

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 12.03.2020

Pronounced on : 04.06.2020

CORAM :

THE HON'BLE MR.JUSTICE R.SUBBIAH

AND

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

CMA No.1962 of 2019
and CMP No.6959 of 2019

United India Insurance Co. Ltd.,
New No.768, Old No.1028,
United India Buildings, Avinashi Road,
Near Dhinathanthi Office,
Coimbatore - 641 018. ... Appellant/3rd Respondent

-vs-

1. Saritha
2. Minor Haripriya
3. Minor Sathya
4. Minor Karthika
- Pachiammal (Died) ... Respondents 1 to 4 / Petitioners
5. S.Simon ... 5th Respondent / 1st Respondent
6. S.Anitha Florence Paskal ... 6th Respondent / 2nd Respondent

[R2 to R4- Minors, represented by their mother, guardian and next friend, Saritha, 1st respondent herein.]

[R5 & R6- remained exparte before the claims tribunal]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 16.04.2018 made in M.C.O.P.No.898 of 2014 on the file of the Motor Accident Claims Tribunal [Special Subordinate Judge], Coimbatore.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.I.Abrar Md. Abdullah
(for R1 to R4)
R5 & R6 : Ex parte

J U D G M E N T

R.PONGIAPPAN, J.

Aggrieved over the award passed by Motor Accidents Claims Tribunal (Special Subordinate Judge), Coimbatore, in MCOP No.898

of 2014, the appellant herein, who is the 3rd respondent in the claim petition, has filed this appeal, in which, he seeks the relief to set aside the award passed by the claims tribunal.

2. Before the claims tribunal, the respondents 1 to 4 herein and one Pachiammal (since deceased) had filed the claim petition under Section 166 of the Motor Vehicles Act, in which they claimed a compensation of Rs.85,50,000/-, towards the death of the husband of the 1st respondent viz., Paramasivam. The 1st respondent/claimant viz., Saritha, is the wife of the deceased Paramasivam and the respondents/claimants 2 to 4 are the daughters born to the deceased and 1st respondent. After elaborate enquiry, the claims tribunal awarded a compensation of Rs.51,51,648/- as the total compensation with interest at the rate of 7.5% per annum against which the present appeal has been preferred.

3. For the sake of convenience, the parties are hereinafter referred to as per their litigative status, before the claims tribunal.

4. The case of the claimants in the claim petition, is as follows:

(i) On 21.08.2013, the deceased Paramasivam was riding his motorcycle bearing Regn.No.TN37-BB-7625 along with his wife Saritha as a pillion rider on Coimbatore - Perur Main Road. When they were nearing LIC Junction, Selvapuram, opposite to Ananda Hotel from west to east, the Sedan car bearing Regn.No.TN66E4403, driven by the 1st respondent came in the same direction in a rash and negligent manner, without following the traffic rules and regulations. When the 1st respondent tried to overtake the deceased's vehicle, the left hand side back door of the car hit against the handle bar of the deceased's vehicle. Due to the hit, the deceased and the pillion rider were thrown away from the vehicle and they fell down on the road. Due to the said accident, deceased sustained severe multiple injuries on his left leg knee and all over the body. For the said accident, a case has been registered in Crime No.255/2013 by the Traffic Investigation West Police Station under Sections 279, 338 and 304(A) IPC, in which the 1st respondent is arrayed as an accused.

(ii) The deceased was treated as an inpatient from 21.08.2013 to 31.08.2013 in Ganga Medical Centre and Hospital Pvt. Ltd., Coimbatore. Thereafter, he was shifted to KTVR Hospital and admitted as an inpatient from 31.08.2013 to 11.09.2013. Later on 19.09.2013, he was admitted in the PSG Hospital, Coimbatore and treated from 19.09.2013 to 23.09.2013, Resultantly the Doctors who gave treatment had said that the deceased sustained some infectional injury in his left knee. Further it was said by the doctors that the said injury slowly spread over his body. However, despite the best treatment given

to the deceased, his health condition became worse. Finally, he was shifted to Coimbatore Medical College and Hospital and admitted on 23.09.2013 and he died on 24.09.2013.

(iii) Before the accident, the deceased was working as a LIC agent and earning Rs.3 Lakhs per month. The claimants who are the wife and minor daughters of the deceased have lost his love and affection towards the deceased including the loss of income from the deceased. Hence, they claimed compensation.

