



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.2912 of 2012 & Cross.Obj.No.54 of 2013
and
MP.No.1 of 2012

M/s. New India Assurance Co, Ltd.,
No.46, Moore Street,
Chennai 01.

...Appellant in CMA /
1st Respondent in Cross Obj.,/
3rd Respondent in trial Court

Versus

1.S.Parameshwari
2.Gomathi
3.Senthilkumar

... Respondents 1 to 3 in CMA
/ Cross Objectors in
Cross Objection /
Petitioner 1 to 3

4.M.Sridhar Babu

... 4th Respondents in CMA
/ 2nd Respondent in
Cross Objection /
1st Respondent in trial Court

Common Prayer: Civil Miscellaneous Appeal and Cross Objection have been filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 27.09.2011 made in M.C.O.P.No.3149 of 2007 on the file of the Motor Accident Claims Tribunal (Cheif - Judge) Small Causes Court at Chennai.

For Appellant in CMA
& R1 in Cross Obj.

: Mr.J.Chandran

For R1 to R3 in CMA &
Cross Objectors in Cross Obj.: Mr.V.Mohan Choudary

For R4 in CMA
& R2 in Cross Obj.

: Not ready in notice



JUDGMENT

This Civil Miscellaneous Appeal and the Cross objection have been filed against the award dated 27.09.2011 made in M.C.O.P.No.3149 of 2007 on the file of the Motor Accident Claims Tribunal Judge, Small Causes Court at Chennai.

2.For the sake of convenience, the parties are referred to as per their litigative status in the claim petition.

3.The claimants are wife and children of the deceased. The first respondent is the owner of the offending vehicle and second respondent is the insurance company. The claim petition in M.C.O.P.No.3149 of 2007 was filed seeking a sum of Rs.10,00,000/- for the death of one K.Sampath.

4.According to the claimants, the deceased Sampath was the husband of the first claimant and father of the claimants 2 and 3. It is represented by the claimants that the deceased was working as a Mason and earning a sum of Rs.300/- per day. On 10.07.2007, at about 06.00 hours, when he was crossing the road at the junction of Agraharam road, the first respondent's motorcycle bearing regn.No.TN-04-T-3367 driven by its driver in a rash and negligent manner knocked down the deceased Sampath, as a result of which, the deceased, Rajendran, sustained multiple grievous fractures and injuries all over the body and due to the impact, he succumbed to death. A case was registered by the Thirumangalam Police in Crime No.230/TM2/2007 under Sections 279, 304(A) IPC, 3 read with 184 & 185 of the Motor Vehicles Act, against the rider of the motorcycle. The owner of the offending vehicle was set ex-parte before the Tribunal.

5.Before the Tribunal, on behalf of the claimants, the first claimant (wife of the deceased) was examined as PW.1; the second claimant (son of the deceased) was examined as PW.2; one eye witness Balan was examined as PW.3 and seven documents were marked as Exs.P1 to P8 . On the respondents side, one V.P.Sivaraman, Sub-Inspector of Police was examined as RW.1; one A.Vadamalai Raju, Deputy Manager of the insurance company was examined as RW.2, and four documents were marked as Exs.R1 to R4.

6.The Insurance company has filed a counter affidavit alleging that the first respondent did not claim or produce any document, which was related to the said vehicle. Further, he contended that the driver did not possess any valid or effective licence at the time of accident, in which case there is a violation of the policy condition and also resisted the claim petition, by disputing the age, income and other details furnished by the claimant. It is also contended that the deceased crossed the road and invited the death in the said



accident. Further, he submitted that at the time of accident the rider of the motorcycle was in inebriated condition, which is a clear violation of policy. Therefore, the Insurance company denied their liability to pay the compensation. Therefore, the insurance company prayed for dismissal of the claim petition.

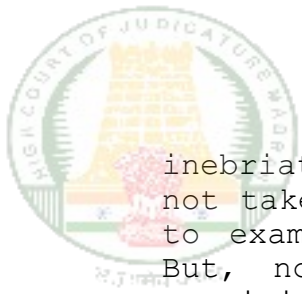
7.The Tribunal, considering the oral and documentary evidence, including Ex.P1/FIR, Ex.P3/Accident Register copy, Ex.P4/Postmortem certificate and Ex.P5/Death Certificate, held that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle and that the Insurance company is liable to pay compensation on behalf of the first respondent. Thus, the Tribunal awarded a compensation to the tune of Rs.5,34,000/- along with interest at the rate of 7.5% per annum.

8.Challenging, the said award the insurance company is filed the appeal and seeking enhancement of compensation, the claimants have filed the Cross Objection.

9.The learned counsel appearing for the Insurance company, challenged the award on the ground of that the driver of the offending vehicle had no driving license on the date of occurrence and he was under influence of alcohol. To substantiate the said plea, learned counsel placed reliance on Ex.R1/Charge sheet, which was duly supported by the evidence of RW.1/Inspector of Police. Further, learned counsel submitted that the amount fixed towards the income of the deceased at the rate of Rs.4,500/- per month is on the higher side.

