

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1837 of 2018
and
C.M.P.No.14229 of 2019

United India Insurance Co. Ltd.,
P.B.No.30, C.G.Complex,
139, Kumaran Road,
Tiruppur. ... Appellant/4th Respondent

Vs

1.Arundhati Ghoshal, 37 years,

2.Minor.Depannita Saha, 5 years,
D/o.Dipakkumar Saha,

3.Bedana Saha, 67 years,
W/o.Dakshina Ranjan Saha,
(Minor Rep. by mother/guardian/
next friend Arundhati) ...1 to3 Respondent/Petitioners

All are residing at 20/37,
Chairman Kandasamy Nagar, 4th Street,
Palaiaikadu, Tiruppur 641 601.

4.Venkatesan,
S/o.Madhavan,
Residing at 27/75, Puthu Thottam Estate,
Valparai. ...4th Respondent/1st Respondent

5.The Managing Director,
Tamil Nadu State Transport Corporation,
(Division - I) Limited,
37,Mettupalayam Road,
Coimbatore. ...5th Respondent/2nd Respondent

6.M/s.Fuchsia Garments,
14, Senthil Nagar near Konganagiri Temple,
College Road,
Tiruppur 641 602. ...6th Respondent/3rd Respondent

PRAYER : Civil Miscellaneous Appeal filed against the award
and decree dated 29.10.2015 made in MCOP.No.336 of 2013 on the
file of the Motor Accident Claims Tribunal, I Additional
District Judge, Tiruppur.

For Appellant :Mr.S.Arunkumar

For Respondents :Mr.Ma.P.Thangavel (R1 to R3)

Mr.K.J.Sivakumar (R5)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Insurance company questioning the 75% liability fixed on it and also quantum of compensation of Rs.57,35,000/- awarded for the death of one Mr.Dipak Kumar Saha, aged 37 years, Merchandise Manager, allegedly earning about Rs.40,000/- per month, in the accident occurred on 22.02.2013, when he was travelling in a two wheeler as a pillion rider and fell down due to application of sudden brake and the bus belonging to the Transport Corporation came in the opposite direction, ran over him and caused his death.

2.Heard Mr.S.Arunkumar, learned counsel appearing on behalf of the Insurance company, Mr.Ma.P.Thangavel, learned counsel appearing on behalf of the claimants and Mr.K.J.Sivakumar, learned counsel appearing on behalf of the Transport Corporation.

3.It is very vehemently argued by Mr.S.Arunkumar, learned counsel that the two wheeler is in no way responsible for the accident as the two wheeler rider was compelled to apply sudden brake as the mini bus which was going ahead of the two wheeler stopped suddenly by applying brake, resulting in falling of the two wheeler riders. Therefore, the main culprit is only the driver of the mini bus. However, neither the driver of the mini bus nor the Insurance company of the mini bus have been impleaded as parties to this proceedings and making allegations against the driver of the transport corporation alone, the case has been filed and so also the FIR. He would submit that when the two wheeler rider correctly applied brake and did not collide or dash against the mini bus which was going ahead, there cannot be any negligence on the part of the two wheeler and consequently there is no liability on the part of the Insurance Company.

4.However, Mr.Ma.P.Thangavel, learned counsel appearing on behalf of the claimants would support the finding given by the Tribunal.

5.Mr.K.J.Sivakumar, learned counsel appearing on behalf of the Transport Corporation would submit that the driver of the Transport Corporation is in no way responsible for the accident and it is because of the mini bus and the two wheeler that the accident occurred.

6. However, the Tribunal found that the two wheeler rider was responsible for the accident to the extent of 75% and the driver of the transport corporation was responsible for the accident to the extent of 25%.

