

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3556 of 2019
and C.M.P.Nos.20705 & 25917 of 2019

M/s. ICICI Lombard General
Insurance Company Limited,
No.140, III floor,
Nungambakkam High Road,
Chennai 600 034.

.. Appellant /2nd Respondent

Vs.

1.C.Sudarmani
2.K.Chindambaram
3.Kumar
4.D.Manikandan

..Respondents 1 & 2/Petitioners 1 & 2

5.M/s.Oriental Insurance Company Ltd.,
No.251, I floor, (opp to Ram Theatre),
Arcot Road, Vadapalani,
Chennai 600 026.

..Respondents 3 to 5/Respondents 1,3 & 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.08.2017 made in M.C.O.P.No.4413 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents: Mr.A.Shanmugaraj for R1 & R2
R3 to R5 : Not Ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 23.08.2017 made in M.C.O.P.No.4413 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant is the second respondent in M.C.O.P.No.4413 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one C.Balasubramani, who died in the accident that took place on 31.12.2009.

3. According to the respondents 1 and 2, on the date of accident i.e., on 31.12.2009 at about 10.45 p.m., while the deceased was travelling as a pillion rider in a motorcycle bearing Registration No. TN 09 AU 7953 belonging to the fourth respondent, insured with the fifth respondent, dashed against a lorry bearing Registration No. TN 23 AB 7242 belonging to the third respondent, insured with the appellant, on the back side, which was parked without parking light and the accident has occurred. Due to the said impact, the deceased died. Hence, the respondents 1 and 2, who are the legal heirs of the deceased, filed the claim petition, claiming compensation against the third respondent as owner and appellant as insurer of the said lorry and respondents 4 and 5 as owner and insurer of the motorcycle respectively.

4. The respondents 3 and 4, who are owners of motorcycle and lorry respectively, remained ex parte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident occurred only due to rash and negligent riding by the deceased, rider of the motorcycle. As per rough sketch and FIR, the deceased was riding the motorcycle and was not a pillion rider at the time of accident and he was accompanied by two pillion riders. In the FIR itself it was stated that the lorry was parked on the left side of the road with parking lights and the driver was also giving signal for other vehicles to slow down and switch lanes. There was no fault on the part of the driver of the lorry. The deceased is solely responsible for the accident. Hence, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 & 2. In any event, the compensation claimed by the respondents 1 & 2 is excessive and prayed for dismissal of the claim petition.

6. The fifth respondent/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident has occurred only due to negligence on the part of the driver of the lorry, which was parked on the road without any signal and parking lights. In any event, the deceased being rider of the motorcycle and alleged tort-feasor, the deceased or anyone claiming under him are not entitled to maintain a claim against this respondent as insurer of the motorcycle rode by the deceased. Hence, this respondent is not liable to pay compensation to the respondents 1 & 2. In any event, the compensation claimed by the respondents 1 & 2 is excessive and prayed for dismissal of the appeal.

7. Before the Tribunal, on the side of the respondents 1 and 2, one Chidambaram, co-worker of the deceased was examined as P.W.1, Dr.A.Madhan Mohan was examined as P.W.2 and one Dinesh

Kumar, eye-witness to the accident, was examined as P.W.3 and marked ten documents as Exs.P1 to P10. On the side of the appellant, one Elango, driver of the lorry was examined as R.W.1 and one Abirami was examined as R.W.2 and marked six documents as Exs.R1 to R6.

8.The Tribunal considering the pleadings, oral and documentary evidence held that the accident has occurred due to negligent parking of the lorry belonging to the third respondent by its driver and directed the appellant being insurer of the said lorry to pay a sum of Rs.14,21,000/- as compensation to the respondents 1 and 2.

9. Against the said award passed by the Tribunal, dated 23.08.2017 made in M.C.O.P.No.4413 of 2011, the appellant-Insurance Company has filed the present Civil Miscellaneous Appeal.

