

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NOS.2769 & 2914 OF 2019
AND

C.M.P.NO.14112 OF 2019 IN C.M.A.NO.2769 OF 2019

C.M.A.No.2769 of 2019:

The Oriental Insurance Company Ltd.,
Rep. by its Divisional Manager,
Jambu Bala Complex, Arcot Road,
Vellore Town. ... Appellant/2nd Respondent

Versus

1. P.Sri.Jayanthi
2. Minor P.Rajeshwari
D/o.Late Prabakaran
3. Minor P.Raja
S/o.Late Prabakaran

(Minors 2 & 3 Rep.by Their Mother/
1st Respondent)

4. J.Nithiyanantham

5. N.Mala

... Respondents 1 to 5/Petitioners

6. K.Ravi

... 6th Respondent/1st Respondent

Prayer:-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 28.02.2019 passed in M.C.O.P.No.204 of 2012 on the file of Motor Accidents Claims Tribunal, Vellore (1st Additional District and Sessions Court, Vellore).

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For Appellant : Mr.R.Ganesan
For Respondents - 1 to 5 : Mr.R.Nalliyappan

C.M.A.No.2914 of 2019:

1. P.Sri.Jayanthi

2. Minor P.Rajeshwari
D/o.Late Prabakaran

3. Minor P.Raja
S/o.Late Prabakaran

(Minors 2 & 3 Rep.by Their Mother/
1st Appellant)

4. J.Nithiyanantham

5. N.Mala ...Appellants/Petitioners

Versus

1. K.Ravi ... 1st Respondent/1st Respondent

2. The Oriental Insurance Company Ltd.,
Rep.by its Divisional Manager,
Jambu Bala Complex, Arcot Road,
Vellore Town. ...2nd Respondent/2nd Respondent

Prayer:-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 28.02.2019 passed in M.C.O.P.No.204 of 2012 on the file of Motor Accidents Claims Tribunal, Vellore (1st Additional District and Sessions Court, Vellore).

For Appellants : Mr.R.Nalliyappan
For Respondent - 1 : Mr.R.Ganesan

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COMMON JUDGMENT
(Judgment of the Court was delivered by
KRISHNAN RAMASAMY, J.,)

The Civil Miscellaneous Appeal in C.M.A.No.2769 of 2019 has been preferred by the Insurance Company against the liability fixed by the Tribunal vide judgment and decree dated 28.02.2019, passed in M.C.O.P.No.204 of 2012.

The Civil Miscellaneous Appeal in C.M.A.No.2914 of 2019 has been preferred by the claimants viz., wife, minor daughter, minor son, father and mother of one deceased Prabakaran against the quantum of compensation awarded by the Tribunal vide judgment and decree dated 28.02.2019, passed in M.C.O.P.No.204 of 2012.

2. The brief facts of the case reads as follows:

On 09.10.2011, at 11.45 a.m, the driver and cleaner of the Lorry bearing Reg.No.TN 23 AC 2979 parked the said Lorry on the Bye-Pass over bridge just opposite to Yamaha showroom in the Chennai to Bangalore National Highways due to the reason that the rear right side dummy tyre got punctured. When the driver and cleaner of the Lorry parked the said Lorry, they failed to display reflector triangle light, put on parking indicator, display red flag cautioning the passing vehicles and also failed to divert the traffic, however, they were simply changing the punctured dummy tyre of the Lorry. While so, at that time, one N.Prabakaran was riding a two wheeler with his minor daughter Rajeswari as pillion rider seated behind him in the Chennai to Bangalore National Highway. But the said Prabakaran was not aware that the Lorry is parked there. So, he dashed against the lorry and in that accident, the said Prabakaran died on the spot and his daughter/pillion rider got grievous injuries. The accident was reported to Vellore North L & O Police and they have registered a case in Crime No.674/2011 u/s.279, 337 and 304 (A) of IPC. Aggrieved by the death of said Prabakaran, the claimants viz., wife, minor daughter, minor son, father and mother of the deceased had filed a Claim Petition against the owner of the Lorry and Insurance Company claiming a sum of Rs.80,00,000/- as compensation for the death of Prabakaran.

