

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2263 of 2013 and M.P.No.1 of 2013

M/s United India Insurance Company ltd.,
Rep. by Divisional manager,
Divisional office,
1st floor of T.K.M.Complex,
No.46-51, Katpadi Road,
Vellore - 632 004
Vellore District Appellant/2nd Respondent

Vs

1. P.Nadhiya
2. M.Prakash ... Respondents 1 & 2/Petitioner 1 & 2
3. J.Jaya ... 3rd Respondent/2nd Respondent
(Set-Exparte before the Trial Court)

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.399 of 2011 on the file of Motor Accidents Claims Tribunal (I Additional District and Sessions Court,) at Vellore dated 06.10.2012.

For Appellant : Ms. K.Saraswathi

For Respondents : Mr.C.Prabakaran for R1 and R2
R3-Exparte

J U D G M E N T

The appellant herein, who is the Insurance Company has preferred this Civil Miscellaneous Appeal against the Judgment and Decree made in M.C.O.P.No.399 of 2011 on the file of Motor Accidents Claims Tribunal (I Additional District and Sessions Court,) at Vellore dated 06.10.2012.

2. The case of the respondents / claimants is that on 23.10.2010 at 12.30 p.m., the deceased P.Vishva was travelling in the cycle and his grand father was riding the cycle at Vellore to Thorady road near TKV complex, Dinesh medical Shop,

Thorapad, Vellore, when he was going on the extreme left side of the road, at that time, the driver employed by the 1st respondent was driving the lorry bearing Regn. No.MDA 3952 in a rash and negligent manner with high speed without blowing horn and dashed against the cycle. On account of the same, the deceased fell down from the cycle and the wheels of the lorry ran upon the head of the deceased, who died on the way to the hospital. Prior to the accident, the deceased was hale and healthy, he was brilliant in his studies and if he had not expired, he would have educated higher education and well qualified and supported his parents and the driver of the 1st respondent's lorry is facing criminal trial based on the complaint of the deceased's grand father. Therefore, the respondents claimed a sum of Rs.11,75,000/- from the appellant, Insurer of the vehicle as well as the 1st respondent, owner of the vehicle.

3. In contrary, the appellant had filed a counter denying all the averments of the respondents / claimants. The alleged accident was solely due to the rash and negligence of cyclist, who had proceeded with the deceased as pillion rider without following the traffic rules / regulations and dashed against the said lorry and the pillion rider caught under the rear wheel of the lorry, as such, the claim is not maintainable and thereby, sought to dismiss the claim petition.

4. The Tribunal considering the pleadings, counter pleadings and the materials available on record had awarded a sum of Rs.3,27,000/- as compensation, to the respondents 1 and 2. Challenging the said compensation, the appellant is before this Court.

5. The learned counsel for the appellant contended that the Tribunal has awarded the compensation of Rs.3,27,000/- to the claimants, which is not proper. When the deceased minor aged 4 years studying in U.K.G., notional income alone to be taken as Rs.15,000/- p.a. by the tribunal and failed to deduct 1/3rd of his personal expenses. Further, awarding a sum of Rs.1,00,000/- towards love and affection by the Tribunal is on the higher side and hence seeks to set aside the award passed by the Tribunal.

6. The learned counsel for the respondents 1 and 2 submitted that the compensation awarded by the Tribunal is not a reasonable amount and pleaded to enhance the same. In support of his contention, he has relied on the Judgment of Hon'ble Supreme Court reported in [2013 (2) TNMAC 358 (SC)] Kishan Gopal and Another V. Lala & Others wherein it is held as follows:

'That the proof of the deceased as per claim while travelling in Trolley of tractor died due to rash and negligent driving of tractor driver. The first information

report, charge sheet as also site map, post mortem report, mechanical inspection, insurance cover note etc., produced and marked to substantiate claim. The father of the deceased and eye witness spoken about manner of accident to the effect that trolley in which deceased travelled, turned down due to high speed, rash and negligent driving causing death of deceased. Tribunal, however holding that death of deceased due to rash and negligent driving not proved. The finding of Tribunal confirmed by High Court in Appeal, driver and owner of vehicle / Tractor-Trolley remained ex-parte before Tribunal and no rebuttal evidence adduced by insurer before Tribunal. In such circumstances, Tribunal ought to have appreciated oral and documentary evidence in proper perspective. When FIR and charge-sheet are not in dispute, Tribunal should have accepted evidence in favour of claimants. The tribunal ignored relevant facts and evidence on record and the High Court also failed to re-appreciate the pleadings and evidence on record. The High court also failed to re-appreciate pleadings and evidence on record and mechanically confirmed finding of Tribunal in absence of rebuttal evidence. Concurrent finding of fact being erroneous and invalid, set aside.'