10.The learned counsel appearing for the appellant contended that the Tribunal having found that the petition filed under Section 163(A) of the Motor Vehicles Act is not maintainable as annual income of the deceased is more than Rs.40,000/-, ought to have restricted the income of the deceased to Rs.40,000/- instead of treating the claim under Section 166 of Motor Vehicles Act. The Tribunal erred in granting Rs.14,21,000/- as compensation, whereas the respondents 1 and 2 claimed only Rs.5 lakhs. The Tribunal failed to see that the deceased was under the influence of Alcohol at the time of accident and three persons have travelled in the motorcycle contrary to the statutory provisions and rider of the motorcycle alone is responsible for the accident. The Tribunal failed to consider Ex.R4/petition copy in OP No.111 of 2010. The claim petition filed in M.C.O.P.No.111 of 2010 before the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai, was filed by the legal heir of one Karthik, pillion rider of the motorcycle. In M.C.O.P.No.111 of 2010, the deceased in the present appeal was shown as rider of the motorcycle. The Tribunal failed to see the contention of the respondents 1 and 2, that the deceased was a pillion rider, was false and the deceased was shown as rider of the motorcycle in M.C.O.P.No.111 of 2010 and failed to consider Ex.P1/FIR and Ex.R3/Motor Vehicle's Inspector Report. The Tribunal without any basis fixed excess amount of Rs.8,000/- per month as income of the deceased. The amounts awarded by the Tribunal under different heads are also excessive and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the respondents 1 and 2 contended that the accident has occurred only due to negligent parking of the driver of the lorry in the middle of the road without any parking light and indicator. The complaint was given by the driver of the lorry falsely

implicating the rider of the motorcycle. The respondents 1 and 2 have examined one Dinesh Kumar, eye-witness as P.W.3 and proved the same. The Tribunal has considered all the materials on record and awarded just compensation. The compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

13. It is the contention of the respondents 1 and 2 that the driver of the lorry belonging to the third respondent insured with the appellant, parked the lorry in the middle of the road without any parking light & indicator and rider of the motorcycle dashed on the back side of the lorry. The accident has occurred only due to negligent parking of the lorry. To prove the same, they examined one Dineshkumar, eye-witness as P.W.3. From the evidence of P.W.3, it is seen that the lorry was parked in the middle of the road without any parking light and indicator and due to the same, the accident has occurred. P.W.3 denied the suggestions that he was not an eye-witness to the accident. It is the case of the appellant that the lorry was parked with parking light and the deceased, who was under the influence of alcohol, rode the motorcycle with two pillion riders in a rash and negligent manner, dashed on the back side of the lorry, which was parked with indicator. To substantiate this contention, the appellant examined the driver of the lorry, who deposed that he parked the lorry with parking light. The appellant in addition to the evidence of R.W.1 also relied on Ex.P1/FIR, wherein it was stated that the accident has occurred only due to rash and negligent riding by the deceased, rider of the motorcycle. The Tribunal rejected the FIR on the ground that the complaint was given by the driver of the lorry and naturally, he will not admit his negligence and give complaint against him. R.W.1/driver of the lorry is an interested witness. The contents of FIR is not the sole basis for fixing negligence. The evidence let in before the Tribunal on oath must be considered independently to fix the negligence. In the present case, the Tribunal has considered the evidence of P.W.3 - an eyewitness in proper perspective and fixed the negligence on the part of the driver of lorry. The appellant has not examined any independent witness to substantiate their contention. The Tribunal considering the evidence of P.W.3 held that the accident has occurred only due to negligent parking of the driver of the lorry. The Tribunal has given valid reason for the above finding.

14.From the award of the Tribunal, it is seen that M.C.O.P.111 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, filed by the legal heirs of one U.Karthik was not decided on merits, but settled before the Lok Adalat.

15.The next contention of the learned counsel appearing for the appellant is that the claim petition is filed under Section 163(A) of the Motor Vehicles Act and the Tribunal ought to have restricted the income of the deceased at Rs.40,000/- per annum. The Tribunal erroneously fixed the income of the deceased at Rs.8,000/- per month and awarded more than the amount claimed by the respondents 1 and 2. The said contention is without merits. When a claim petition is filed under Section 163(A) of the Motor Vehicles Act, the same has to be disposed of without any fullfledged trial with regard to the negligence on the part of the driver/rider of the vehicle. The claimants need not allege and prove the negligence. In the present case, the Tribunal conducted a fullfledged trial and gave a finding that the accident has occurred only due to negligence on the part of the driver of the lorry. The Tribunal relied on the judgment of the Jharkhand High Court in the case of Sumiya Devi and others Vs. Sri Bir Marketing Services and others, reported in 2008 (1) JCR 517 (Jhr), wherein, it has been held that in a claim petition filed under Section 163(A) of the Motor Vehicles Act, if the trial is conducted with regard to the negligence, the Tribunal can convert the claim petition under Section 166 of the Motor Vehicles Act and grant compensation. The ratio in the said judgment is squarely applicable to the facts of the present case. The relevant portion of the judgment reads as follows:

"A Motor Vehicles Act, 1988, Sections 163-A read with Second Sch. And 166 - Claim petition - Even on an application under Section 163-A of Act, if tribunal follows the regular procedure and evidence is led by parties that the tribunal may proceed to decide the claim under Section 166 of the Act if the tribunal finds that such application under Section 163-A was not maintainable for the reason that the annual income of persons concerned is more than Rs.40,000/-."