(iv) The 2nd respondent, is the owner of the offending vehicle and the 3rd respondent is its insurer. Since the accident had occurred due to the rash and negligent act of the 1st respondent, who is the driver of the 2nd respondent's vehicle, both the respondents 2 and 3 are jointly and severally liable to pay the compensation fixed by the tribunal with costs and interest.

5. Before the claims tribunal, respondents 1 and 2 remained exparte.

6. Opposing the claim made by the claimants, the 3rd respondent - Insurance company/appellant had filed a counter and states that during the time of accident, the 1st respondent had driven the vehicle with utmost caution adhering to traffic rules and regulations and the accident occurred only due to the negligence of the deceased. He had ridden the two wheeler without adhering to traffic rules and regulations and dashed against the car driven by the 1st respondent and caused the accident. The claimants are having the duty to prove the fact that the deceased had valid driving licence on the date of accident, to ride the motorcycle. The age, avocation, income and the earning prospects of the deceased are denied. With those averments, it is prayed by the 3rd respondent/appellant for dismissal of the claim petition.

7. Before the claims tribunal, on the side of the claimants, the 1st claimant examined herself as PW1 and exhibited 28 documents as Ex.P1 to P28. One Dr.Roy Wilson Armstrong, was examined as PW2 and Ex.29 to Ex.39 were marked through him. One Mr.Sabari Krishnan, has been examined as PW3. Dr.Raghupathy, has been examined as PW4 and Ex.P32 to P34 were marked through him. Ex.P35 and Ex.P36 were marked subject to objection. On the side of the 3rd respondent, there is no oral or documentary evidence.

8. Having considered all the materials placed before the Claims Tribunal, the learned Presiding Officer, has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the 1st respondent. Further, he came to the conclusion that since the 2nd respondent being the owner of the vehicle and the 3rd respondent/ appellant is the insurer, both are jointly and severally liable to pay the compensation.

Resultantly, he assessed Rs.51,51,648/- as the total compensation and allowed the claim petition, accordingly.

9. Challenging the same, the 3rd respondent-Insurance Company is before this Court with the present Civil Miscellaneous Appeal.

10. We heard the arguments advanced by Mr.S.Arunkumar, learned counsel appearing for the appellant/Insurance Company and Mr.I.Abrar Md. Abdullah, learned counsel appearing for the respondents 1 to 4 / claimants.

11. Initially, the learned counsel appearing on behalf of the appellant/Insurance Company, did not dispute the factum of negligence committed by the driver of the offending vehicle. Further, though it was contended in the counter affidavit, filed by the appellant that only due to the rash and negligent act of the deceased, the accident occurred, in order to prove the same, nobody has been examined on the side of the appellant/Insurance Company and no documents have been exhibited to prove the said averments. Accordingly, in respect to the negligence aspect, the findings arrived at by the claims tribunal is confirmed.

12. Learned counsel appearing on behalf of the appellant/Insurance Company would contend that before his death, the deceased has some other complications in his kidney and liver. Though in the said accident he has sustained some grievous injuries, the same would not have led to his death. So the cause of death elicited by the claimants is not correct.

13. In the evidence given by the Doctors, viz., PW2 and PW4, they have categorically stated that though, the deceased was suffering from some other ailments, the injury sustained in the road accident alone had aggravated the infection in the liver which led to organ failure and caused the death of the deceased. On close scrutiny of the said evidence reveals the fact that if the alleged fatal accident has not occurred, it is impossible to aggravate the earlier disease, had by the deceased.

14. In the said circumstances, it is clear that only due to the injury sustained by the deceased in the road accident, the death would have happened to the deceased. In otherwise, the death of the deceased is only to the consequential development of the injury sustained by the deceased and not by otherwise. Therefore, we are of the considered opinion that the death had occurred only due to the accident i.e. due to the rash and negligent act of the 1st respondent, who is the driver of the 2nd respondent's vehicle.

15. Coming to the point in respect to the quantum of compensation, for calculating the loss of dependency, the claims tribunal has taken Rs.3,00,000/- as the yearly income of the

deceased. Now on going through the evidence of PW1, she has stated that before the death, the deceased was working as a LIC agent and earned Rs.3,00,000/- per year. Further, she has stated before the claims tribunal that the deceased alongwith the work of LIC agent, was engaged in agricultural activities in his own land. In order to prove the income of the deceased, before the claims tribunal PW1 produced the income tax returns, which relates to the deceased as Ex.P24 to P27. On perusal of Ex.P27, i.e., income tax returns for the Assessment year 2010-11, the annual income of the deceased was shown as Rs.2,49,262/-.

