



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2567 of 2009

and

Cross Obj.No.67 of 2018

and M.P.No.1 of 2009 and 1 of 2014 in C.M.A.No.2567 of 2009

CMA No.2567 of 2009

National Insurance Co., Ltd.,

C/o Motor 3rd Party Claims,

No.751, Anna Salai,

Chennai - 600 006

...

Appellant/2nd Respondent

vs.

1. Rajeswari [Deceased]

2. K.Ravindran

3. Miss.Lakshmi

4. Miss. Ramalakshmi

... R1 to R4/Petitioners

[Respondents 2 to 4 recorded as legal
representatives of the deceased 1st respondent
vide order of the court dated 16.07.2013 made
in M.P.No.1 of 2013 in C.M.A.No.2567 of 2009]

5. Sirajasanavas

... 5th Respondent/1st Respondent

6. Manjula alias Manju

... 6th Respondent/3rd Respondent

7. Gopi

... 7th Respondent/4th Respondent

8. Nawas

... 8th Respondent/5th Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, against the Judgement and Decree in
M.C.O.P.No.2860 of 2006 dated 19.11.2008 on the file of Motor
Accident Claims Tribunal, [Chief Judge, Court of Small Causes],
Chennai.

Cross Objection No.67 of 2018

Against C.M.A.No.2567 of 2009

1. Mrs.Rajeshwari

2. K.Ravindran

3. Miss Lakshmi

4. Miss Ramalakshmi

... Cross Objectors 1 to 4 /
respondents 1 to 4

Vs.



1. National Insurance Company Ltd.,
C/o Motor Third Party Claims Offices,
No. 751 Anna Salai,
Chennai - 600 006

... 1st respondent /
Appellant

2. Sirajasanavas

3. Manjula @ Manju

4. Gopi

5. Nawas

... Respondents 2 to 5 /
Respondents 5 to 8

Prayer of Cross Objection: Cross Objection under order 41 Rule 22 of CPC against the award dated 19.11.2008 made in M.C.O.P.No.2860 of 2006 on the file of the Motor Accident Claims Tribunal, [Chief Judge, Court of Small Causes], Chennai.
In C.M.A.No.2567 of 2009

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Mr.T.G.Balachandran for R2 to R4
Mr.K.Varadhakamaraj for R6
R1 - Died steps taken
R 5,7 and 8 - Name printed -
No appearance

In Cross Obj.No.67 of 2018

For Cross Objectors : Mr.T.G.Balachandran

For Respondents : Mr.M.Krishnamoorthy for R1
Mr.K.Varadhakamaraj for R3
R 2, 4 and 5 - Name printed -
No appearance

J U D G M E N T

Challenging the quantum of compensation awarded to the legal representatives of the deceased, Insurance Company, has filed the appeal. Not satisfied with the quantum of compensation, the respondents/claimants have also filed the Cross-Objection.

2. Brief facts leading to the appeal are as follows:

On 02.02.2006 at 21.00 hrs, the deceased was proceeding in a two wheeler, viz., Suzuki bearing Regn.No.TN 07 X.9435 at Kamarajar Salai Opp. to Tamilnadu Clearance Board Tenements Building and at that time, another motorcycle, viz., Yamaha, bearing Regn.No.Rx 135-TN 20-A 9253 driven in a rash and negligent manner, which came from North to South direction had hit the backside of the two wheeler and caused fatal head injuries to the deceased. On account of the same, a case was registered in Cr.No.41/T2/2006 by the Inspector of Police, D6



Anna Square Police Station, Traffic Investigation, Chennai - 5 against the rider of the two wheeler, viz., Yamaha vehicle bearing Regn. No.Rx 135-TN 20-A 9253.

3. Claiming that the deceased was a Police Constable, S.B.CID and earned Rs.6,240/- per month, legal representatives of the deceased, viz., parents and sisters, aged 54, 58, 23 and 23 years, respectively, filed claim petition in MCOP No.2860 of 2006, on the file of MACT [II Court of Small Causes], Chennai, for a sum of Rs.15,00,000/- and restricted to Rs.7,00,000/-.

