IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11..12..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.1526 of 2020

M/s. United India Insurance Co. Ltd.,
96-B, K/T Complex New Scheme Road,
Pollachi, Coimbatore.
...Appellant/2nd Respondent

-Versus-

1.Kolanji
2.Minor.Ayyappan
3.Minor.Arulpandian
4.Karuppan ..Respondents 1 to 4/Claimants
5.Venkatesh Prabhu ...5th Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 27.08.2019 made in M.C.O.P.No.1160 of 2015 by the Motor Accidents Claims Tribunal (Court of Principal District Judge), Perambalur, Perambalur District.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.V.Illanchezian
for RR1 to 4

JUDGEMENT

Challenging the award passed by the Motor Accidents Claims Tribunal / Principal District Judge, Perambalur, as exorbitant, the insurer, who was the 2nd respondent before the tribunal, has come forward with this Civil Miscellaneous Appeal.

2. It is a case of fatal accident claim. The 1st respondent is the wife and the respondents 2 and 3 are sons and the 4th respondent is the father of the deceased one Chinnadurai, who died in a road accident occurred on 11.08.2015. The 5th respondent is the owner of the offending vehicle.

3. According to the claimants, on 11.08.2015 at about 07.30 p.m. the deceased was riding on his TVS - 50, motor cycle, bearing Regn. TN 27 F 0433 on Thittakudi - Ariyalur Main Road. While the deceased was proceeding in front of Jeppiar Cement Factory Main Gate at Keelamathur in his two wheeler, a lorry bearing Regn. No.TN 41 AL 2511 was stationed in the middle of

the main road without any signal or indication and the deceased dashed against the lorry and he was thrown off and died on the spot. Had the lorry been parked on the road side with proper signal and following the precautionary measures, the accident would not have occurred. The accident was occurred only due to negligent act of the driver of the lorry. The deceased was aged 40 years old at the time of accident. He was an agricultural coolie work and was earning a sum of Rs.21,00/- per month. He was the sole breadwinner of the family. Hence, claiming compensation of Rs.20,00,000/- claim petition was filed.

4. The 5th respondent herein, the owner of the offending vehicle was remained absent before the tribunal and therefore, he was set ex parte. The appellant insurance company contested the claim petition disputing the accident. They further contended that accident was taken place due to the negligence of the deceased only and therefore, no liability could be fixed on the insurance company. They had also disputed the monthly income of the deceased.

5. Before the tribunal, in order to prove their case, the respondents 1 to 4 examined the 1st respondent as P.W.1, one Mr.Ilaiyaraja, the eye witness to the occurrence was examined as P.W.2 and Mr.Manoj, the then Inspector of Police, who conducted the investigation in the criminal case, was examined as P.W.3 and as many as 12 documents were marked as Exs.P.1 to P.12. On the side of the insurance company, one Mr.Elangovan, the investigator of the insurance company was examined as R.W.1 and the copy of the investigation report was marked as Ex.R.1. In addition to the above, a copy of the charge sheet with a list of witness appended thereto and a copy of the rough sketch were marked as Ex.X.1 and Ex.2 respectively.

6. On considering the materials which were placed on record, the tribunal held came to a conclusion that the lorry was parked on the middle of the road without any signal and without taking any precautionary measures. Therefore, holding that the driver of the lorry was negligent and responsible for the accident, the tribunal fixed the liability on the appellant insurance company with whom the offending lorry was insured on the date of accident. So far as the quantum of compensation is concerned, the tribunal has taken the monthly income of the deceased at Rs.12,000/- and added benefit of 40% towards future prospects. Thus, the monthly notional income of the deceased would be Rs.16,800/- Thereafter, making a deduction of Rs.4,200/- being 1/4th of Rs.16,800/- towards personal expenses of the deceased and by adopting the multiplier of 15, the tribunal calculated loss of dependency at Rs.12,600 x 12 x 15 = Rs.22,68,000/-. Accordingly, the tribunal awarded a sum of Rs.22,68,000/- towards loss of dependency and under the conventional heads,

the tribunal awarded a sum of Rs.40,000/- towards loss of consortium, a sum of Rs.15,000/- towards loss of estate and a sum of Rs.15,000/- towards funeral expenses. In all, the tribunal awarded a sum of Rs.23,38,000/- as compensation to the respondents 1 to 4. Challenging the quantum of compensation as exorbitant, the insurer has come forward with this Appeal.