3. The owner of the Lorry (R5 in C.M.A.No.2769 of 2019 & R1 in C.M.A.No.2914 of 2019) remained ex parte before the Tribunal.

4. The Insurance Company filed a counter statement, wherein, they denied the averments made by the claimants viz., wife, minor daughter, minor son, father and mother of the deceased, in the Claim Petition.

5. When the matter came up before the Tribunal, on the side of the claimants, 3 witnesses were examined viz., P.W.1 to P.W.4 and 12 documents were marked as exhibits viz., Ex.P1 to Ex.P12 and on the side of the Insurance Company, 2 witnesses were examined viz., R.W.1 & R.W.2 and 4 documents were marked as exhibits viz., Ex.R1 to Ex.R4. Also, one document was marked on the side of the Court viz., Ex.X1.

6. On appreciation of the oral and documentary evidence

produced before it, the Tribunal decided that the accident was happened only due to the rash and negligent driving of the driver of the Lorry. It also held that the owner of the Lorry and the Insurance Company being the insurer of the Lorry are jointly and severally liable to pay the just compensation to the claimants. By arriving at such a conclusion, the Tribunal awarded the compensation in the following manner:

(i)	Loss of Income	-	Rs.18,90,000/-
(ii)	Loss of Love & Affection-		Rs. 80,000/-
(iii)	Loss of Consortium	-	Rs. 40,000/-
(iv)	Funeral Expenses	-	Rs. 15,000/-
(v)	Transport Expenses	-	Rs. 5,000/-
Total			Rs.20,30,000/-

Since the owner of the Lorry insured the Lorry with the Insurance Company the Tribunal directed the Insurance Company to pay and deposit the award amount of Rs.20,30,000/- with interest at 7.5% per annum from the date of petition till the date of deposit, excluding period of default if any to the claimants. Challenging the said judgment and decree, the claimants and the Insurance Company had filed these Appeals respectively before this Court.

Liability:

7. Mr.R.Ganesan, learned counsel appearing for the Insurance Company would contend that the Tribunal had wrongly came to the conclusion that the accident occurred due to the negligence on the part of the driver of the Lorry. He would further contend that originally the accident was happened due to the negligent driving of the rider of the two wheeler who drove the two wheeler in a rash and negligent manner and dashed against the parked Lorry. The accident was occurred on 09.10.2011 at 11.45 a.m in the Chennai to Bangalore National Highways during day light. When the driver and cleaner of the Lorry parked the said Lorry and were changing its rear right side punctured dummy tyre, the rider of the two wheeler dashed against the parked Lorry and invited the accident. Therefore, the accident was happened only due to the careless and negligent driving of the two wheeler rider. However, the Tribunal failed to consider the said fact. Though the exhibits Ex.R1, Rough Sketch & Ex.R2, Letter dated 14.04.2012 sent by the Insurance Company to the owner of the Lorry indicate that the accident was happened only because of the 100% negligence on the part of the two wheeler rider, the Tribunal wrongly fixed the entire liability on the shoulder of the driver of the Lorry.

8. Per contra, Mr.R.Nalliyappan, learned counsel appearing

for the claimants viz., wife, minor daughter, minor son, father and mother of the deceased Prabakaran would strongly contend that the accident was occurred only because of the driver and cleaner of the Lorry who parked the Lorry without putting any parking indicator to alert the passing vehicles.

8.1 The learned counsel would argue that in the present case, the important point to be noted is that when the Service Road was very much available, the driver and cleaner of the Lorry parked the Lorry in the Highway and was changing the punctured dummy tyre of the Lorry there itslef. Therefore, there is no embargo for the driver of the lorry to park the vehicle on the Service Road and change the punctured tyre of the Lorry. Since it was a National Highway the rider of the two wheeler thought that the Lorry was moving and only when he went nearer to the Lorry, came to know that the Lorry was parked. So, immediately, he put sudden brake, however, his two wheeler dashed against the Lorry. Hence, there is no fault on the part of the rider of the two wheeler. It is only the mistake of the driver of the Lorry who parked the Lorry carelessly in the National Highway during the day light, when the Service Road is very much available. This is the true reason behind the accident. He therefore submitted that the Tribunal has rightly fixed the entire liability on the Insurance Company.

