IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

CMA No.1714 of 2013

1. Yasodha
2. R.Nagappan .. Appellants/Petitioners

Vs

1. N.Balaji
2. ICICI Lombard General Ins.Co.Ltd.,
Arihant Plaza, 1st Floor,
84/85, Walltax Road,
Chennai - 600 003. .. Respondents/Respondents
[R1 was set exparte before the Claims Tribunal]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.1652 of 2011 dated 24.09.2012, on the file of the Motor Accidents Claims Tribunal [V Judge, Small Causes Court], Chennai.

For Appellants : Mr.K.Suryanarayanan

For Respondents: Mrs.R.Sreevidhya (for R2)

For R1 : Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants, challenging the judgment and decree dated 24.09.2012 passed in MCOP No.1652 of 2011, on the file of Motor Accidents Claims Tribunal [V Court of Small Causes], Chennai.

2. For the sake of convenience, the parties are referred to as per the litigative status before the Claims Tribunal.

3. The case of the petitioners is that on 10.01.2011 at about 12.00 hours, while their son N.Saravanan, was travelling as a pillion rider, in the motorcycle bearing Regn.No.TN22-AK-8404, in Kancheepuram, 'I' Road, Near Aathur Tea Stall, the container lorry bearing Regn.No.TN20-AY-8561, owned by the 1st respondent, came in a rash and negligent manner, dashed against

the motorcycle in which, the said Saravanan was travelling. Due to the accident, the said N.Saravanan succumbed to the fatal injuries and died on the same day. For the said accident, case has been registered by Traffic Investigation Wing, Chengalpet, in Crime No.8 of 2011.

3.(i) The 1st respondent herein is the owner of the said offending vehicle and the 2nd respondent is the insurer. Since the accident had occurred due to the rash and negligent act of the driver of the 1st respondent vehicle, both the 1st and 2nd respondents are jointly and severally liable to pay the compensation of Rs.6,00,000/-.

4. Before the Claims Tribunal, the 1st respondent remained exparte. On the other hand, opposing the claim of the petitioners, by filing counter, the 2nd respondent-insurance company, denied the accident itself and stated that only due to the rash and negligent act of the rider of the two wheeler, the accident occurred. The petitioners have to prove the validity of the insurance policy and the validity of driving licence of the driver of the offending vehicle. The claim made under various heads, is highly excessive. In the alleged act, the compensation claimed at a sum of Rs.6 Lakhs for the death of petitioners' son, doing college education, is not justifiable and not reasonable and it is purely an imaginary one for the sake of insurance claim. Since, at the time of accident the deceased was a pillion rider, alongwith two other persons, it is necessary to implead the owner and insurer of the motorcycle to find out the liability. According to him, the rider of the two wheeler is also liable for the alleged accident.

5. Before the claims tribunal, the OP pertains to this Civil Miscellaneous Appeal was tried along with MCOP No.1651 of 2011, which was filed by the rider of the two wheeler, in which he claimed compensation for the injuries sustained by him in the said accident. Further in order to prove the claim, Naveen Kumar, the petitioner in MCOP No.1651 of 2011 was examined as PW1 and the 1st petitioner/1st appellant herein, was examined as PW2. Besides, 8 documents were marked as Exs.P1 to P8. On the side of the respondents, neither oral nor documentary evidence, was let in.

6. Having considered all the materials placed before him, the Presiding Officer, Motor Accidents Claims Tribunal, came to the conclusion that in the alleged accident, the rider of the two wheeler made contribution to the level of 10% and held that out of the total award amount of Rs.4,75,000/- the petitioners are entitled to get only 90% of the same i.e. Rs.4,27,500/-.

7. Challenging the same, the petitioners are before this Court, seeking enhancement of compensation awarded by the Claims Tribunal.

8. Initially, the learned counsel appearing for the petitioners/appellants would contend that before the Claims Tribunal, in order to prove the negligence contributed by the rider of the two wheeler, none has been examined on the side of the 2nd respondent-Insurance Company. Without considering the said lapses found on the side of the respondents, the Claims tribunal, suo motu came to the conclusion that the rider of the two wheeler has also made some contribution in the accident, which is erroneous one.

9. On the other hand, the learned counsel appearing for the 2nd respondent-Insurance Company, would contend that the evidence given by PW1, who is the rider of the two wheeler reveals the fact that the negligence of two wheeler also involved in the accident.

10. Now, on considering the rival submissions made by the learned counsels appearing on either side, it is the duty vested upon the respondents to prove that the rider of the two wheeler, in which the deceased was travelling as a pillion rider, also contributed some negligence to the alleged accident. But in this case, in order to prove the same, nobody has been examined on the side of the respondents, for pointing out the negligence committed by the rider of the two wheeler. In otherwise, as per the copy of the FIR, which was marked as Ex.P1, the driver of the 1st respondent vehicle alone committed the offence and the same was also not disputed on the side of the respondents. Moreover the evidence given by PW1 does not disclose that he is also responsible for the alleged accident.

11. So, without any relevant documents and relevant evidence, it is unnecessary for the Presiding Officer, Claims tribunal to hold that the rider of the two wheeler has also made contribution in the accident. In the said circumstances, this Court is of the considered view that there is no negligence on the part of the rider of the two wheeler and hence the owner and rider of the two wheeler is not a necessary party to decide the claim petition.

