IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.711 of 2015
and
M.P.No.1 of 2015

The Manager
M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
3rd floor, Subramaniam building
No.1, Club house road
Chennai-600 002. ... Appellant/2nd respondent

Vs.

1.Ramachandran
2.Mallika
3.Logeswari .. Respondents 1to 3/ Petitioners
4.Krishnamurthy
... 4th Respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.06.2014 made in M.C.O.P.No.452 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.M.Krishnamoorthy

For R1 to R3 : Mr.T.Gopinath

R4-set exparte in lower Court itself

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 03.06.2014 made in M.C.O.P.No.452 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Court, Perambalur.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.452 of 2011 on the file of Motor Accident Claims

Tribunal, Principal District Court, Perambalur. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Karthik, who died in the accident that took place on 23.04.2011.

3.According to the respondents 1 to 3, on the date of accident, i.e., on 23.04.2011 at 2.45 p.m., while the deceased Karthik was riding the motor cycle along with the pillion rider and was proceeding on the extreme left side on Mannachanallur towards Trichy road opposite to Meenakishi Rice Mill, the Tata light goods vehicle, which came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motor cycle and caused the accident. Due to the accident, the deceased Karthik died on the spot and the pillion rider sustained grievous injuries. Hence, the respondents 1 to 3 have filed the claim petition seeking compensation.

4.The 4th respondent, owner of the goods vehicle remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 to 3 and contended that at the time of accident, the deceased Karthik had no valid driving license and he did not wear helmet. The claim petition is bad for non-joinder of owner and insurer of the motor cycle in which the deceased was riding. The deceased without following the traffic rules, suddenly entered the main road and dashed against the vehicle belonging to the 4th respondent. The accident occurred due to rash and negligent riding of the motor cycle by the deceased and the appellant/Insurance Company is not liable to pay compensation.

6.Before the Tribunal, 1st respondent, father of the deceased, examined himself as P.W.1, one Saravanan, pillion rider of the motor cycle, was examined as P.W.2 and marked fourteen documents as Exs.P1 to P14. On the side of the appellant, One Udhayakumar, driver of the goods vehicle, was examined as R.W.1, one Amarakavinathan, Special Sub-Inspector of Police, was examined as R.W.2 and one Vaitheeswaran, Assistant Manager of the appellant/Insurance Company, was examined as R.W.3 and marked three documents as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the goods vehicle belonging to the 4th respondent, fixing 90% negligence on the part of the 4th respondent, 10% negligence on the part of the deceased as he did not wear helmet and awarded a sum of Rs.16,20,000/- towards loss of dependency, after deducting 10% from the amount granted towards loss of dependency, which comes to Rs.14,58,000/- (16,20,000 – 1,62,000) and awarded a total compensation of Rs.15,68,000/- and directed the appellant/Insurance Company being insurer of the goods vehicle to pay a sum of Rs.15,68,000/- as compensation to the respondents 1 to 3.

8.Against the said award dated dated 03.06.2014 made in M.C.O.P.No.452 of 2011, granting compensation to the respondents 1 to 3, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal having held that death of the deceased could have been avoided had he wore helmet, erred in fixing only 10% negligence on the part of the deceased. The Tribunal ought to have fixed more percentage of negligence on the deceased. The Tribunal failed to consider the evidence of R.W.1/driver of the goods vehicle, who deposed that the deceased drove the motor cycle in a rash and negligent manner on the wrong side and invited the accident. The father and mother of the deceased were aged 50 and 40 years respectively at the time of accident. The Tribunal ought to have applied multiplier considering the age of the mother of the deceased instead of age of the deceased. The notional income fixed by the Tribunal is excessive and the same is without any basis. The total compensation awarded by the Tribunal is excessive and prayed for allowing the appeal. In support of his contentions, he relied on the following judgments:

(i) 2017 (1) TNMAC 423 (A.Chitra and others vs. G.A.Sivakumar and others);

(ii) 2017 (1) TNMAC 718 (Oriental Insurance Company vs. Indirani and others);

10.The learned counsel appearing for the respondents 1 to 3 contended that the deceased was a brilliant student and the accident occurred only due to negligence on the part of the driver of the goods vehicle. The respondents 1 to 3 who are the parents and sister of the deceased have lost their son and brother at an early age. The Tribunal erred in fixing 10% negligence on the part of the deceased for not wearing helmet. The Tribunal ought to have awarded 100% compensation to the respondents 1 to 3. The amount awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the respondents 1 to 3 and perused the materials available on record.

12.From the materials available on record, it is seen that the Tribunal has held that the accident has occurred due to rash and negligent driving by the driver of the goods vehicle belonging to the 4th respondent. The Tribunal, having held so considering the fact that the deceased was not wearing helmet at the time of accident, fixed 10% negligence on the part of the deceased. In the judgments relied on by the learned counsel appearing for the appellant/Insurance Company as cited supra, this Court has held that for not wearing helmet by the rider of the motorcycle, fixed 15% negligence on the part of the rider of the motor cycle. The ratio in the said judgments is squarely applicable to the facts of the present case. Therefore, the contention of the learned counsel appearing for the appellant/Insurance Company that the Tribunal ought to have fixed more percentage of negligence on the part of the deceased is acceptable in view of the judgments relied on by him and hence, 15% negligence is fixed on the part of the deceased.

13.The deceased was aged 20 years at the time of accident and was IInd year B.E. Computer Science student. The Tribunal considering the judgment of this Court reported in 2013 (2) TNMAC 846 (United India Insurance Company Limited vs. Velumayil), has rightly fixed a sum of Rs.15,000/- per month as notional income of the deceased including future prospects. The accident is of the year 2011, the deceased was aged 20 years and was IInd year B.E. Computer Science student. The amount fixed by the Tribunal is not excessive. The contention of the learned counsel appearing for the appellant that the Tribunal ought to have taken the age of the parents for applying multiplier is not correct. In the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), it has been held that age of the deceased is the basis for applying multiplier. The Tribunal after deducting 50% towards personal expenses and applying correct multiplier, granted compensation towards loss of income, which is not excessive. The respondents 1 to 3 are entitled to 85% compensation. Accordingly, after deducting 15% towards negligence on the part of the deceased, a sum of Rs.13,77,000/- (16,20,000 - 2,43,000) is awarded towards loss of dependency. Similarly, the amounts granted by the Tribunal under conventional heads are not excessive. 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 or reduced
1.	Loss of dependency	Deducted 10% 14,58,000	Deducted 15% 13,77,000	Reduced

2.	Loss of love and affection	90,000	90,000	Confirmed
3.	Funeral expenses	5,000	5,000	Confirmed
4.	Transportation	5,000	5,000	Confirmed
5.	Loss of estate	10,000	10,000	Confirmed
	Total	15,68,000	14,87,000	Reduced by Rs.81,000/-

14.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.15,68,000/- awarded by the Tribunal is hereby reduced to Rs.14,87,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount along 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 respondents 1 to 3/claimants are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, as per the apportionment made by the Tribunal, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.452 of 2011, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
1.The Principal District Judge
Motor Accident Claims Tribunal,Perambalur.

2.The Section Officer
VR Section,High Court
Madras.
+1cc to Mr.M.Krishnamoorthy , Advocate SR.No. 101720
+1cc to Mr.T.Gopinath, Advocate SR.No. 101941

A.SK(07/09/2020)