

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.08.2020

Pronounced on: 01.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1666 of 2016

1.V.Veeraraghavan

2.V.Malliga

...Appellants/Petitioners

/versus/

1.G.Manoharan

2.Shriram General Insurance Company Limited,
No.66, Thirumalai Pillai Road,
City Centre Complex 2nd Floor, T.Nagar,
Chennai-600 017.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 08.01.2014 passed in M.C.O.P.No.126 of 2013 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Tiruvallur at Poonamallee .

For Appellants : Mr.K.Suryanarayanan

For R1 : No appearance

For R2 : Mr.K.Poomalai

J U D G M E N T
सत्यमेव जयते

(The case has been heard through video conference)

Bharathi a call taxi driver, died as bachelor at the age of 26 years, in the road accident while driving the call taxi. His parents who lost their only child are the appellants before this court.

2. The road traffic accident was reported to the police by one Silambarasan. Based on his report, the FIR registered as below:-

The complainant (Silambarasan) is employed as Escort in an IT company at MEPS, Tambaram. The company has arranged call

taxi for its staff to commute from home to office and back to home after the duty. The complainant used to escort them and return back to the company in the taxi. On 19/10/2012, while returning to office from Puzal, Bharathi was on the wheels and the complainant was seated next to Bharathi, at about 11.00 p.m., near KG Signature Club at Maduravoil on the Puzhal to Tambaram bye-pass road the taxi hit a stationed mini lorry loaded with iron rods. The mini van was parked on the right side of road close to median without any indicator or signal. The iron rods protruding the van pierced the driver Bharathi. He died on the spot.

3. The Tribunal on considering the claim and evidence held that, the victim and the mini van driver had equally contributed for the accident. Hence Rs.3,38,500/- was awarded as compensation after deduction 50% towards contributory negligence.

4. In the appeal, the learned counsel for the appellants challenge the award both on deducting 50% towards contributory negligence and on quantum. As far as negligence, it is submitted that the Tribunal has erred in attributing contributory negligence on the victim without taking note of the proven fact that the entire negligence was on the driver of the parked van loaded with iron rods protruding. The van was parked on the right side of the road next to median without any indicator or signal. In the FIR, the informant has clearly narrated how the accident occurred. The van driver was prosecuted for his negligence. One of the eye witness to the occurrence Manoharan (PW-2) who is a watchman in KG Signature club was examined and his testimony not dislodged by contra evidence. Hence, the deduction of 50% for the contribution is incorrect.

5. On quantum, the learned counsel would submit that, the deceased was a call taxi driver and the accident while he was driving the call taxi itself the proof for his avocation. While so, the Tribunal erred in fixing his monthly income as low as Rs.6,000/- instead of Rs.12,000/-. Further it erred in not taking into consideration the future prospects of the deceased and loss of care and protection to the claimants due to the sudden demise of their only son. Regarding the application of multiplier, the apppellant's counsel would submit that the victim was 25 years old at the time of accident. Therefore, the appropriate multiplier is 18 and not 17. Under the non-conventional heads, the learned counsel pray to apply the guidelines of Pranay Sethi case and enhance the award accordingly.

6. Per contra, it is submitted by the learned counsel for the respondent/Insurance Company that the bye-pass road where the accident happened is broad and busy road with full illumination. Several vehicles have passed through the road without any hindrance noticing the parked van. The victim Bharathi has failed to be diligent while driving. He ramped into the parked van due to rash and negligent driving. The Tribunal after taking notice of all the relevant facts had rightly fixed the negligence equally and deducted 50% from the award.

7. As far as the alleged income, the learned counsel for the Insurance Company submitted that, the claimants did not produce any document to prove the income. On presumption notional income of Rs.6,000/- fixed. Regarding the future prospect, the learned counsel would fairly state that, the award was prior to Pranay Sethi case, the rulings at that point of time did not mandate any future prospect for self employed/fixed salary persons. However, in view of the judgment of the Hon'ble Supreme Court, the claimants may be awarded additional compensation under the head future prospects and other non conventional compensations in tune with the Supreme Court guidelines.

8. The evidence before the Court indicates that the mini van was parked on the right side of the road near median. The insurance policy of the van (Ex.P-5) indicates it is closed type van. However they have loaded iron rods protruding out. The post mortem report indicates that the rod has pierced the car and hit the driver due to that his Right and left side ribs got fractured. The doctor has opined that the victim died due to the effect of 'blunt injury in the abdomen'. To be noted, the other occupant of the car who was seated next to the driver had stated that the parked van had no indicator or signal and the protruded iron rods caused the injury to the driver. In such circumstances, no doubt other vehicles have passed through the road without any hindrance, so without the negligence of the victim, the accident could not have occurred. But then, that by itself cannot be a ground to presume that the victim contributed equally for the accident. Parking of van on the right side of the road with load protruding speaks for itself.

9. In T. O. Anthony vs Karvarnan And Others the Hon'ble Supreme Court has observed that,

"when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured

claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case."

10. In the instant case also, the negligence is equally attributed to the deceased driver of the moving vehicle who hit a parked vehicle. The Tribunal assumed 50:50 negligence without advertng to the other circumstance. As pointed earlier, parking the mini van on the right side of the road without indicator and signal has really caused the accident. Therefore, the major negligence is on the part of the van driver. Hence, the contribution of negligence on the part of the victim shall be only 1/3rd and the van driver contribution is fixed as 2/3rd.

11. Coming to the income of the deceased, the claimants have not produced document to substantiate their claim in this regard. Except the driving license there is no evidence that he was employed for salary in the call taxi company. The driving license and the fact he met with the accident while on duty as driver leads to the presumption only for his avocation and not for income. Therefore, in the year 2014, a driver could have earned an average of Rs.7,500/- p.m., the loss of dependency shall be fixed taking Rs.7,500/-p.m., as fundamental. The age of the victim at the time of accident is mentioned as 27 years in the claim petition. This corroborated by the driving license (Ex.P-4) where his Date of Birth is shown as 01/06/1983. Therefore admittedly, on the date of accident (09/10/2012) the victim was 27 years old. Since he has crossed 25 years, the multiplier 17 applied by the Tribunal is appropriate and no interference required in this regard. The claimants are entitled for future prospect of 40% and compensation under non conventional heads, in addition as per Pranay Sethi case. Also compensation for loss of care and protection during the old age to be awarded in this case since the claimants have lost their only child. The victim died as bachelor. 50% of the presumed salary to be deducted for his personal expenditure and 1/3rd for his contributory negligence.

12. The modified enhanced compensation for the claimants in the appeal is determined as below:

Loss of dependency: (7500 MI + 3000 FP) x 12 x 17 x 50 / 100	Rs 10,71,000/-
Loss of estate	Rs 15,000/-
Funeral expenses	Rs 15,000/-
Loss of love, affection, care and protection	Rs 80,000/-
1/3 rd contributory negligence (less)	(- Rs 3,93,600/-)
Compensation payable (11,81,000 - 3,93,600)	Rs 7,87,400/-

The award of Rs 3,38,500/- is modified and enhanced to Rs 7,87,400/-. Thus the compensation payable to the claimants by the second respondent Insurance Company is fixed as Rs.7,87,400/- with interest at the rate of 7.5% from the date of petition (04/02/2013) till the date of realisation. Eight weeks time granted to deposit the award amount with interest. On such deposit, the claimants are entitled to withdraw 50% each on filing appropriate petition.

13. Accordingly, this Civil Miscellaneous Appeal is allowed. With costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
III Additional District Judge,
Tiruvallur at Poonamallee.

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

+1cc to Mr.K.Suryanarayanan, Advocate Sr.28430

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