16. Now on going through Ex.P24, which is the income tax returns for the Assessment year 2007-08, it shows that the deceased earned Rs.58,071/- Further for the Assessment year 2008-09, as per Ex.P25, he has received a total gross income of Rs.1,70,925/-. Subsequently, for the Assessment Year 2009-10, he has received the total gross income of Rs.1,82,745/-. Now on calculating the average gross income of the last three years i.e. for the Assessment years 2008-09, 2009-10 and 2010-11, the annual income of the deceased comes to Rs.2,00,977/- $[(Rs.170925/- + 182745/- + 249262/-) / 3]$.

17. Apart from the said income, though it was alleged on the side of the 1st claimant/PW1 that the deceased is having own agricultural lands, through which he received a reasonable income, in order to prove the same, she has not produced any document to show that the deceased is having agricultural income. Accordingly, the said evidence given by the PW1 is not proved through relevant documents. However, as per the Income Tax returns, the claimants have proved that the deceased earned Rs.2,01,000/- per year. Therefore, the annual income of the deceased at the time of accident is fixed at Rs.2,01,000/- and the same is taken for calculating the loss of dependency.

18. As per the dictum laid down by the Constitutional Bench of our Hon'ble Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017 ACJ 2700 (SC), the deceased is entitled to future prospects at the rate of 40% as he was aged 40 years, at the time of accident, as per the postmortem certificate which was marked as Ex.P7. Therefore, a sum of Rs.80,400/- is added towards future prospects $[Rs.2,01,000/- \times 40\% = Rs.80,400/-]$. Accordingly, the total annual income of the deceased after adding prospects is Rs.2,81,400/- .

19. With regard to the multiplier, since the age of the deceased is 40 years, as per the guidelines of our Hon'ble Apex Court in Sarla Verma and Others Vs. Delhi Transport Corporation and Another, reported in 2009-5-LW 561, the appropriate multiplier to be taken for calculating the loss of dependency is '15'.

20. Further, admittedly, the deceased was having four dependants during his life time, who are the claimants/respondents 1 to 4 herein. Hence, from the annual income of the deceased, as per Sarla Verma's case [cited supra] 1/4th of the income has to be deducted towards his personal and living expenses. Therefore, after deducting 1/4th of the income of the deceased [Rs.2,81,400/-] towards his personal and living expenses and by applying '15' multiplier, the loss of dependency works out to Rs.31,65,750/- [Rs.2,81,400/- x $\frac{3}{4}$ x 15].

21. In respect to award under other conventional heads, as per the decision of our Hon'ble Apex Court in Pranay Sethi's case [cited supra], the award of Rs.15,000/- under the head loss of estate, Rs.15,000/- under the head funeral expenses and Rs.40,000/- under the head loss of consortium, by the claims tribunal, is just and reasonable and hence, confirmed.

22. Further, here it is a case that the claimants 2 to 4 are the minor children and they have lost the love and affection of their father. The said loss of love and affection is nothing but akin to loss of consortium. Therefore, we are of the opinion that a sum of Rs.1,00,000/- has to be added further under the head loss of love and affection.

23. In this case, after the accident the deceased was getting treatment from various hospitals and spent much money towards medical expenses. In order to prove the same, on the side of the claimants medical bills relating to the treatment given to the deceased were marked as Ex.P28 and P33. As per those bills, a sum of Rs.3,56,648/- has been spent by the deceased towards his medical expenses. The said amount has to be allowed as a compensation to the claimants. Hence, the award of the tribunal towards medical expenses, is confirmed.

