IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1099 of 2015

The Branch Manager,
M/s.The New India Assurance Co. Ltd.,
No.99/C-3, 1st Floor,
Opposite to New Bus Stand
Perambalur. ... Appellant/2nd Respondent

Vs.

1.Rahman Sheriff
2.Ausiya Beebi
3.Gunasekaran ...Respondents/Petitioners/1st Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.09.2014 made in M.C.O.P.No.50 of 2014 on the file of the Motor Accident Claims Tribunal(Principal District Court), Perambalur.

For Appellant :Mr.J.Chandran

For Respondents :Mr.T.Gopinath for R1 & R2
No Appearance for R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company challenging the judgement and decree dated 25.09.2014 made in M.C.O.P.No.50 of 2014 on the file of the Motor Accident Claims Tribunal, (Principal District Court), Perambalur.

2. The appellant is the 2nd respondent in M.C.O.P.No.50 of 2014 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Shafia Bivi, who died in the accident that took place on 28.10.2013.

3.According to the respondents 1 and 2, on the date of accident viz., 28.10.2013, when the deceased was proceeding in her bicycle at normal speed from East to West on the Agaram main road, opposite to the house of one Sethuraman, driver of the bus bearing Registration No. TN-57 V 4466, belonging to the 3rd respondent, drove the vehicle in a rash and negligent manner with hectic speed without sounding horn and dashed against the rear portion of the bicycle and caused the accident. As a result of which, the said Shafia Bivi was thrown off, fell down on the road and the wheel of the bus ran over her head which was crushed and died on the spot. The accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the 3rd respondent and hence, the respondents 1 and 2, who are the parents of the deceased, filed the claim petition, claiming compensation against the 3rd respondent as owner and appellant as insurer of the said lorry.

4.The 3rd respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 and 2 in the claim petition. According to the appellant, the accident did not occur due to rash and negligent driving by the driver of the bus belonging to the 3rd respondent. The deceased rode her bicycle towards her right side and got dashed against the bus and succumbed to the accident injuries. The deceased was only responsible for the accident. In any event, the total compensation claimed by the respondents 1 and 2 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 33 documents as Exs.P1 to P33. On the side of the appellant, driver of the bus was examined as R.W.1 and no documentary evidence was marked.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the third respondent and directed the appellant being insurer of the vehicle to pay a sum of Rs.13,76,000/- as compensation to the respondents 1 and 2.

8.Challenging the negligence as well as the quantum of compensation awarded by the Tribunal in the award dated 25.09.2014 made in M.C.O.P.No.50 of 2014, the appellant-Insurance Company has come out with the present appeal.

9.Learned counsel appearing for the appellant contended that the Tribunal erred in holding that the accident has occurred due to negligent driving by the driver of the bus belonging to the 3rd respondent. The accident has occurred only due to negligence on the part of the deceased as she came to right side of the road and dashed against the bus. In any event, the Tribunal ought to have fixed 50% contributory negligence on the part of the deceased. The Tribunal erroneously fixed the monthly income of the deceased wgi was a minor and non earning member as Rs.10,000/- and granted 50% enhancement towards future prospects. The Hon'ble Apex Court in the judgment reported in 2013 (5) CTC 212 (SC) [Kishan Gopal and another VS. Lala and others], has fixed the annual income of the minor victim as Rs.30,000/- only. The Tribunal awarded compensation excessively for loss of dependency. The compensation of Rs.25,000/- each granted towards loss of love and affection, Rs.10,000/- each towards loss of estate and funeral expenses are excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 and 2 contended that the respondents 1 and 2 have lost their child at the young age of 15 years. The deceased was a 11th standard student. The Tribunal considering the facts and circumstances of the case, fixed the notional income of the deceased at Rs.10,000/- per month and granted 50% enhancement towards future prospects. The total compensation awarded by the Tribunal is not excessive, warranting interference by this Court and prayed for dismissal of the appeal.

