



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1758 of 2018

1.P. Amudha

2.Minor.P.Varshana

3.Minor P.Dhanusri

4.Duraisamy

5.Saraswathi

... Appellants

vs.

1.D. Mohan

2.The Divisional Manager,
National Insurance Company Limited,
North Prathachana Road, Karur

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 06.10.2017 passed in MCOP.No.731 of 2015 by the Motor Accident Claims Tribunal/Principal District Court at Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For 2nd Respondent : Mr.S. Vadivel

1st Respondent : Ex-parte

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the claimants seeking enhancement of the compensation passed under the Impugned Award dated 06.10.2017 by the Motor Accident Claims Tribunal (Principal District Court), Namakkal in MCOP.No.731 of 2015.

Brief facts leading to the filing of the instant appeal:

2. A person by name Palanivel died on 20.04.2015 in an accident, caused by a Hero Splendor Pro Motor Cycle, bearing Registration No.TN 47 AB 9193, owned by the first respondent and insured with the second respondent/Insurance Company. The



accident happened when the deceased Palanivel was driving a Hero Honda 100 Motor cycle bearing Registration No.TN.28.H.1113 in Karur-Velur Main Road, when the Hero Splendor Pro Motor Cycle, bearing Registration No.TN 47 AB 9193 dashed against the Hero Honda 100 Motor cycle bearing Registration No.TN.28.H.1113, driven by the deceased. As a result of the said accident, the deceased sustained multiple injuries on his head and several grievous injuries all over his body and he died in the hospital.

3. The dependents of the deceased are his wife, two minor children and his parents, who are the Appellants herein. They preferred a claim before the Motor Accidents Claims Tribunal (Principal District Court), Namakkal in MCOP No.731 of 2015, seeking compensation for a sum of Rs.50,00,000/- for the death of Palanivel.

4. The Motor Accidents Claims Tribunal by its Award dated 06.10.2017 in MCOP No.731 of 2015 gave a finding that both the two wheelers viz., Hero Splendor Pro Motor Cycle, bearing Registration No.TN 47 AB 9193 and Hero Honda 100 Motor cycle bearing Registration No.TN.28.H.1113 were equally at fault and fixed 50% contributory negligence on the riders of both the two wheelers and directed the second respondent Insurance Company to pay a sum of Rs.4,69,226.50 (Rupees Four Lakhs Sixty Nine thousand and two hundred twenty six and paise fifty only) (50% contributory negligence) with interest at 7.5% from the date of claim petition till the date of realisation.

5. Aggrieved by the adverse finding of contributory negligence as well as the quantum of compensation assessed by the Tribunal, this appeal has been filed by the claimants.

6. Heard Mr.MA.P.Thangavel, learned counsel for the Appellants/claimants and Mr.S. Vadivel, learned counsel for the Second Respondent/Insurance Company. The first respondent has remained exparte both before the Tribunal as well as this Court.

Discussion:

7. According to the Appellants/claimants, fixing 50% of contributory negligence on the part of the deceased, who was the rider of the Hero Honda 100 Motor cycle bearing Registration No.TN.28.H.1113 is not correct and the quantum of compensation awarded by the Tribunal is very meager. It is also their case that the deceased was earning a monthly income of Rs.20,000/- as a Supervisor in Pionner Packs Pvt Ltd at Velayuthampalayam and despite establishing his monthly income through his employer, who has been examined as PW4, the Tribunal has assessed the monthly income of the deceased at Rs.6,000/- and has also not added any amount towards loss of future prospects. It is also their case that the compensation awarded under the heads loss of



love and affection, transport expenses and funeral expenses are also inadequate. Further, according to the claimants, no compensation has been awarded under the head loss of estate.