7. A close scrutiny of the pleadings and evidence would show that Ex.P.1/FIR was registered against the driver of the transport corporation and even in the claim petition the tortfeasor alleged is only the driver of the transport corporation. PW2 in his evidence categorically stated that the accident occurred because of the stopping of the mini bus suddenly and application of sudden brake by the rider of the two wheeler. After the deceased fell down from the two wheeler, the transport corporation bus ran over the deceased. Though PW2 categorically stated that mini bus suddenly applied brake, no such plea has been made either in the claim petition by the claimants or by the Insurance company in the counter statement. If really there was a mini bus going ahead of the two wheeler and it stopped suddenly definitely it would have found place either in Ex.P.1/FIR or in the claim petition or in the counter statement filed by the Insurance Company. When there is no such plea, it would go to show that there was no such vehicle going in front of the two wheeler. It is a fact proved by PW2 that applying of sudden brake by the rider of the two wheeler is the reason for falling of the deceased from the vehicle and thereafter, the transport corporation's bus ran over the deceased. Therefore, the negligence is on the part of two wheeler rider as well as on the part of the driver of the transport corporation which was rightly found by the Tribunal. However, 75% negligence fixed on the Insurance Company and 25% negligence fixed on the Transport Corporation. Though the deceased fell down due to application of sudden brake, he died because of the bus running over him. Therefore, 40% liability is fixed on the rider of the two wheeler and 60% liability is fixed on the driver of the transport corporation's bus. There is no evidence adduced on the side of the transport corporation. Moreover, the rider of the two wheeler was not examined to prove the case of the Insurance Company.

8. With regard to the quantum of compensation, Mr.S.Arunkumar, learned counsel appearing on behalf of the Insurance Company would rightly point out that 50% has been added towards future prospects, whereas the deceased was working in a private company, therefore only 40% has to be added towards future prospects. As per the evidence of PW3 and on perusal of Ex.P.9/salary statement, the Tribunal rightly fixed the monthly income at Rs.30,000/-. After adding 40% towards future prospects, the monthly income would be at Rs.42,000/- [Rs.30,000/- (+) Rs.12,000/-].

9. Since the size of the family is 3, $1/3^{rd}$ has to be deducted towards personal expenses, after deducting $1/3^{rd}$, the monthly income would be at Rs.28,000/- [Rs.42,000/- (-) Rs.14,000/-].

10.As per Ex.P.2/Post mortem certificate, the age of the deceased is 37 years and therefore, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) right multiplier is "15". Therefore, loss of contribution would be Rs.50,40,000/- (Rs.28,000/- x 12 x 15).

11.Loss of consortium:

The Tribunal has awarded a sum of Rs.1,00,000/- under this head. As per the Apex Court Judgement in Pranay Sethi's case the same is reduced to Rs.40,000/-.

12.Love and affection:

The Tribunal has awarded a sum of Rs.1,00,000/- under this head. The same is confirmed in respect of minor claimant. As far the mother of the deceased, the Tribunal has awarded a sum of Rs.1,00,000/-, the same is reduced to Rs.40,000/-

11.Loss of estate:

No amount was awarded by the Tribunal under this head. Hence, this Court awards a sum of Rs.15,000/- under this head.

12.Funeral expenses:

The Tribunal has awarded a sum of Rs.25,000/- under this head. The same is reduced to Rs.15,000/-.

13.Transportation charges:

The Tribunal has awarded a sum of Rs.10,000/- under this head. The same is confirmed.

Head	Amount (Rs.)
Loss of contribution	5040000
Loss of consortium	40000
Loss of love and affection	140000
Loss of estate	15000
Funeral expenses	15000
Transportation charges	10000
	5260000

14.Hence the compensation awarded to the claimants comes to Rs.52,60,000/-. Out of the modified award amount, the 1st respondent/1st claimant is entitled to get Rs.25,00,000/-, the 2nd respondent/2nd claimant is entitled to get Rs.20,00,000/- and 3rd respondent/3rd claimant is entitled to get Rs.7,60,000/-. The rate of interest fixed by the Tribunal at 7.5% per annum is confirmed.

15.The insurance company as well as the Transport Corporation are directed to deposit 40% and 60% of the compensation amount respectively as per the modified award passed by this Court along with interest and costs, within a period of four weeks from the date of receipt of a copy of

this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the share of the 1st and 3rd respondents/1st and 3rd claimants with proportionate interest and costs to their bank accounts through RTGS within a period of one week thereon. As far as the share of the minor/2nd respondent/2nd claimant is concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till she attains majority. The 1st respondent/1st claimant is permitted to withdraw interest accruing on such deposit once in three months.

16. Accordingly, this appeal is partly allowed reducing the compensation amount from Rs.57,35,000/- to Rs.52,60,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sai

To
The District Judge,
Additional District Court,
Tiruppur.

+lcc to Mr.Ma.P.Thangavel , Advocate SR.No. 102286

+lcc to Mr.S.Arun kumar , Advocate SR.No. 102565

C.M.A.No.1837 of 2018

bp co

A.SK(27/11/2020)

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