

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.08.2020
Pronounced on: 10.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1198 of 2016
& C.M.P.No.9058 of 2016

Royal Sundaram Alliance Insurance Co. Ltd.,
Represented by its Manager, Bus Plaza, 3rd Floor,
No.5, Jilla Sons Road, Cantonment,
Trichy - 620 001. ... Appellant/Respondent-2

/versus/

1. Mathiazhagi,
W/o.Balakrishnan,
residing at Big Street, Maruvathur,
Vaidheeswaran Koil Post, Seergazhi Taluk.
2. Minor Madhubala, aged 10, D/o.Balakrishnan,
3. Minor Mounika, D/o Balakrishnan, aged 9 years
(Minors represented by their mother and next friend the 1st
respondent at the above address)
4. S.Selvarani,
W/o.B.Manoharan,
No.48, Swami Sannadhi Street,
Vaideeswaran Koil,
Seergazhi Taluk. ... Respondents/Petitioners 1 to 3/
Respondent-1

Prayer : Civil Miscellaneous Appeal is filed under Section 173
of the Motor Vehicles Act, 1988, against the Judgment and Decree
dated 11th day of January 2016 made in M.C.O.P.No.10 of 2013 on
the file of Motor Accident Claims Tribunal(Additional Sub
Court), Mayiladuthurai.

For Appellant	: Mr.Elveera Ravindran
For R1 to R3	: Mr.S.Sounthar
For R4	: Given up

J U D G M E N T

(The case has been heard through video conference)

The Appellant herein is the Insurance Company. The respondents 1 to 3 are the claimants/dependants of the accident victim Balakrishnan. The 4th respondent herein is the owner of the offending vehicle.

2. The claimants in their claim petition had averred that, Balakrishnan aged about 42 years was a mason and agriculturist. He was earning about Rs.15,000/- per month. On 15/10/2012, at about 7.30 pm near Anbu Petty shop, Vaitheeswaran Koil West Street, a TATA Ace van bearing Registration No.TN 51 P 6511 dashed the two wheeler in which Balakrishnan was travelling as pillion rider. Balakrishnan was severely injured and taken to the hospital. Surgery was done for his left leg fracture, at Sirkali Government Hospital. However, he succumbed to the injury at the hospital on 24/10/2012 at about 11.00 hrs. The claimants, who are the wife and two minor girl children of Balakrishnan solely depend on him for their livelihood. His untimely demise has caused great loss of dependency, love and affection. Hence, they have to be compensated with Rs.20,00,000/-.

3. The Insurance Company, filed a counter and an additional counter. In the first counter admitting the occurrence of accident and involvement of the TATA Ace vehicle insured under them, denied liability attributing negligence on the part of the rider of the two wheeler Muthukumarasamy, who had no driving license but riding the two wheeler accommodating Balakrishnan on the pillion. In this counter statement filed on 21/11/2013, the insurer reserved their right to file additional counter after getting the investigation report. In the additional counter statement dated 04/01/2014, the insurer denied the involvement of the TATA Ace vehicle in the accident based on the report given by the private investigator. It doubted the truthfulness of the F.I.R given by the wife of the deceased 10 days after the alleged accident, without any details of the offending vehicle. It was also contended that there was no nexus between the accident and the death. Balakrishnan died 10 days after the accident due to medical complication and not due to the accident injuries.

4. The claimants examined two witnesses and marked 5 exhibits. The respondents examined three witnesses and marked 4 exhibits.

5. The Tribunal declined to accept the version of the Insurance company since they failed to mark the private investigation report and failed to examine the private investigator who gave report contrary to the content of the F.I.R marked as Ex.P-1. Further, the delay in lodging F.I.R was found justifiable since the first informant was the wife of the injured and she was taking care of her husband who was taking treatment as inpatient and struggling for his life at the hospital in Sirkali. The son of first respondent who is the owner of the offending vehicle was examined by the insurer as R.W.2. He was the driver of the offending vehicle at the relevant point of time. His evidence was held not reliable being an interested witness. He was prosecuted for causing death of Balakrishnan due to his negligent driving. The denial of accident was not made by the vehicle owner by way of counter. As an afterthought, the Insurance Company, to avoid liability had introduced this witness to deny the accident. The Tribunal awarded Rs.10,03,600/- with 7.5% interest from the date of petition (02/01/2013) till the date of realisation.

6. The Learned Counsel for the Appellant/Insurance Company submitted that the Tribunal ought not to have disbelieved the evidence of R.W-2. The Tribunal failed to note that the belated F.I.R does not refer the involvement of the first respondent vehicle. The Motor Vehicle Inspector, in his report Ex.P-2 has not noticed any damage to the vehicles. In any event, the death of Balakrishnan was not due to the motor accident injuries but due to myocardial infraction. (Heart attack). The award of Rs.10,03,600/- is excessive and exorbitant by fixing wrong multiplier, wrong income and future prospects. The award under the non-conventional heads like loss of consortium, loss of love and affection and funeral expenses also challenged as excessive by the appellant.

7. The Learned Counsel for the respondents 1 to 2 would submit that, accident victim died in the hospital during the course of treatment. The day next to the surgery he died. R.W-1 doctor has admitted in his deposition that death might have occurred due to surgical shock. The involvement of the TATA Ace vehicle is spoken by witnesses and supported by exhibits. The Insurance Company has not produced the alleged investigation report knowing well that it is not in their favour. After withholding the best evidence available with them, they want to deny liability on surmises.

