

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.208 of 2017
and C.M.P.Nos.1410 of 2017 & 12093 of 2017

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.30, N. Street, 2nd Floor,
Puducherry. Appellant/2nd Respondent

vs.

1.Mrs.Kayalvizhi
2.Mr.Subramanian Respondents 1 & 2/Claimants
3.R.Duvaraganth 3rd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in made in M.C.O.P.No.552 of 2014 dated 01.06.2016 on the file of the learned Motor Accidents Claims Tribunal, (Principal Subordinate- Judge) at Tindivanam. (MCOP.No. amended vide order of this Court dated 14.06.2017 made in CMP.No.7608 of 2017)

For Appellant : Mr.J.Chandran

For Respondents: Mrs.R.Sumithra Chakkaravarthi for R1 and R2
R3 - Not ready in notice

JUDGMENT

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

This appeal has been filed by the Insurance Company challenging the Award dated 01.06.2016 passed by the Motor Accident Claims Tribunal, (Principal Subordinate-Judge) at Tindivanam in M.C.O.P.No.522 of 2014.

Brief facts leading to the filing of this appeal:

2.A person by name S.Vivek died on 12.09.2014 as a result of an accident caused by a motorcycle bearing Registration No.TN 64 J 0625 owned by the third respondent and insured with the

Appellant. The deceased was travelling as a pillion rider in the aforesaid vehicle, the rider Duraibalaji hit against a tree when the vehicle was nearing Melakottaiyur turning in front of City Union Bank ATM in Vandalur to Kelambakkam Main Road. As a result of the accident, the pillion rider Vivek was thrown out from the vehicle and sustained fatal injuries which resulted in his death in the hospital.

3.The dependants of the deceased, who are his parents and the respondent Nos.1 and 2 herein preferred a claim before the Motor Accidents Claims Tribunal, (Principal Subordinate-Judge) at Tindivanam against the Appellant Insurance Company as well as the third respondent, seeking a compensation of Rs.50,00,000/- for the death of Vivek.

4.The Motor Accidents Claims Tribunal by its Award dated 01.06.2016 in M.C.O.P.No.552 of 2014, directed the Appellant Insurance Company to pay the claimants a sum of Rs.44,40,000/- together with interest at 7.5% per annum from the date of claim till the date of realization and also awarded costs.

5.Aggrrieved by the Award dated 01.06.2016, passed in M.C.O.P.No.552 of 2014, this appeal has been filed by the Insurance Company.

6.Heard Mr.J.Chandran, learned counsel appearing for the Appellant and Mrs.R.Sumithra Chakkaravarthi, learned counsel for the appearing for the respondent Nos.1 and 2.
Discussion:

7.The Appellant Insurance Company has challenged the adverse finding of negligence on the part of the driver of the insured vehicle. They have also challenged the quantum of compensation assessed by the Tribunal as according to them, it is excessive.

8.It is the case of the Appellant that there were three persons travelling in the motorcycle (insured vehicle) and the deceased Vivek was one of them and he was the pillion rider. Therefore, according to the Appellant Insurance Company since the policy conditions has been violated, they are not liable to pay the compensation. Furthermore, it is their case that the Tribunal ought to have rejected the evidence of PW2-Sivaprakash - eyewitness on the ground that the eyewitness is a friend of the deceased, who was travelling in the same motorcycle. According to them, the informant in FIR No.407 of 2014, Tharambur Police Station was not examined as witness by the claimants and if he was examined, the triple driving would have been established.

9.It is also their case that the quantum of compensation awarded by the Tribunal is excessive as the deceased was only 18 years and was a first year student and therefore, the Tribunal ought not to have assessed the notional monthly income of the deceased at Rs.20,000/- which according to the Appellant Insurance Company is not supported by any documentary evidence. It is their case that since the deceased was the root cause of the accident, the claimants are not entitled to invoke fault liability. According to them, the compensation be granted for a sum of Rs.50,000/- as per Section 140 of the Motor Vehicles Act.

10.It is also their case that the deceased being a student, the Tribunal ought not to have added 50% towards loss of future prospects which is not in accordance with the Constitution Bench judgment of Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680.

11.The case of the claimants is that the deceased Vivek was a first year B.Com student at SRM College, Chennai and he is a promising cricketer having participated and won laurels in many Cricket Tournaments. According to them, due to the untimely death of Vivek, he has lost a brilliant cricketing career in his life.

12.Before the Tribunal, the claimants have filed 21 documents which were marked as Exs.P1 to P21 and two witnesses were examined namely, PW1 - the mother of the deceased and PW2 - an eyewitness. On the side of the Appellant Insurance Company two documents were filed namely, Exs.R1 and R2 and one witness was examined as Ex.RW1.

13.FIR(Ex.P1) has been registered only against the rider of the motorcycle in which the deceased was travelling as the pillion rider. The evidence of PW1 as well as PW2 corroborated the contents of the FIR.

14.Before the Tribunal, no evidence has been let in by the Appellant Insurance Company to establish that there were three persons travelling in the motorcycle.