4. Disputing the manner of the accident, appellant-Insurance Company, has filed counter affidavit, before the Tribunal. Without prejudice to the above, they also disputed all the averments of the claimants and the compensation claimed under various heads.

5. Before the Tribunal, father of the deceased, namely, Ravindran was examined himself as PW1. PW2, Ms.Suseela, is the Section Superintendent attached to S.B.C.I.D. and PW3, Mr.Sridhar, is the eye-witness to the accident. On the side of the claimants, documents viz., Ex.P1, copy of FIR, Ex.P2, Copy of Sketch, Ex.P3, Copy of charge sheet, Ex.P4, Copy of Post mortem certificate, Ex.P5, Identity Card of the deceased and Ex.P6, Pay slip of the deceased, Ex.P.7, Legal heir Certificate, Ex.P.8, Salary Particulars and Ex.P.9, Service Particulars of the deceased were marked and R.W.1, Manjula, wife of the deceased was examined, R.W.2, Mrs.Jayashree, Administrator and R.W.3, Mr.Manohar, Investigator were examined and documents, viz., Ex.R.1, Copy of Insurance Policy, Ex.R.2, Notice dated 17.12.2007, Ex.R.3, Ex.R.4 and Ex.R.5, viz., Returned Covers and Ex.R.6, Investigation Report were marked.

6. On evaluation of pleadings and evidence, the Tribunal found that the rider of the two wheeler, viz., Yamaha, bearing Regn. No.Rx 135-TN 20-A 9253 was negligent in causing the accident and quantified the compensation as Rs.9,15,000/- with interest at the rate of 9% per annum from the date of claim till deposit and apportioned the same, as hereunder:

Loss of dependency	: Rs.8,70,000/-
Transport to Hospital & Funeral Expenses	: Rs. 5,000/-
Loss of Consortium to 6 th / 3 rd respondent	: Rs. 20,000/-
Loss of love and affection to the respondents 1 to 4 @ Rs.5,000/- each	: Rs. 20,000/-
Total	: Rs.9,15,000/-

Out of the said amount, the respondents / claimants are entitled to Rs.3,65,000/- and the 6th respondent, wife of the deceased is entitled to Rs.5,50,000/-.

7. The learned counsel for the appellant-Insurance Company submitted that the Tribunal ought to have dismissed the claim



petition as the motorcycle, viz., Yamaha bearing Regn.No.Rx 135-TN 20A 9253 insured with the appellant has been falsely implicated in the impugned accident and on account of the same, the Tribunal ought to have exonerated the appellant and fastened the liability only on the owner of the motorcycle, as the insured had committed breach of policy conditions and allowed a person without driving licence to ride the insured motorcycle.

8. The learned counsel for the appellant further submitted that the Tribunal erred in awarding exorbitant sum of Rs.9,15,000/-, as compensation, for the death of the deceased, aged 34 years, who was employed as a constable. Further, the Tribunal wrongly applied excessive multiplier of 15 years and the Tribunal ought to have rejected the claims of the sisters of the deceased, as they are neither legal heirs nor dependents of the deceased.

9. Whereas, learned counsel for the cross objectors/claimants submitted that though at the time of accident, deceased earned Rs.6,240/- per month, as Constable and despite examining Section Superintendent as P.W.2, the Tribunal fixed the monthly income of the deceased as Rs.9,500/- only and failed to note the Pay Commissions to be fixed by the State Government and future promotions.

10. Learned counsel for the cross objectors/claimants further submitted that compensation awarded under the head, loss of love and affection to the family members of the deceased are very less. Contending that the Tribunal has failed to see that the wife of the deceased / 6th respondent has got remarried, the amount of Rs.5,50,000/-, as her share, is high and disproportionate. Further, the 6th respondent, wife of the deceased has also taken the plot in Erayur Village, which was purchased in her name by the deceased and also took the benefits accrued towards LIC Claim of Rs.1,50,000/- and Government Job on compassionate Grounds.