9. A perusal of the Ex.R1, Rough Sketch marked on the side of the Insurance Company clearly shows that when the Service Road was very much available, the Lorry was parked in the National Highway by the driver and cleaner. The driver and the cleaner had parked the Lorry in the National Highway and was changing the punctured tyre. It is also to be noted that they had failed to put any parking indicator. If the driver and the cleaner of the Lorry wanted to change the punctured dummy tyre, they should have parked the Lorry in the Service Road and changed the same, without doing so, they negligently parked the Lorry in the National Highway. If they would have parked the Lorry in the Service Road and changed the punctured dummy tyre, the accident would have been avoided. The rider of the two wheeler would not have expected that the Lorry was parked in the National Highway and only when he went nearer to the Lorry, he came to know that the Lorry was parked in the National Highway. In spite of the fact that he immediately applied sudden brake, he was not able to control the vehicle and he was forced to dash his two wheeler against the parked Lorry.

10. Considering all these aspects, the Tribunal has rightly fixed the negligent and liability on the part of the driver of the Lorry and its insurer. Therefore, we do not find any infirmity in the finding of the Tribunal and accordingly, we concur with the finding of the Tribunal.

Quantum:

11. In the present case, the Tribunal awarded a sum of Rs.20,30,000/- as compensation to the claimants. As the offending vehicle Lorry was insured with the Insurance Company the Tribunal directed the Insurance Company to pay and deposit the entire compensation to the claimants. The Tribunal apportioned a sum of Rs.8,30,000/- to the wife of the deceased; Rs.4,00,000/- each to the minor daughter and minor son of the deceased and Rs.2,00,000/- each to the father and mother of the deceased.

12. The learned counsel appearing for the claimants would contend that prior to the accident, the deceased was hale and healthy, and he was doing business under the name and style of R.R.Traders and distributing hosiery items and earning not less than Rs.50,000/- per month. However, the Tribunal fixed the notional income of the deceased as Rs.10,000/- per month which is very low. He would also contend that the claimants filed a copy of the deceased Prabakaran's Income Tax Returns (ITR) for the Assessment Year 2009-2010 before the Tribunal, wherein, the income of the deceased was shown as Rs.2,50,775/- per annum. As per Ex.X1, Income Tax Returns for the year 2010-2011, the net profit for the year 2010-2011 is arrived as Rs.2,83,014/- after deducting the Income Tax. On the side of the claimants, two Income Tax Officers, viz., P.W.2 & P.W.4 were examined. P.W.2 in his deposition, deposed that the deceased filed the ITR Statement for the Assessment Year 2010-2011, wherein, the deceased has shown his income for the year 2010-2011 as Rs.2,83,014/- and a sum of Rs.5,850/- as Income Tax paid by him. Therefore, the counsel strongly contended that the notional income of the deceased may be fixed not less than Rs.20,000/- per month.

13. The learned counsel appearing for the Insurance Company would contend that in the absence of any income proof, the Tribunal has fixed a sum of Rs.10,000/- as notional income of the deceased. He would further contend that the ITR Statements of the deceased for the year 2009-2010 and 2010-2011 were filed by the claimants, only after the death of the deceased.

13.1 Further, the counsel would contend that the deceased was carrying on the business of hosiery. It will not come to stand still after the death of the deceased. Therefore, taking into consideration of all these aspects, the Tribunal fairly fixed the notional income of the deceased as Rs.10,000/- per month which requires no interference by this Court.

14. It is to be noted that the claimants had not let in any evidence to show that after the death of Prabakaran, the hosiery business has come to stand still. In the absence of any such

proof or evidence, the Tribunal has fixed a sum of Rs.10,000/- as notional income of the deceased.

15. We have perused the ITR Statements for the year 2009-2010 and 2010-2011 of the deceased. The income shown in the aforesaid ITR Statements was the business income of the deceased and there was nothing stated about the salary of the deceased. Further, the business carried on by the deceased can very well be continued and carried on by the claimants without any interruption. Under these circumstances, only the Tribunal has fixed the notional income of the deceased as Rs.10,000/-. Therefore, we are of the considered view that the Tribunal has rightly fixed a sum of Rs.10,000/- as notional income of the deceased and the same requires no interference by this Court.