15.Before the Tribunal, the Appellant Insurance Company has not established by any reliable evidence that the deceased did not wear helmet. The Appellant Insurance Company during the cross-examination of PW2 has also not elicited any admission by PW2 that the deceased was not wearing a helmet at the time of the accident. No evidence was also produced by the Appellant Insurance Company before the Tribunal to establish that the insured vehicle was used without the permission of the owner of the vehicle and was used gratuitously.

16.This being the case, the Tribunal has rightly rejected the contention of the Appellant Insurance Company that they are not liable to pay the compensation. It is settled law that a motor accident claim is adjudicated based on preponderance of probabilities. With the available materials and evidence available on record, the Tribunal has rightly come to the conclusion that based on preponderance of probabilities that the Appellant Insurance Company is liable to compensate the claimants for the death of Vivek.

17.The claimants have pleaded and have let in evidence to establish that the deceased Vivek was a very promising Cricketer and he was studying first year B.Com at SRM College and was aged 18 years. It is their case that because of his promising performances there was every likelihood of the deceased getting selected for the Tamil Nadu Ranji Trophy Team in future if not for his untimely death.

18.Before the Tribunal, the claimants have filed Ex.P6 (St.Johns International School Certificate), Ex.P7 (SRM University Certificate), Ex.P8 (Migration Certificate), Ex.P9 (Birth Certificate), Ex.P10 (Legal heir certificate), Ex.P11 (Doordharasan & Medal Photo), Ex.P12 (Team spirit X1 winners of the under 17 cricket tournament in Chennai group photo), Ex.P13 (Newspaper Advertisement), Ex.P14 (Junior Super Kings Inter School T 20 Championship 2013 certificate), Ex.P15 (St.Johns International Residential School merit certificate), Ex.P16 (Harrington Cricket Academy Certificate), Ex.P17 U/16 Cricket tournament certificate, Ex.P18 (Trust Deed), Ex.19 (London Sports photo), Ex.20 (Trust photos) and Ex.21 (Passport). The above mentioned documents would clearly establish that the deceased Vivek was a promising Cricketer having won laurels in various Cricket Tournaments and he has also gone to London for training and participation in Cricket Tournaments there. The Tribunal has considered all these factors and only thereafter, has assessed the monthly notional income of the deceased at Rs.20,000/-. No contra evidence has also been produced by the Appellant Insurance Company to disprove the contention of the claimants that the deceased Vivek was a promising Cricketer and his age and educational qualifications has also been established from the documents mentioned above.

19.The Tribunal has considered all these factors and has passed the following Award:

Sl. No.	Heads	Amount awarded by the Tribunal (Rs.)
1	Loss of Dependency	Rs.43,20,000/- (Rs.20,000 +10,000 x 12 x 18)
2	Loss of Love and Affection	Rs.1,00,000/-
3	Funeral Expenses	Rs.20,000/-
	Total	Rs.44,40,000

20.As seen from the impugned Award, the Tribunal has added 50% towards loss of future prospects but 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, the deceased who was only a student at the time of the accident, the Tribunal ought to have added only 40% and not 50% towards loss of future prospects.

21.The deceased being a student and not having a permanent employment, the claimants are only entitled for 40% towards loss of future prospects. We therefore, reduce the loss of future prospects awarded by the Tribunal from 50% to 40%. The Tribunal has not awarded any compensation towards loss of estate, which the claimants are entitled to as per settled principles of law. Accordingly, we Award a sum of Rs.15,000/- towards loss of estate. Insofar as, the compensation awarded by the Tribunal under the heads namely, loss of love and affection and funeral expenses are concerned, we do not find any infirmity in the same and accordingly, we confirm it.

22.For the foregoing reasons, the impugned Award is modified in the following manner:

Sl. No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
1	Loss of Dependency	Rs.43,20,000/- (Rs.20,000 + 10,000 x 12 x 18)	Rs.30,24,000/- (Rs.20,000+40% -1/2x12x18)
2	Loss of Love and Affection	Rs.1,00,000/-	Rs.1,00,000/-
3	Funeral Expenses	Rs.20,000/-	Rs.20,000/-
4	Loss of Estate	-	Rs.15,000/-
	Total	Rs.44,40,000	Rs.31,59,000

Conclusion:

23. In the result, the appeal is partly allowed by modifying the award passed in M.C.O.P.No.552 of 2014 passed by the Motor Accidents Claims Tribunal (Principal Subordinate- Judge) at Tindivanam by reducing the compensation amount from Rs.44,40,000/- to Rs.31,59,000/-. However, the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The Appellant Insurance Company is directed to deposit the entire award amount as per the order of this Court before the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of M.C.O.P.No.552 of 2014 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 award amount to the claimants as per the order of this Court through RTGS within a period of four weeks thereafter. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

pam

To

The Motor Accident Claims Tribunal,
(Principal Subordinate - Judge) at Tindivanam.

+1cc to Mr.J.Chandran, Advocate SR.No.79275

सत्यमेव जयते

C.M.A.No.208 of 2017

VD(CO)

GMV(13/11/2019)

WEB COPY