8. Before the Tribunal, the claimants have filed 16 documents, which were marked as Ex.P1 to Ex.P16 and four witnesses were examined viz., PW1, the wife of the deceased; PW2 and PW3 - eyewitnesses and PW4 is the employer of the deceased. On the side of the respondents, neither any witness was examined nor any document filed

9. The First Information Report (Ex.P1) has been registered only against the rider of the Hero Splendor Pro Motor Cycle, bearing Registration No.TN 47 AB 9193 (insured vehicle). As per the First Information Report, the rider of the insured vehicle Hero Splendor Pro Motor Cycle, bearing Registration No.TN 47 AB 9193 was riding the vehicle ahead of the motorcycle Hero Honda 100 Motor cycle bearing Registration No.TN.28.H.1113, which was driven by the deceased. FIR states that due to the rash and negligent driving by the rider of the insured vehicle who applied sudden brakes, without giving any proper signal, the two wheeler, in which the deceased was riding, dashed against the insured vehicle and as a result of the said accident, the deceased died. Charge Sheet has also been filed by the police only against the rider of the insured vehicle which has been marked as Ex.P8.

10. PW2, an eyewitness has deposed that in front of him, there were 2 vehicles and the first two wheeler was the insured vehicle bearing Registration No. TN 47 AB 9193 Hero Honda Splendor Pro and the second one was the two wheeler bearing Registration No.TN 28 H 1113 Hero Honda CD 100, which was driven by the deceased. According to PW2, without any signal, the insured two wheeler applied sudden brakes and took a right turn and as a result of which, the two wheeler, which was driven by the deceased dashed against the insured two wheeler and he fell down from the vehicle which resulted in his death. PW1, the eyewitness has also deposed that he already knows the deceased.

11. The Tribunal, after considering the evidence of PW2 as well as the contents of the First Information Report observed that the person travelling behind another vehicle should have maintained minimum distance. The Tribunal has also observed that when a person overtakes another vehicle, he should blow horn and then only he should overtake him. The Tribunal has given a finding that the deceased has not followed the traffic rules and held that the deceased was equally responsible for the accident and accordingly, the Tribunal fixed contributory negligence of the deceased at 50%.



12. We have perused the First Information Report (Ex.P1), Charge Sheet (Ex.P8) as well as the oral evidence of PW1 and PW2.

13. The charge sheet corroborates the contents of the First Information Report, which indicate that the rider of the insured two wheeler alone was responsible for the accident. The oral evidence of PW1 as well as PW2 also corroborate the contents of the First Information Report. However, PW2 is not an independent eyewitness, as he deposed that he knew the deceased even prior to the accident. Further, PW2 was asked to depose only at the instance of the claimants. Further, the two wheeler bearing Registration No.TN 28 H 1113 Hero Honda CD 100, in which, the deceased was a rider admittedly coming behind the insured two wheeler, bearing Registration No.TN 47 AB 9193. Therefore, the deceased, who was riding the two wheeler, would have got a full view of the vehicles, in front of him and should have maintained a safe distance between his vehicle and the vehicle in front of him.

14. The only adverse inference that may go against the deceased is that he should have maintained a safe distance between his vehicle and the insured vehicle to avoid any accident in case of any rash and negligent driving by the insured vehicle which was in front of him. A driver should always be cautious while driving to avoid accident. It can be inferred that if the deceased was travelling at a normal speed by following the traffic rules and regulations, he could have avoided the accident. But, we are unable to agree with the finding of the Tribunal that the deceased was equally responsible for the cause of the accident with that of the driver of the insured two wheeler. He can be penalized but not equally with that of the rider of the insured two wheeler who is the major offender

15. Considering the oral and documentary evidence available on record, we re-fix the contributory negligence of the deceased at 25% instead of 50% assessed by the Tribunal under the impugned Award.

16. The accident happened in the year 2015. It is the case of the claimants that the deceased was earning a sum of Rs.20,000/- per month as a supervisor in Pionner Packs Pvt Ltd at Velayuthampalayam. The employer of the deceased was also examined as a witness (PW4) and he corroborated the claim that the deceased was a supervisor in their concern and earning a monthly income of Rs.20,000/-. However, the Tribunal has without considering the year of the accident and without considering the oral evidence of PW4, on its own, assessed the monthly income of the deceased at Rs.6,000/-. In fact, PW4 is none else than the Managing partner of Pionner Packs Pvt Ltd at Velayuthampalayam



and the deceased was his employee. This being the case, we are of the considered view that the Tribunal ought to have given weightage to the oral evidence of PW4 and fixed the monthly income of the deceased at a higher sum than at Rs.6,000/- which according to us, is meager. After considering the cost inflation index, year of the accident and the oral evidence of the employer of the deceased, we are of the considered view that the notional monthly income of the deceased will have to be fixed at Rs.11,000/- instead of Rs.6,000/- fixed by the Tribunal.