24. From the above discussion, we are of the opinion that the compensation awarded by the tribunal has to be modified and the claimants are entitled to a sum of Rs.36,92,398/- as compensation with interest at the rate of 7.5% per annum from the date of claim till its realisation, under the following heads:

Head	Award of the Tribunal Rs.	Modified Award Rs.
Compensation for loss of dependency	47,25,000/-	31,65,750/-
Medical Bills	3,56,648/-	3,56,648/-

Head	Award of the Tribunal Rs.	Modified Award Rs.
Loss of consortium	40,000/-	40,000/-
Funeral expenses	15,000/-	15,000/-
Loss of estate	15,000/-	15,000/-
Loss of love and affection	-	1,00,000/-
Total	51,51,648/-	36,92,398

25. In view of the modification of the award of the claims tribunal, it is ordered as follows:

(i) the compensation of Rs.51,51,648/- awarded by the Claims Tribunal is modified to the extent of Rs.36,92,398/-.

(ii) Out of the modified compensation of Rs.36,92,398/-, each minor claimants 2 to 4 are entitled to Rs.8,00,000/- and the 1st claimant is entitled to Rs.12,92,398/-, with interest as the rate of 7.5% per annum from the date of claim till its realisation and costs.

(iii) The appellant-Insurance Company is directed to deposit the entire award amount along with interest and costs, if not deposited already, within a period of four weeks from the date of receipt of a copy of this judgment. If already deposited, the appellant-Insurance Company is entitled to refund of excess amount, if any.

(iv) On such deposit being made, the Tribunal is directed to transfer the share apportioned to the claimant / 1st respondent herein to her Bank Account through RTGS/NEFT within a period of one week.

(v) At the time of accident i.e. in the year 2013, claimants/respondents 2 to 4 were minors, aged 13, 12 and 8 years respectively. Therefore, the share of the claimants/respondents 2 to 4 shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the claimants/respondents 2 to 4, shall be paid to the 1st respondent herein/mother of the minors, once in six months, till they attain majority.

26. In the result, this Civil Miscellaneous appeal is partly allowed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

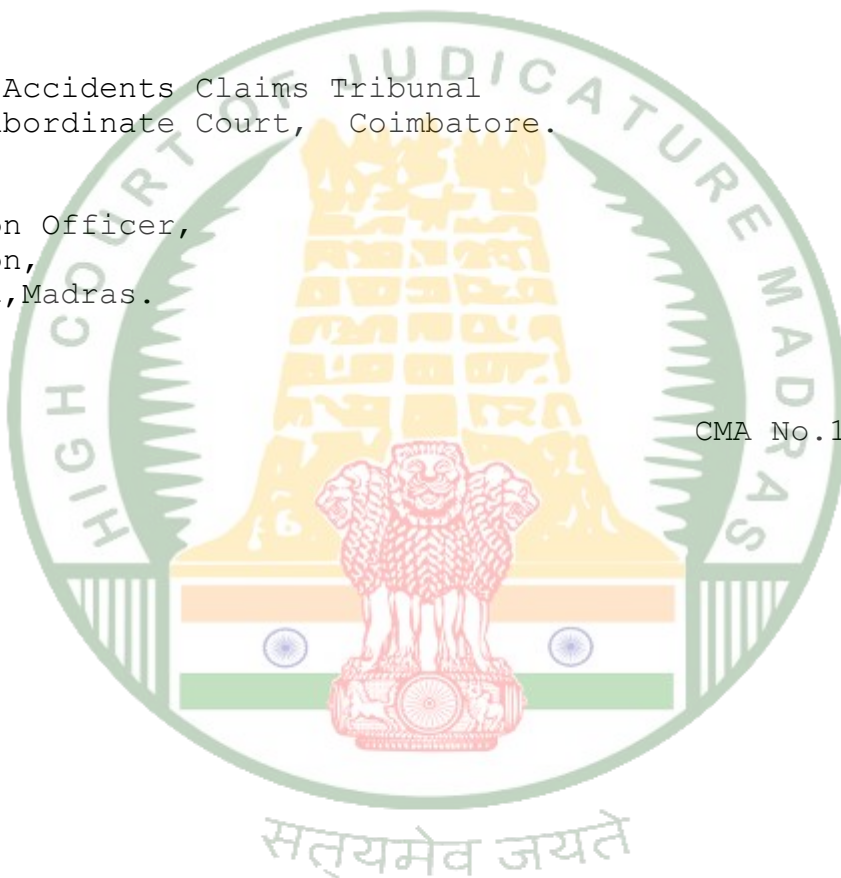
To

The Motor Accidents Claims Tribunal
Special Subordinate Court, Coimbatore.

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The Section Officer,
V.R.Section,
High Court, Madras.

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CMA No.1962 of 2019



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