2-post mortem certificate and Ex.P5-death certificate. Ex.P6 is the legal heirship certificate. As per Ex.P2-post mortem certificate, the deceased was aged 43 years. Considering Exs.P2 and P5, the Tribunal has rightly taken the age of the deceased as 43 years at the time of accident.

28. In her evidence, P.W.1 deposed that her husband was doing agricultural coolie work at the time of accident and was earning Rs.8,000/- per month. The learned counsel for the claimants submitted that in the present case the accident of the year 2011 and the Tribunal ought to have taken the monthly income of the deceased at Rs.8,000/-.

29. Normally, if a person doing agricultural coolie work, there would be no proof available regarding avocation and the daily coolie he/she received. However, considering the age of the deceased and his avocation as agricultural coolie, the Tribunal has fixed the notional monthly income of the deceased at Rs.5,000/-. As stated supra, in the present case, the accident was happened in 2011. During the year 2011, if a person doing agricultural coolie, would have earned at least

Rs.250/- per day. Since in the present case the deceased was doing agricultural coolie at the time of accident, he would have earned Rs.7,500/- per month. Therefore, this Court is inclined to take the monthly income of the deceased at Rs.7,500/- in the place of Rs.5,000/- taken by the Tribunal. Thus, the annual income is calculated at Rs.90,000/-. Since the living members are five in numbers, it would be appropriate to deduct one-fourth towards personal and living expenses. Deducting one-fourth towards personal expenses, the yearly contribution to the family is calculated at Rs.67,500/-.

30. In the present case, while determining the award, the Tribunal has adopted multiplier "15". Adoption of multiplier "15" in the age group 41 - 45 is wrong. Multiplier approved by the Hon'ble Supreme Court in the age group 41 - 45 is "14". Thus, adopting multiplier "14", the loss of dependency is calculated at Rs.9,45,000/- (Rs.67,500/- x 14 = Rs.9,45,000/-)

31. The Tribunal awarded Rs.5,000/- towards funeral expenses; Rs.50,000/- towards love and affection and Rs.26,000/- towards loss of consortium.

32. In National Insurance Co. Ltd. v. Pranay Sethi, reported in 2017 (2) TN MAC 609 (SC), the Hon'ble Supreme Court set out the various amounts to be awarded as compensation under the conventional heads in case of death. The relevant portion of the decision reads thus:

"Therefore, we think it seems to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years."

33. Following the decision of the Hon'ble Supreme Court in Pranay Sethi (supra), compensation of Rs.15,000/- is awarded towards loss of estate; Rs.26,000/- awarded by the Tribunal towards loss of consortium is enhanced to Rs.40,000/- to the 1st claimant. Similarly, Rs.5,000/- awarded towards funeral expenses is enhanced to Rs.15,000/-.

34. In Magma General Insurance Company Ltd. v. Nanu Ram alias Chuhru Ram and others, Civil Appeal No.9581 of 2018, decided on 18.9.2018, the Hon'ble Supreme Court considered

awarding of compensation towards parental consortium to children who lose their parents in motor vehicle accidents. In the aforesaid decision, in para 8.7, the Hon'ble Supreme Court held as under:

"8.7. A Constitution Bench of this Court in *Pranay Sethi* (2017) 16 SCC 680 dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is a right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their life time. Children are valued for their love, affection, companionship and their role in the family unit.

.....

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "Loss of Consortium" as laid down in Pranay Sethi (supra).
(emphasis supplied)

35. In the present case, we deem it appropriate to award an amount of Rs.40,000/- each to the minor claimants 2 and 3 towards loss of Parental Consortium.

36. The claimants 4 and 5, who lost their son at the age of 43 years and also loss of love and affection, an amount of Rs.40,000/- each is awarded.

37. In view of the above discussion, the compensation of Rs.9,81,000/- awarded by the Tribunal is enhanced to Rs.11,75,000/- as under:

Heads	Rs.
Loss of dependency	9,45,000.00
Loss of estate	15,000.00
Loss of consortium to 1 st claimant	40,000.00
Loss of funeral expenses	15,000.00
Parental consortium to claimants 2 and 3	80,000.00
Loss of love and affection to claimants 4 and 5	80,000.00
Total	11,75,000.00

38. The total compensation of Rs.11,75,000/- is apportioned to the claimants as under:

- (i) First claimant - Rs.6,75,000/-
- (ii) Second and Third claimants - Rs.1,50,000/- each
- (iii) Fourth and Fifth claimants - Rs.1,00,000/- each

39. It appears that at the time of filing the claim petition, the claimants 2 and 3 were aged 17 and 15 years respectively. It appears that now the claimants 2 and 3 would

have attained majority. The claimants 2 and 3 are permitted to withdraw their respective shares after declaring them as major and after discharging their guardianship.

40. In the result:

(a) C.M.A.No.2745 of 2015 filed by the claimants is partly allowed with proportionate costs.

(b) The compensation of Rs.9,81,000/- awarded by the Tribunal in M.C.O.P.No.474 of 2012 is enhanced to Rs.11,75,000/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(c) Since it is reported that the entire award amount of compensation already deposited, the claimants are permitted to withdraw the same on filing appropriate application.

(d) The second respondent insurance company is directed to deposit the remaining amount, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.

(e) C.M.A.No.2599 of 2015 filed by the second respondent insurance company is dismissed.

(f) Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vs

To

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

Copy to

The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 5095

+1 CC to Mrs.R. Sreevidya, Advocate sr 5137.

C.M.A.Nos.2745 & 2599 of 2015 and
M.P.No.1 of 2015

VGII (CO)
SP(19/08/2020)