17. The claimants are legally entitled to loss of future prospects as per the Constitution Bench judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. But the Tribunal has erroneously not awarded any compensation towards loss of future prospects in the impugned award. The deceased was aged 42 years at the time of the accident and considering his age, we assess the loss of future prospects at 25% of his monthly income as per Pranay Sethi Judgment referred to supra.

18. As regards the multiplier applied by the Tribunal for loss of dependency is concerned, the Tribunal has rightly applied 14 multiplier after considering the age of the deceased. We are therefore, not interfering with the said finding of the Tribunal and the same is confirmed.

19. The dependents of the deceased are five in number. The Tribunal has rightly deducted 1/4th towards personal expenses of the deceased while assessing the loss of dependency.

20. The first respondent who is the wife of the deceased is entitled for loss of consortium as per Pranay Sethi Judgment referred to supra. But the Tribunal has not awarded any compensation to her under the said head. Accordingly, we award a sum of Rs.40,000/- as compensation for loss of consortium in accordance with Pranay Sethi Judgment referred to supra.

21. The compensation awarded by the Tribunal towards loss of love and affection is an inadequate compensation and not in accordance with settled principle of law. As per Pranay Sethi Judgment referred to supra, the claimants 2 to 5 are entitled to a higher compensation. Accordingly, we assess the same at Rs.50,000/- to each of the claimants 2 & 3/minor children and Rs.40,000/- to each of the claimants 4 & 5/parents.

22. The compensation awarded to the claimants under the head transportation cost is inadequate and we assess the same at Rs.10,000/-



23. Insofar as the reimbursement of medical bills is concerned, the same is confirmed as it is supported by documentary evidence.

24. The compensation awarded by the Tribunal towards loss of estate as well as the funeral expenses is inadequate and not in accordance with settled principle of law. We therefore, enhance the compensation awarded towards loss of estate from Rs.1,000/- to Rs.15,000/- and funeral expenses from Rs.5,000/- to Rs.15,000/-.

25. For the foregoing reasons, the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of dependency	7,56,000/- (6000 - $\frac{1}{4}$ = 4,500 x 14 x 12)	17,32,500/- (11,000 + 25% = 13,750 - $\frac{1}{4}$ =10,312.50 x 14 x12)
Loss of consortium	Nil	40,000/-
Loss of love and Affection	2,000/-	1,80,000/-
Funeral Expenses	5,000/-	15,000/-
Loss of Estate	1,000/-	15,000/-
Transportation	5,000/-	10,000/-
Medical Bills	1,69,453/-	1,69,453/-
Total	9,38,453/-	21,61,953/-
Less: contributory negligence of the deceased	4,69,226.50 (50%)	5,40,488/- (25%)
Award amount	4,69,226.50	16,21,465/-

26. In view of the above modification in the impugned award, the first Appellant being the wife of the deceased is entitled to 6,21,465/-, the second and third Appellants being the minor children of the deceased are entitled to Rs.4,00,000/- each and the fourth and fifth Appellants being the parents of the deceased are entitled to Rs.1,00,000/- each.



Conclusion:

27. In the result, the appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second respondent insurance Company is directed to deposit the modified award amount i.e, Rs.16,21,465/- along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.731 of 2015 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the share of the first, fourth and fifth Appellants as per the order of this Court through RTGS within a period of four weeks thereafter. Since the second and third Appellants are minors, their respective share of award amount shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first Appellant once in 6 months. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

sr/nl
To

1.The Principal District Judge
Motor Accident Claims Tribunal
Namakkal

2.The Section Officer,
VR Section, High Court,
Chennai.

+1 CC to Mr.S. Vadivel, Advocate sr 82031.

+1 CC to Mr.Ma.Pa. Thangavel, Advocate sr 82349.

C.M.A.No.1758 of 2018

RP(CO)
SP(31/08/2021)