16.Further, the wrong provision given by the Court will not be a reason for denying the relief to the claimant and will not be fatal to the claimant. The Courts have power to apply correct provision and grant more than the relief claimed by the claimant. The Motor Vehicles Act is a beneficiary legislation and the Court must award just and correct compensation to the claimants, even more than the amounts claimed by the claimants. The Tribunal relying on Ex.P6/Salary Certificate, fixed the monthly income, awarded compensation and the same is not

excessive. The contention of the learned counsel appearing for the appellant that the Tribunal ought to have restricted the income of the deceased only to Rs.40,000/- per annum is without merits, once the Tribunal has proceeded to consider the claim petition under Section 166 of the Motor Vehicles Act and fixed the negligence on the part of the driver of the lorry belonging to the third respondent. The Tribunal has rightly considered the same and awarded compensation.

17.The issue of correcting wrong provision of law, came up for consideration before the Division Bench of this Court in the case of The Oriental Insurance Company Limited Vs. V.Bhuvaneswari and others, reported in 2019 (1) TNMAC 72 and the Division Bench has held that the Court can apply correct provision of law. The relevant portion of the judgment reads as follows:

"9.It is not in dispute about the manner of the accident and the primordial submission made by the learned counsel for the appellant is that the wrong provision of law has been invoked and as such, the tribunal ought to have returned the appeal and had awarded the compensation by invoking Section 163A of the Motor Vehicles Act.

10.In the considered view of this Court, the submission made by the learned counsel for the appellant is liable to be rejected. The Motor Vehicles Act is a benevolent legislation and mere applying wrong provision of law will not reject the claim petition and this Court can mould the record by applying the correct provision of law and the submission made by the learned counsel for the appellant is liable to be rejected."

It is to be taken note of the fact that at the time of accident, three persons have travelled in the motorcycle contrary to the statutory provisions. In view of the violation of statutory provisions, 25% of contributory negligence is fixed on the part of the deceased. The respondents 1 and 2 are entitled to only 75% of compensation and the appellant is directed to deposit 75% of the total compensation awarded by the Tribunal.

18.As far as quantum of compensation is concerned, at the time of accident, the deceased was working in Mirudhu Dental and Maxillo Facial Centre and was earning a sum of Rs.8,000/- per month. To substantiate this contention, the respondents 1 and 2 have examined one Co-worker as P.W.1 and marked Ex.P5/Transfer Certificate & Ex.P6/Salary Certificate. The Tribunal after

considering the documents, fixed a sum of Rs.8,000/- as monthly income of the deceased and the same is proper. As per Ex.P5/Transfer Certificate, the deceased was aged 20 years at the time of accident and bachelor and the Tribunal deducted 50% towards personal expenses. The Tribunal has erroneously awarded 50% towards future prospects. The appellants are entitled to only 40% enhancement towards future prospects. In view of the above, after deducting 50% towards the personal expenses of the deceased, granting 40% enhancement towards future prospects and applying multiplier 18, the compensation awarded by the Tribunal towards loss of income is modified to Rs.12,09,600/- $\{[Rs.8,000/- + Rs.3,200/-(40\% \text{ of } Rs.8,000/-)] \times 12 \times 18 \times 1/2\}$. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection and a sum of Rs.25,000/- towards funeral expenses, which are on the higher side and hence, the same are hereby reduced to Rs.40,000/- each to the respondents 1 and 2 for loss of love and affection and Rs.15,000/- for funeral expenses. The Tribunal has not granted any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate. Thus the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	12,96,000/-	12,09,600/-	Reduced
2.	Loss of love and affection	1,00,000/-	80,000/-	Reduced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Loss of estate	-	15,000/-	Granted
	Total	Rs.14,21,000/-	Rs.13,19,600/-	
	75% of the compensation		Rs.9,89,700/-	Reduced by (14,21,000 - 9,89,700) Rs.4,31,300/-

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,21,000/- is hereby reduced to Rs.13,19,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit 75% of the award amount i.e., Rs.9,89,700/-, along with interest and costs, 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, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.4413 of 2011 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petitions are also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
IV Court of Small Causes,
Chennai.

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

+1 CC to Mr.J.Michael Visuvasam, Advocate sr 13002.

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C.M.A.No.3556 of 2019
and C.M.P.Nos.20705 & 25917 of 2019

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