7. I have heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4 and also perused the records carefully.

8. The learned counsel for the appellant would submit that the accident was occurred only due to the rash and negligent riding of the deceased and he only dashed his two wheeler against the parked lorry. The lorry was parked on the mud road, near the main road and it was not parked on the main road, without noticing the same, the deceased dashed his two wheeler against the lorry. Therefore, no negligence could be fixed on the driver of the lorry. But, the tribunal, without considering the evidence in a proper prospective, erroneously held that the accident was occurred due to the negligent parking of the lorry.

9. So far as the quantum of compensation is concerned, according to the learned counsel, there was no evidence adduced by the appellants to prove the monthly income of the deceased. However, the tribunal without any evidence fixed the monthly income of the deceased as Rs.12,000/- which is on the higher side. Further, the deceased was aged 40 years at the time of accident and as per the guidelines of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, 25% of his monthly income alone could be added towards future prospects, but the tribunal had taken 40% towards future prospects and therefore, the loss of dependency is to be reassessed.

10. Per contra, the learned counsel appearing for the respondents 1 to 4 would contend that the accident was taken place due to the negligent parking of the lorry on the middle of the main road. The evidence of P.W.2 and P.W.3 would be sufficient to establish the same. Considering all those materials, the tribunal rightly fixed negligence on the driver of the lorry.

11. Insofar as future prospects is concerned, the learned counsel for the respondents 1 to 4 would submit that the deceased was aged 40 years at the time of accident. Therefore, considering the same the tribunal has rightly given the benefit of 40% towards future prospects and no perversity or infirmity could be found with the conclusion of the tribunal.

12. I have considered the rival submissions carefully.

13. The accident was taken place at about 07.00 p.m. Therefore, this court assumes that it would have been dark by that time. It is the case of the respondents 1 to 4/claimants that the lorry was parked on the middle of the road without any indication and without taking any precautionary measures.

14. The Government of India has framed regulations with regard to parking of vehicles known as Road Regulations, 1989. Regulation 15 of the said Regulations, deals with parking of vehicles, which reads as follows:

> "15. Parking of the vehicle.-
>
> (1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and if the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.
>
> (2) A driver of a motor vehicle shall not park his vehicle-
>
> (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
>
> (ii) on a foot-path;
>
> (iii) near a traffic light or pedestrian crossing;
>
> (iv) on a main road or one carrying fast traffic;
>
> (v) opposite another parked vehicle or as obstruction to other vehicle;
>
> (vi) along side another parked vehicle;
>
> (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;
>
> (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
>
> (ix) on the wrong side of the road;
>
> (x) where parking is prohibited;
>
> (xi) away from the edge of the footpath..."

15. A careful scrutiny of testimony of P.W.3, who was then Sub Inspector of Police, Kunnam P.S. and the rough sketch marked under Ex.X-2, it could be seen that the width of the road was 30 feet and the offending lorry was said to have been parked on the road side. P.W.3 had also clearly admitted in his cross that there was 26 feet road available from the parked lorry. However, there is no evidence available on record to show that the lorry was parked by following precautions as per the above mentioned regulations. At the same time, the deceased also ought to have been little cautious while riding on the motor cycle. In the instant case, the deceased did not wear helmet at the time of accident. Wearing helmet is not just a matter of precaution, it is also mandatory. The death of the deceased could have been avoided had he wore helmet. Thus, in the considered opinion of this court, the deceased was also contributed to the accident by not wearing helmet and as such, 10% of negligence could be fixed on the deceased.