11. Heard the learned counsel appearing for the respective parties and perused the materials available on record. Though notice was ordered and names, viz., Sirajasanavas, Gopi and Nawas have been printed in the cause list, there is no representation for them either in-person or through learned counsel.

12. From the perusal of the order passed by the Tribunal it is seen that the Tribunal by taking into the consideration of the evidence of P.W.3, eye witness, held that the rider of the two wheeler, viz., Yamaha, who came behind the vehicle of the deceased was solely at fault. Except simply denying the manner of the accident, the appellant / Insurance company has not taken any steps to summon the 8th respondent, viz., Nawaz, who is the driver of the Yamaha Motorcycle to speak about the actual manner of accident. That apart, the post mortem report, Ex.P.4,



states that the deceased sustained head injury and died of the same, hence the Tribunal rightly held that the legal heirs of the deceased are entitled for compensation.

13. It is also pertinent to note that both R.W.2 and R.W.3, Administrator and Investigator of the appellant - Insurance Company in the witness box, orally admitted that the 7th respondent, namely, Gopi was the past owner at the commencement of the insurance coverage and the 5th respondent is the owner of the vehicle on the date of accident and Ex.R.1, policy covers the date of accident. Such admission would clearly prove that the vehicle got transferred in the name of the 5th respondent and the appellant was not intimated about the transfer of the same. When there is no dispute regarding the ownership of the vehicle and valid insurance coverage for the vehicle on the date of accident, the Tribunal had rightly fastened the liability on the appellant / Insurer of the vehicle and owner of the vehicle, which cannot be found fault with.

14. In view of the above, addition of 50% income towards future prospects also cannot be said to be erroneous, as per the judgment of the Hon'ble Apex Court in Sarla Verma and others Vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC). Therefore, fixation of monthly income and addition of 50% income towards future prospects, is sustained. Similarly, compensation for loss of consortium and funeral expenses, are reasonable.

15. Though the learned counsel for the appellant contended that the wife of the deceased/ 6th respondent had performed remarriage, no document has been produced to substantiate the same. Also, there is no documents to show that the sisters are still not married and when the father is alive, the sisters may not be a dependent on the brother. Moreover, mother of the deceased, viz., 1st respondent, died and legal heirs were impleaded and the sisters of the deceased were aged 25 years during the year 2012 and at this distance point of time, they would have definitely got married, hence, by now, they will not be as dependents to the father of the deceased, therefore this Court is of the opinion that the Tribunal has rightly taken note of the negligence aspect, fastened the liability as well as fixed the compensation, which are reasonable and does not require any interference by this Court.

16. In the result, the Civil Miscellaneous Appeal No.2567 of 2009, preferred by the Insurance Company is dismissed and Cross objection No.67 of 2018, preferred by the claimants is also dismissed, as indicated above. No costs. Consequently, the connected Miscellaneous Petitions are closed.

17. Consequent to the dismissal of the appeal, the appellant / Insurance Company herein is directed to deposit the entire award amount as directed by the Tribunal with interest



from the date of claim till deposit and costs, to the credit of MCOP No.2860 of 2006, on the file of Motor Accident Claims Tribunal [Court of Small Causes], Chennai, within a period of four weeks from the date of receipt of a copy of this order.

WEB COPY

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Ssd

To

1. The Motor Accident Claims Tribunal,
[Chief Judge, Court of Small Causes],
Chennai.
2. The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No. 9454

C.M.A.No.2567 of 2009
and Cross Obj.No.67 of 2018
and M.P.No.1 of 2009 and 1 of 2014 in
C.M.A.No.2567 of 200

BP(CO)
GN(11/08/2021)