12. As already pointed out, since the case has been registered against the driver of the 1st respondent's vehicle and also for the reason that the respondents have not proved negligent act of the rider of the two wheeler, liability to pay the compensation fixed if any, is only with the 1st and 2nd respondents, as both of them are jointly and severally liable to pay the compensation.

13. In respect to the quantum of compensation fixed by the tribunal, the learned counsel appearing for the petitioners/appellants would contend that while at the time of disposing the claim petition, the claims tribunal has fixed a meagre amount as the income of the deceased. Further future prospects has not been taken into account for calculating the compensation. More than that the multiplier adopted by the claims tribunal is against the principles set out in Sarla Verma & Others Vs. Delhi Transport Corporation & Another, reported in (2009) 6 SCC 121 : 2009 ACJ 1298.

14. Now, on considering the said submissions with the relevant records, while at the time of the accident, the deceased N.Saravanan was doing B.Com. So, it is needless to say, after completion of the decree, he would get employment or opt for higher studies. Certainly, it cannot be predicted the deceased would get better job opportunities. However, being a graduate in Commerce, he would have got hand sum salary according to his ability. After holding as above, the claims tribunal fixed Rs.5,000/- as monthly income of the deceased.

15. In the abovesaid circumstances, it is relevant and useful to see the judgment of our Hon'ble Apex Court reported in Kishan Gopal & Another Vs. Lala & Others, reported in (2014) 1 SCC 244. In the said case, for the boy aged about 10 years, who died on 19.07.1992, the Hon'ble Apex Court has fixed Rs.30,000/- as the annual income.

16. So, applying the said principle to the case in our hand, in this case since the deceased is a B.Com graduate, and also for the reason that the accident had occurred on 10.01.2011, it is appropriate to fix Rs.9,000/- as the monthly income of the deceased. Secondly on going through the award passed by the Claims Tribunal, the Presiding Officer has not calculated the future prospects to the monthly income fixed. Hence, following the case of Sarla Verma, since the age of the deceased, at the time of accident is 18 years, it is necessary to add 40% of the monthly income as the future prospects, for calculating the pecuniary loss. Accordingly, the total monthly income of the deceased is calculated as follows:

Total Monthly Income	: Rs. 9,000/-
Add: Future Prospects @40%	: Rs. 3,600/-
Total	: Rs.12,600/-

17. Now, coming to the point of deduction, it is an admitted fact that the deceased was a Bachelor and the claimants 1 and 2 in the Claim Petition, are the mother and father of the deceased, respectively. Therefore, following the case of Sarla Verma, 50% of the monthly income has to be deducted towards the

personal expenses of the deceased. Accordingly, after deducting 50% of the monthly income, pecuniary loss is calculated as follows.

Total Monthly Income	:	Rs. 12,600/-
Less: 50% of Monthly Income towards personal expenses	:	Rs. 6,300/-
Total	:	Rs. 6,300/-

So, after deducting 50% of the monthly income towards the personal expenses of the deceased, the pecuniary loss to claimants per month comes to Rs.6,300/-.

18. Further, following the judgment rendered by our Hon'ble Apex Court, in Sarla Verma's case [cited supra], the appropriate multiplier for calculating the compensation is 18. Accordingly, the pecuniary loss to the family of the deceased is as follows:

Loss of Dependency	:	Rs.6,300/- x 12 months x 18 multiplier
	:	Rs.13,60,800/-

19. Now, on going through the conventional heads, in the instant case, the claims Tribunal has awarded a meagre sum of Rs.5,000/- towards "Funeral Expenses" and Rs.20,000/- towards "Loss of love and affection.

20. In this occasion, it is necessary to see the judgment of our Hon'ble Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others, [SLP (C) 25590/2014 dt/ 31.10.2017], in which Rs.15,000/- towards "Funeral Expenses" and Rs.15,000/- towards "Loss of Estate", were allowed. Moreover, in this case, the claimants, who are the parents, have lost their 18 years old son, who was doing college education. Hence, a sum of Rs.20,000/- each is allowed to the claimants, towards 'loss of love and affection'. Accordingly, the claimants are entitled to the compensation as follows:

Loss of dependency	:	Rs.13,60,800/-
Loss of Funeral Expenses	:	Rs. 15,000/-
Loss of Estate	:	Rs. 15,000/-
Loss of Love and affection	:	Rs. 40,000/-
Total	:	Rs.14,30,800/-

21. Accordingly, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.14,30,800/-. The modified compensation of Rs.14,30,800/- has to be apportioned among the claimants equally. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. The 2nd respondent-Insurance Company is directed to deposit the entire award amount along with interest and costs, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, after collecting the Court fee for the enhanced compensation, if any, the Tribunal is directed to transfer the

said amount to the Bank Account of Claimants through RTGS/NEFT within a period of one week.

22. In the result, this Civil Miscellaneous appeal is partly allowed. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The [V Judge, Small Causes Court], Chennai.

Copy to: The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.17909
+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.18800

CMA No.1714 of 2013

PP(CO)
CB(18/11/2021)