16. It is also seen that while determining the Loss of Income, following the decisions taken by the Honourable Supreme Court in the cases of National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC) and Smt.Sarla Varma & Others Vs. Delhi Transport Corporation & Others reported in 2009 (2) TNMAC 1 (SC), the Tribunal considered the age of the deceased at the time of accident as 38 and rightly added 40% of income towards the future prospects, deducted 1/4th of salary towards personal & living expenses of the deceased and applied the multiplier '15'.

17. Also, the Tribunal awarded a sum of Rs.80,000/- towards Loss of Love & Affection; Rs.40,000/- towards Loss of Consortium; Rs.15,000/- towards Funeral Expenses and Rs.5,000/- towards Transport Expenses. In our point of view, the amount awarded by the Tribunal under the aforesaid heads are just and fair. Hence, there is no need to modify or enhance the same.

18. In the result, C.M.A.Nos.2769 & 2914 of 2019 are dismissed and the judgment and decree passed by the Tribunal in M.C.O.P.No.204 of 2012 dated 28.02.2019 is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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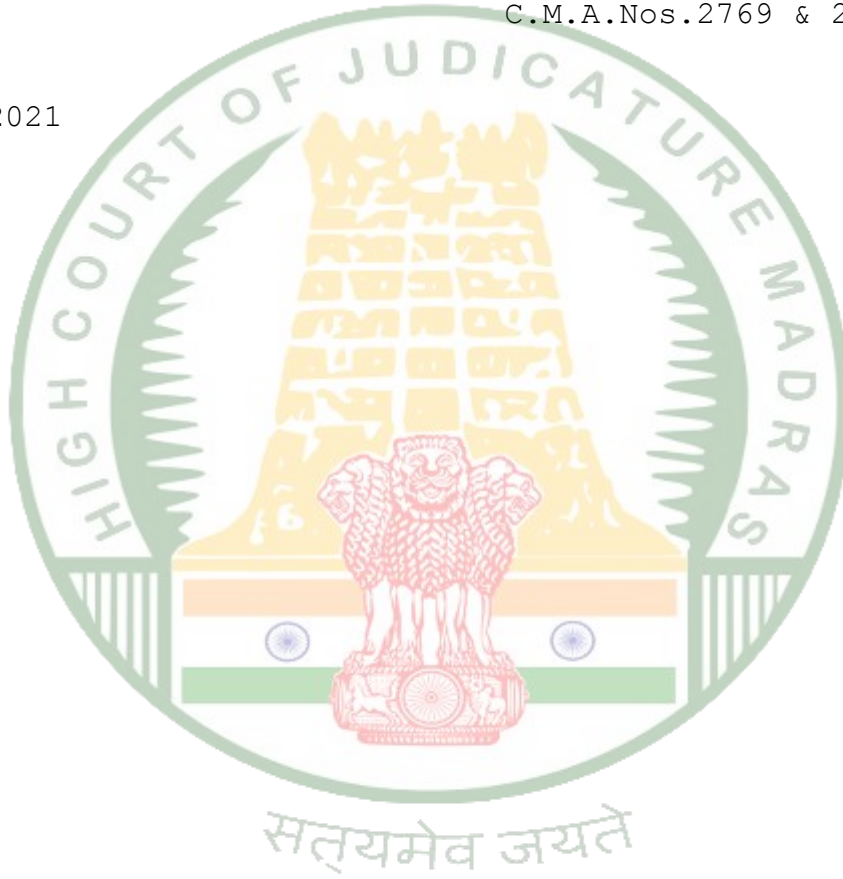
1. The I Additional District and Sessions Judge,
Motor Accidents Claims Tribunal, Vellore.
2. The Section Officer,
VR Section, High Court,
Madras.

+lcc to M/s.R.Ganesan, Advocate in Sr.No.3824

+lcc to Mr.R.Nalliappan, Advocate in Sr.No.3399

C.M.A.Nos.2769 & 2914 of 2019

KJ(CO)
CS/25/01/2021



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