

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2019

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2644 of 2017
and
C.M.P.No.14542 of 2017

National Insurance Company Limited,
Third Party Claims Office,
3rd Floor, No., 751, Anna Salai,
(Opp.TVS), Chennai - 2. ... Appellant/2nd Respondent

vs.

1.R.Shanthi
2.P.Kaliyamoorthy ...1 & 2 Respondents/
1 & 2 Petitioners
3.S.Janakiraman ...3rd Respondents/
1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 09.09.2016 in MCOP No.491 of 2012 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge) at Poonamallee.

For Appellant : Mr.R.Ravichandran

For Respondents : Mr.P.Ganesan for R1 & R2
Mr.M.Malar for R3

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is preferred by the insurance company, challenging both negligence and quantum.

2.The Tribunal, after considering the materials, was pleased to award a sum of Rs.35,07,000/- in favour of respondents 1 and 2, who are the parents of the deceased, aged about 26 years. The deceased was driving a car on 27.01.2011

bearing Regn. No.TN 22 U 8920. P.W.2 who is also the second claimant was travelling along with the deceased being an injured witness. It is the case of respondents 1 and 2 that the lorry which has been insured suddenly overturned on the curve without reducing the speed causing fatal injury. Much reliance has been made on the complaint given in Ex.P1 (First Information Report) and the evidence of P.W.2. The appellant placed reliance upon Ex.R1 which is the rough sketch. The Tribunal, after considering the aforesaid material, was pleased to hold that negligence is to be attributed on the part of the driver of the lorry which has been insured with the appellant. A total sum of Rs.35,07,000/- has been awarded by the Tribunal by fixing the loss of income at Rs.28,80,000/-, funeral expenses and legal expenses - Rs.50,000/-, loss of estate Rs.1,00,000/-, loss of expectation of life - Rs.1,00,000/-, loss of love and affection - Rs.3,50,000/-, transportation charges - Rs.25,000/- and damage to clothing - Rs.2,000/-.

3.Learned counsel appearing for the appellant would submit that the Tribunal could have accepted Ex.R1 as against Ex.P1. P.W.2 is none other than the father of the deceased being the second respondent. The car dashed against the lorry from behind. Therefore, the negligence will have to be fixed on the deceased.

4.On the question of quantum, learned counsel submitted that fixing of higher amount for loss of estate, loss of expectation of life, loss of love and affection is contrary to the judgment of the Apex Court in National Insurance Co. Ltd vs Pranay Sethi and others (2017 (2) TN MAC 271). Therefore, the appeal will have to be allowed both on the question of negligence and quantum.

5.Learned counsel appearing for respondents 1 and 2 submitted that the Tribunal took into consideration the evidence available before it and fixed negligence on the part of the driver of the lorry. On the question of quantum, taking into consideration the fact that respondents 1 and 2 are the parents of the deceased and the deceased was the only son, the compensation has been rightly fixed.

6.Learned counsel appearing for the third respondent submitted that the Tribunal was wrong in ordering pay and recovery. Therefore, the award passed will have to be reversed to that extent.

7.On the question of negligence, we do not find any reason to interfere with the order of the Tribunal. There is nothing wrong in making reliance upon the Ex.P1 coupled with the evidence of P.W.2. There is no dispute with respect to Ex.R1 - rough sketch, which per se cannot be a sole factor to come to

the conclusion that there is no negligence on the part of the deceased. Evidence available would suggest that the lorry was proceeding at a reasonable speed and taking U turn resulting in the accident. Merely because P.W.2 is the father of the deceased his evidence cannot be eschewed. Thus the reasoning adopted by the Tribunal cannot be faulted.

8.We do find some force in the submission made by the learned counsel for the appellant insofar as quantum is concerned. Fixation of amount for loss of estate, loss of expectation of life and loss of love and affection is certainly excessive and particularly against the law laid down by the Apex Court in Pranay Sethi's case (cited supra). The Tribunal ought to have fixed a sum of Rs.15,000/- for loss of estate and no amount ought to have been fixed for loss of expectation of life which at best is repetition of loss of income already arrived at. Similarly, for the loss of love and affection, a sum of Rs.80,000/- ought to have been awarded as against Rs.3,50,000/-.

9.In such view of the matter, the award passed by the Tribunal stands modified to a sum of Rs.30,52,000/- with interest at 7.5% per annum as under:

Head	Amount Awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
Loss of income	28,80,000.00	28,80,000.00
Funeral expenses and legal expenses	50,000.00	50,000.00
Loss of estate	1,00,000.00	15,000.00
Loss of expectation of life	1,00,000.00	-----
Loss of love and affection	3,50,000.00	80,000.00
Transportation charges	25,000.00	25,000.00
Damages to clothing	2,000.00	2,000.00
TOTAL	35,07,000.00	30,52,000.00

10.The contention of the learned counsel for the third respondent cannot be countenanced as no appeal has been preferred by him.

11.In the result, the Civil Miscellaneous Appeal is allowed in part by reducing the compensation awarded by the Tribunal

from Rs.35,07,000/- to Rs.30,52,000/- payable with 7.5% interest per annum from the date of petition till the date of realisation. No costs. Consequently, connected miscellaneous petition is closed.

12.The appellant insurance company is directed to deposit the reduced compensation amount awarded by this Court, less the amount if any already deposited, to the credit of MCOP No.491 of 2012 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge) at Poonamallee., within a period of eight weeks from the date of receipt of a copy of the judgment.

13.We also direct the Tribunal to transfer the entire amount awarded along with proportionate interest at 7.5% per annum by way of RTGS to the bank account of the claimants within a period of three weeks from the date of deposit of the award amount. On such deposit, the claimants are entitled to withdraw the same. The appellant is permitted to withdraw the excess amount, if any.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
(II Additional District Judge) at Poonamallee.

2.The Record Keeper, V.R. Section,
High Court, Madras.

+1 cc to Mr.P.Ganesan Advocate sr101290
+1 cc to Mrs.M.Malar Advocate sr101482
+1 cc to Mr.R.Ravichandran Advocate sr101253

C.M.A.No.2644 of 2017

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