10.The learned counsel appearing for the respondents/Claimants submitted that the Tribunal failed to consider the future prospects of the deceased, in the light of the judicial pronouncements more particularly the decision of the Supreme Court in the case of (National Insurance Company Limited Vs. Pranay Sethi), reported in 2017-13 SCALE 12. Learned counsel further sought grant of compensation under the head 'loss of estate' and sought enhancement of compensation under the heads 'loss of consortium', 'loss of love and affection', 'funeral expenses & transportation charges' in the light of the Supreme Court pronouncement in the above cited decision.

11.On consideration of the findings of the Tribunal, the material available on record, more particularly the evidence of PW.2, it is explicitly clear that the accident had occurred due to the rash and negligent driving of the rider of the offending vehicle. With regard to the influence of alcohol, the evidence of RW.1/Inspector of Police is category. However, he has not obtained any medical certificate to substantiate that, at the time of accident, the driver of the offending vehicle was in an

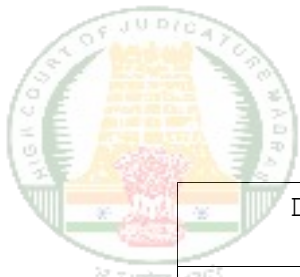


inebriated condition. That apart, the second respondent has also not taken any steps to summon the rider of the offending vehicle to examine him. R3 and R4 notices were returned as unserved. But, no other steps to serve the notice through Court for examining them as witness or for production of driving licence etc and therefore, the second respondent before the Tribunal has failed to prove the above said facts i.e., the rider was not having valid driving licence and the rider has driven the vehicle under the influence of alcohol by sufficient oral or documentary evidences and therefore, the second respondent before the Tribunal is liable to pay compensation.

12.The Tribunal, after consideration of deposition of PW.1 as well as the other documentary evidence like Ex.P6/legal heirs certificate, Ex.P1/FIR, Ex.P4/Postmortem certificate and Ex.P5/Death certificate has rightly come to the conclusion tha the deceased was aged 42 years at the time of accident. This Court finds no reason to take a different view inasmuch as no contra evidence has been let in by the Insurance company.

13.The Tribunal after taking the age of the deceased as 42 years, fixed his income as of Rs.250/- per day and thus arrived his montly income of Rs.4,500/- and after deducting 1/3 towards his personal expenses, the Tribunal fixed the annual income of Rs.36,000/- by applying multiplier '14' fixed the total sum of Rs.5,04,000/- towards loss of income, hence, this Court does not find any reason to interfere with the said amount, which was arrived at by the Tribunal. However, the Tribunal has lost sight of granting amount towards future prospects to the deceased. In the light of the decision of the Supreme Court in Pranay Sethi case, this Court feels that it is just and proper to grant 25 % towards future prospects. Thus, this Court fixes the loss of income at Rs.6,30,000/- ($\text{Rs.4500} + 25\% = \text{Rs.5625/-} \times \frac{2}{3} = 3750/- \times 12 \times 14$).

14.This Court also feels that the amount awarded by the Tribunal under the head 'loss of consortium', 'loss of love and affection' and 'funeral & transport charges' is too meagre. Therefore, in the light of the decision of the Supreme Court in Pranay Sethi case, the amount awarded towards 'loss of consortium' is enhanced from Rs.10,000/- to Rs.40,000/-; under the head 'loss of love and affection' a sum of Rs.40,000/- is awarded instead of Rs.10,000/- granted by the Tribunal, i.e., at the rate of Rs.20,000/- each to the respondents 2 and 3. The amount awarded by the Tribunal towards 'funeral and transport expenses' of Rs.10,000/- is enhanced to Rs.15,000/-. This Court considering the fact that the Tribunal did not award any sum under the head 'loss of estate', feels it appropriate to grant a sum of Rs.15,000/- towards loss of estate. Thus, in all, the amount awarded by the Tribunal is enhanced as under:-



WEB COPY

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income	Rs.5,04,000/-	Rs.6,30,000/-
Loss of consortium	Rs.10,000/-	Rs.40,000/-
Love and affection	Rs.10,000/-	Rs.40,000/-
Funeral & transport to hospital expenses	Rs.10,000/-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
Total	Rs.5,34,000/-	Rs.7,40,000/-

15. In the result, the Civil Miscellaneous appeal filed by the insurance company is dismissed. The Cross objection filed by the claimants is partly allowed. The appellant/Insurance company is directed to pay the compensation amount Rs.7,40,000/- as against the award passed by the Tribunal at Rs.5,34,000/-, within a period of eight weeks from the date of receipt of a copy of this Judgement. Out of the above said compensation the first claimant is entitled to Rs.3,40,000/- and the claimants 2 & 3 are entitled to Rs.2,00,000/- each and other terms and conditions with regard to interest is imposed by the Tribunal held good. The first respondent/claimant and the respondents/claimants 2 & 3 are entitled to withdraw their respective share amount, by moving appropriate application before the Tribunal. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

klt
To

Sub Assistant Registrar

1. The Motor Accident Claims Tribunal
(Chief - Judge) Small Causes Court, Chennai.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+2 ccs to Mr.V.Mohan Choudary, Advocate, S.R.No.24376
+1 cc to Mr.J.Chandran, Advocate, S.R.No.24117

CMA.No.2912 of 2011
and
Cross Obj.No.54 of 2013

CA(CO)
SSM(15/10/2019)