8. Heard the submissions of the Learned Counsels for the appellant and the respondents. Records perused.

Liability:

9. Regarding the involvement of the vehicle TATA Ace TN 51 P 6511, we find in the F.I.R, the offending vehicle make alone is mentioned. P.W-2, Nagaiah has deposed about the accident and the vehicle. Though the driver of the TATA Ace was examined as Respondent witness R.W-2 to deny his involvement in the accident, he admits that the proof affidavit was prepared by the Insurance Company and he signed in it. His mother is the owner of the vehicle and she is one of the respondent, but did not contest the claim petition. He admits that he was arrested by the police and let out on bail in connection with this case (Motor Accident). The involvement of the first respondent vehicle is held to be proved based on the F.I.R given by the wife of the victim and the evidence of P.W-2. The Tribunal has held the evidence of R.W-2 is an afterthought and unreliable since he is an interested witness.

10. The post mortem certificate which is exhibited as Ex.P.3, the following anti-mortem injuries were noted:-

- 1). Blackish abrasion 1cm x 1cm (r) knee.
 - 2). Vertical sutured wound over anterior aspect of (r) knee with drainage tube length 12 cm.
 - 3). Sutured wound over anterior aspect of middle of leg (r) length 3 cm.
 - 4). Blackish abrasion just below (r) knee 2cm x 2cm.
- On opening the operated site K-wire and SS wire seen.

11. R.W-1 Dr.Senthil Kumar, the doctor who conducted the post mortem has deposed that Balakrishnan died 10 days after the accident. After the surgery, the next day he died. The surgery was necessary for his injuries. Cardiac arrest could occur due to the impact of the surgery.

12. Thus, it is clear from his evidence there is no remoteness from the accident to the death. Neither there is intervening facts which has aggravated the death. The victim had died while undergoing treatment soon after surgery. No other alternate facts available before this Court to infer otherwise. In the absence of the evidence contrary to the version of the claim petitioner, this Court confirms the Tribunal finding that Balakrishnan died in the hospital while taking treatment for his injuries, therefore the death is due to the accident injuries.

13. In the said factual circumstances, this Court finds nothing wrong in the findings of the Tribunal about the involvement of the first respondent vehicle in the accident and the liability of the Insurance Company to indemnify the first respondent.

Quantum:

The Tribunal has fixed the age of the deceased as 43 years. His income is notionally fixed at Rs.6,000/- pm. Following Sarala Verma Judgement multiplicand 14 applied. By adding 30% towards future prospects, compensation of Rs.8,73,600/- awarded towards loss of dependency. Under other non-conventional head Rs.1,30,000/- awarded. Totally, the Tribunal has awarded Rs.10,03,600/- with 7.5% from the date of filing the claim petition till the date of realisation.

15. The accident occurred on 15/10/2012. The impugned award of the Tribunal is dated 11/01/2016. The Five Judges Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd -vs- Pranay's Sethi case delivered its judgment on 31/10/2017. In this judgment, the Hon'ble Supreme Court has laid down the thumb rule to bring about consistency in the approach of the Tribunals and the Courts. On applying the yardstick of Pranay's Sethi case, reduction under certain heads to be done.

- (i). 25% instead of 30% under future prospects;
- (ii). Rs.40,000/- instead of Rs.50,000/- towards consortium for first claimant and
- (iii). Rs.15,000/- instead of Rs.25,000/- towards funeral expenses has to be awarded.

16. Whereas in the recent judgment of the Hon'ble Supreme Court 2020 CDJ 709 (SC), the New India Assurance Company Limited Vs. Smt.Somwati and others following Pranay's Sethi case, has clarified that Rs.40,000/- each under the head consortium should be awarded to wife for loss of spousal consortium, for the children under parental consortium and for parents under filial consortium. Therefore for the 2nd and 3rd claimants compensation consortium has to be enhanced to Rs.40,000/- each. Accordingly, the award of the Tribunal modified as below:-

Loss of income: (Rs.6,000 + Rs.1,500 PF) x 12 x 14 x 2/3	Rs.8,40,000
Loss of spousal consortium (first claimant)	Rs.40,000
Loss of parental consortium (2 nd and 3 rd claimants)	Rs.80,000
Funeral expenses	Rs.15,000
Transport expenses	Rs.5,000
Total	Rs.9,80,000/-

17. The award amount shall be apportioned by the claimants as under:

First claimant (wife):	Rs.3,80,000/-
2 nd and 3 rd claimants:	Rs.3,00,000/-each

18. The award amount and the interest at the rate of 7.5% shall be deposited by the appellant/Insurance Company within a period of 12 weeks from the date of receipt of the order copy. The first claimant is permitted to withdraw her share with proportionate interest. The shares of the minor claimants shall be invested in any one of the Nationalised Bank till the minor claimants attain majority. The first claimant as mother and natural guardian of the minors shall be permitted to withdraw the interest alone annually, to meet the basic needs of the minors.

19. In the result, the Civil Miscellaneous Appeal No.1198 of 2016 is partly allowed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm
To,

1. The Motor Accident Claims Tribunal(Additional Sub Court), Mayiladuthurai.
2. The Section Officer,
VR Section, Madras High Court.

+1cc to M/s.Elveera Ravindran, Advocate Sr.29680
+1cc to Mr.S.Sounthar, Advocate Sr.29765

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