7. Though notice was ordered to the 3rd respondent /owner of the lorry, there is no representation for the 3rd respondent, either in person or through learned counsel and he was set exparte before the court below.

8. From the order of the Tribunal, it is seen that to prove the rash and negligence driving of the driver of the lorry, the respondents 1 and 2 were examined as P.W.1 and P.W.2 and marked Exs.P.1 to P.5. One Muralirangan, who is the eyewitness to the accident and grand father of the deceased and rode the bicycle, was examined as P.W.2. A case has been registered against the driver of the lorry bearing regn. No.MDA 3952, which is evident from Ex.P.1, FIR. Since there is no contra evidence produced on the side of the appellant to disprove the case of the respondents 1 and 2, the Tribunal rightly held that the accident had occurred only due to the rash and negligence driving of the driver of the 3rd respondent and stated that the 3rd respondent, being owner of the vehicle and appellant being insurer of the vehicle are jointly liable to compensate the respondents 1 and 2.

9. Further, a perusal of the order passed by the court below would show that the deceased was a non earning member studying in U.K.G in a English Medium School. For the non-earning member, the notional annual income is fixed at Rs.15,000/-, as per the provisions of the Motor Vehicles Act and the Multiplicand 15 is adopted and thereby fixed Rs.2,25,000/- towards loss of Income. In addition to the same, a sum of Rs.1,00,000/- is awarded

towards love and affection and Rs.2,000/- towards funeral expenses. In total, a sum of Rs.3,27,000/- is awarded to the respondents 1 and 2 and directed the appellant and the 3rd respondent to pay the said compensation to the respondents 1 and 2 and the same is tabulated as follows:-

S1.	Name of the Heads	Amount
01	Loss of income [Rs.15,000 X15]	Rs.2,25,000/-
02	Love and Affection	Rs.1,00,000/-
03	Funeral Expenses	Rs.2,000/-
TOTAL		Rs.3,27,000/-

10. This Court finds some force in the submission of the learned counsel for the respondents 1 and 2 and is of the view that the Judgment of the Hon'ble Supreme Court reported in 2013 (2) TNMAC 358 (SC) [Kishan Gopal and Another V. Lala & Others] cited supra relied on by the learned counsel for the respondents squarely applicable to the case on hand because of the reason, firstly, the deceased boy was 4 years old at the time of accident and that the rupee value has come down drastically from the year 1994. Further, if the deceased boy was alive, he would have certainly contributed substantially to the family of the respondents 1 and 2 by working hard. In view of the same and being bound by the Judgment of the Hon'ble Supreme Court reported in [2013 (2) TNMAC 358 (SC)] Kishan Gopal and Another V. Lala & Others cited supra, it is just and reasonable to take his notional income at Rs.30,000/- and further taking into account the young age of the parents, who were 23 and 35 years old respectively and by applying the legal principles laid down in the case of Sarla Verma V. Delhi Transport Corporation, 2009 (2) TN MAC 1(SC), the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = \text{Rs.}4,50,000/-$ and Rs.50,000/- under Conventional heads towards Loss of Love and affection, funeral expenses, last rites as held in Kerala SRTC V. Susamma Thomas, 1994(2) SCC 176, 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.

11. In total, a sum of Rs.5,00,000/- is awarded to the respondents 1 and 2 with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. The appellant / Insurance Company and the 3rd respondent / owner of the vehicle, jointly or severally are directed to deposit the enhanced award amount to the Credit of M.C.O.P.No.399 of 2011 on the file of Motor Accidents Claims Tribunal (I Additional District and Sessions Court,) at Vellore dated 06.10.2012, along with interest and costs as determined by

this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondents 1 and 2 are permitted to withdraw the amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned.

With the above said observations and directions, the present Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssd
To

The Motor Accidents Claims Tribunal
(I Additional District and Sessions Court,)
Vellore

Copy to

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

+1cc to Mr.C.R.Krishnamoorthy, Advocate sr.12336
+1cc to Mr.C.Prabakaran, Advocate Sr.12494

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M.P.No.1 of 2013

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