16. So far as the quantum of compensation, the tribunal fixed the monthly income of the deceased at Rs.12,000/-. This court finds no infirmity in the same. Considering the age of the deceased, as per the guidelines laid down by the Hon'ble Supreme Court in Pranay Sethi's case, cited supra, in case of self employed person where the deceased was between the age of 40 and 50 years, benefit of 25% could be added towards future prospects not 40% as added by the tribunal. Thus, the notional income of the deceased would be Rs.12,000 + 3000 = Rs.15,000/- p.m. There are four dependents who are widow, children and father respectively of the deceased. Therefore, a deduction of Rs.3,750/- being 1/4th of Rs.15,000/- could be made towards personal expenses of the deceased and in that case, the annual notional income would be Rs.11,250 x 12 = Rs.1,35,000/-. Considering the age of the deceased if multiplier of 15 is applied, the loss of dependency would be arrived at Rs.20,25,000/-. Thus, the respondents 1 to 4 are entitled to a sum of Rs.20,25,000/- towards loss of dependency in the place of Rs.22,68,000/- awarded by the tribunal.

17. Insofar as compensation under the conventional heads are concerned, the tribunal awarded a sum of Rs.40,000/- towars loss of consortium to the widow of the deceased alone and it did not award any compensation to the children of the deceased who are respondents 2 and 3 towards loss of love and affection and towards loss of filial consortium to the father of the deceased, who is the 4th respondent. As per the judgement of the Hon'ble Supreme Court in United India Insurance Co. Ltd v. Satinder Kaur @ Satwinder Kaur [Civil Appeal No.2705 of 2020 dated 30.06.2020], the respondents 2 and 3 are entitled to a sum of Rs.40,000/- each towards parental consortium and the 4th respondent is entitled to a sum of Rs.40,000/- towards filial

consortium. That apart, the respondents 1 to 4 are entitled to a sum of Rs.5,000/- towards transport charges. As far as loss of estate and funeral expenses are concerned, the tribunal itself awarded a fair and reasonable compensation and therefore, the same do no call for any interference by this court. Thus, the total compensation works out to Rs.22,20,000/-. However, since the deceased also contributed negligence, a sum of Rs.2,20,000/- could be deducted towards 10% of negligence fixed on the deceased and therefore, the respondents 1 to 4 are entitled to a sum of Rs.19,98,000/- as compensation. The compensation awarded by the tribunal is modified accordingly as follows:-

Serial No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of Dependency	22,68,000	20,25,000	Reduced
2.	Loss of Consortium to the 1st respondent	40,000	40,000	Confirmed
3.	Loss of Parental Consortium to the respondents 2 and 3 [Rs.40,000 each]	-	80,000	Granted
4.	Loss of Filial Consortium to the 4th respondent	-	40,000	Granted
5.	Loss of Estate	15,000	15,000	Confirmed
6.	Funeral Expenses	15,000	15,000	Confirmed
7.	Transport Expenses	-	5,000	Granted
		23,38,000	22,20,000	
	Amount deducted towards 10% negligence fixed on the deceased	-	2,22,000	
	Total	23,38,000	19,98,000 [Rounded to Rs.20,00,000]	Reduced
	Round up to	23,38,000	20,00,000	Reduced by Rs.3,40,000

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.23,38,000/- awarded by the Tribunal is hereby reduced to Rs.20,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is entitled for refund of court fee, if any, as per law. The appellant corporation is directed to deposit the award amount directed above along with interest and proportionate costs in the claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The compensation determined herein above is directed to be apportioned among the respondents 1 to 4 in the same proportion as ordered by the tribunal. On such deposit, the respondents 1, 2 and 4 are at liberty to withdraw their respective shares together with proportionate interest by making appropriate application before the Tribunal. The share of the 3rd respondent (minor) together with proportionate interest shall be invested by the tribunal in any one of the nationalized bank until the minor attains majority and the 1st respondent is permitted to withdraw the interest accrued on such investment once in six months directly from the bank for the welfare and maintenance of the minor. In other respects the directions of the tribunal stand confirmed. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1.The Motor Accidents Claims Tribunal
(Principal District Judge), Perambalur,
Perambalur District.

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

C.M.A.No.1526 of 2020

CNR(CO)
SP(12/11/2021)