11.Heard learned counsel appearing for the appellant as well as the respondents 1 and 2 and perused the materials available on record.

12.It is the contention of the respondents 1 and 2 that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the 3rd respondent. The 1st respondent examined himself as P.W.1 to prove the manner of the accident and marked Ex.P1/FIR which was registered against the driver of the bus. The appellant/Insurance Company has contended that the driver of the bus is not responsible for the accident. To substantiate the said contention, the appellant examined the driver of the bus as R.W.1. R.W.1 deposed that due to the expansion of the road there was mud heap on the road. The deceased rode the bicycle over the mud heap and fell down on the left side back wheel of the bus. The Tribunal did not accept the evidence of R.W.1 as such a stand was not taken by the appellant in the counter statement. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the 3rd respondent and the appellant as insurer of the offending vehicle is liable to pay the compensation. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the respondents 1 and 2 claimed compensation for the death of their minor daughter who was aged 15 years due to the injuries sustained in the accident. As per II Schedule of the Motor Vehicles Act, 1988, the annual income of a non-earning minor aged below 15 years is fixed at Rs.15,000/- per annum. The Hon'ble Apex Court in the judgment reported in 2013 (5) CTC 212 (SC) [Kishan Gopal and another VS. Lala and others], considering the passage of time and the facts of the case, has fixed the annual income of the minor at Rs.30,000/- and awarded compensation towards loss of income.

> "..... We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non- earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation[3], the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas[4], which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy[5], for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their

legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified.”

This Court considering the above judgment, fixed the annual income of the minor deceased from Rs.45,000/- to Rs.60,000/-, depending upon the facts and circumstances of the case. In case of minor being a victim, no deduction is made from annual income towards personal expenses. The Tribunal without understanding the judgments of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 (SC) [Smt.Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.] and 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], has erroneously fixed the income of the deceased minor at Rs.90,000/- per annum, granted enhancement of 50% towards future prospects, deducted 50% towards personal expenses and adopted wrong multiplier of 12, to arrive at the compensation for loss of dependency. The Tribunal fixed the annual income of the deceased minor at Rs.90,000/- which is excess and in view of the wrong multiplier adopted and erroneous deduction made by the Tribunal towards personal expenses of the deceased minor, the compensation awarded by the Tribunal towards loss of dependency is set aside. The accident is of the year 2013. The annual income of the deceased minor is fixed as Rs.60,000/-. The multiplier applicable is '15'. Thus, the compensation for loss of dependency is arrived at Rs.9,00,000/- [Rs.60,000/- x 15]. The sum of Rs.25,000/- granted by the Tribunal for loss of love and affection to the respondents 1 and 2 is enhanced to Rs.40,000/- each. The amounts awarded by the Tribunal towards loss of estate and funeral expenses are meagre and the same are hereby enhanced to Rs.15,000/- each respectively. The amount awarded by the Tribunal towards transport expenses is just and reasonable and the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	12,96,000/-	9,00,0000/-	Reduced

2.	Loss of love and affection	50,000/-	80,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of estate	10,000/-	15,000/-	Enhanced
5.	Transport expenses	10,000/-	10,000/-	Confirmed
	Total	13,76,000/-	10,20,000/-	Reduced by Rs.3,56,000 /-

14.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.13,76,000/- is reduced to Rs.10,20,000/- along with interest and costs. The appellant/Insurance Company is directed to deposit the compensation now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 50 of 2014. The appellant is entitled to withdraw the excess amount lying to the credit of M.C.O.P.No.50 of 2014, if the entire amount has already been deposited by them. On such deposit, the respondents 1 and 2/claimants are permitted to withdraw their share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vkr

To

1.The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur.

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

+1cc to Mr.T.Gobinath, Advocate Sr.11962
+1cc to Mr.J.Chandran, Advocate Sr.12067

C.M.A.No.1099 of 2015

vba[co]
srg 21/01/2021