

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-09-2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

CIVIL MISCELLANEOUS APPEAL NO.3809 OF 2019
AND
C.M.P.NO.21879 OF 2019

Tata AIG General Insurance Company Ltd.,
Peninsula Business Park, Piramal Tower
9th Floor, Ganpatrao Kadam Marg
Lower Parel, Mumbai - 400 013

.. Appellant/2nd Respondent

Versus

1. Kaveri
2. Govindaraj
3. Janani
4. Mathaiyan

.. Respondents 1 to 3/Claimants
.. 4th Respondents/1st Respondent

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act against the Judgment and Decree dated 01.02.2019 passed in MCOP No.7 of 2016 on the file of Motor Accident Claims Tribunal (Sub Court), Sangagiri

For Appellant : Mr.K.Vinod

For Respondents : Mr.S.P.Yuvaraj for R1 to 3

JUDGMENT

(The Judgment of the Court was delivered by R. Subbiah, J)

The appellant/Insurance Company has come up with this appeal questioning the award dated 01.02.2019 passed by the Tribunal in MCOP No.7 of 2016, both on the ground of liability as well as quantum.

2. The respondents 1 to 3 herein are the mother, father and sister of the deceased Yuvaraj, who died in a motor accident on

27.07.2014. It is their contention that on 27.07.2014, at about 8.00 am, the deceased Yuvaraj was travelling in a Hyundai Eon Car bearing Registration No.TN-18-V-0335 along with his friends. The car was driven by one Mohanraj, one of the friends of the deceased. While the car was proceeding near Chinnaiyan Chattiram at Bangalore to Chennai Main Road in Neervallur Village, Kancheepuram District, the car hit a stationary lorry bearing Registration No.TN-23-BZ-5829 owned by the fourth respondent in this appeal. According to the claimants, the lorry was parked on the middle of the road without any warning signal or caution board and it had resulted in the accident. It was further stated that in the said accident, apart from the deceased, one other occupant of the car, by name, Ayyappan, also died. Further, three other occupants of the car sustained fracture injuries and admitted in Government Head Quarters Hospital, Kancheepuram. It was further stated that at the time of accident, the deceased was 24 years old and practising as Yoga and Naturopathy Doctor after completing his Degree in Government Yoga and Naturopathy from Medical College in Chennai. It was also stated that the deceased was earning Rs.40,000/- per month and had he been alive, he would have earned more. Therefore, the claimants have filed the claim petition claiming a sum of Rs.70 lakhs as compensation as against the owner of the lorry and its insurer, the appellant herein.

3. Resisting the claim petition, the appellant/Insurance Company has filed a counter statement contending inter alia that the accident was as a result of the negligence of the driver of the Car, who drove it in a rash and negligent manner and hit the stationed container lorry. It was further stated that the container lorry was parked on the extreme left side of the road and therefore, no negligence can be attributed as against the driver of the lorry in parking it. The Insurance Company also refuted the averments with reference to the age, avocation and income of the deceased and prayed for dismissal of the claim petition.

4. Before the Tribunal, in order to substantiate the averments made in the claim petition, the first respondent herein/mother of the deceased was examined as PW1. That apart, another witness by name Satish Kumar, an eye witness to the accident, was examined as PW2 and Exs. P1 to P14 were marked. On behalf of the respondents in the claim petition, neither any witness was examined, nor any document was marked. The Tribunal, on a consideration of Ex.P1, First Information Report, Ex.P6, charge sheet, both filed against the driver of the lorry and the deposition of PW2, eye witness, had concluded that there is no contra evidence adduced to show that the driver of the car was negligent in driving the car and consequently, the Tribunal held that the driver of the lorry is solely attributable for the

accident, inasmuch as he had parked the lorry on the road without any caution board or warning signal. The Tribunal also placed reliance on Ex.P3, Insurance Policy to conclude that the policy was in force as on the date of accident on 27.07.2014. Therefore, the Tribunal mulcted the appellant/Insurance Company with the liability to pay the entire compensation amount.

5. With respect to the quantum of compensation awarded by the Tribunal, it is seen that the Tribunal considered the evidence of PW1/mother of the deceased to the effect that the deceased was running a Yoga and Naturopathy Clinic, which is supported by Ex.P7, Degree Certificate obtained by the deceased issued by Tamil Nadu Dr.M.G.R. Medical University as well as The Government Yoga and Naturopathy College of Institution Chennai. The Tribunal also considered Ex.P13 to conclude that the deceased was imparting Yoga and Naturopathy education to students as a Yoga Trainer. Though the claimants did not produce any concrete documentary evidence to show the exact amount of income earned by the deceased, the Tribunal observed that the deceased would have earned Rs.50,000/- per month through his Clinic and Rs.52,000/- through the Yoga training he imparts to the students, totalling a sum of Rs.1,02,000/-. However, in the absence of any documentary evidence to support the income of the deceased, the Tribunal fixed a sum of Rs.35,000/- as notional income. By adding 40% future prospects which works out to Rs.14,000/-, the total income of the deceased was calculated at Rs.49,000/-. After deducting 50% of the income of the deceased towards his personal expenses, as he was a Bachelor at the time of his death, and by applying multiplier '18', the Tribunal awarded a total sum of Rs.52,95,000/- as compensation under the head of loss of income. That apart, towards non-pecuniary compensation, the Tribunal awarded a sum of Rs.1,00,000/- to the mother and Rs.75,000/- each to the father and sister of the deceased, totalling Rs.2,50,000/- towards loss of love and affection. A sum of Rs.10,000/- was also awarded towards transportation charges, another sum of Rs.15,000/- was awarded towards loss of estate and Rs.15,000/- towards funeral expenses. In all, a total sum of Rs.55,85,000/- was awarded as compensation in favour of the deceased.

6. Assailing the judgment of the Tribunal, the learned counsel for the appellant/Insurance Company vehemently contended that the lorry, which was insured with the appellant, was parked on the extreme left side of the road. The accident had occurred at about 8.00 am during which time, there will be enough visibility for the drivers to see the other motorist plying on the road. Even otherwise, as per the Motor Vehicle Inspector's report, as a result of the accident, the rear right side body of the lorry dented and the rear right side indicator lamp broken,

meaning thereby, it was the driver of the Car, who, without noticing the stationary lorry, had driven it in a rash and negligent manner and hit the rear side of the lorry. Therefore, it cannot be gainsaid that the container lorry was parked on the middle side of the lorry, which resulted in the accident. It is the contention of the learned counsel for the appellant/Insurance Company that the triangular reflector board or parking light will be ignited only when the lorry is stationary during night hours. When the accident had occurred at 8.00 am., the driver of the lorry cannot be expected to adhere to the safety parameters in erecting the triangular reflector board or to ignite the indicator lamp. Notwithstanding the above, the Tribunal, by solely relying upon Ex.P1, First Information Report and Ex.P6, charge sheet against the driver of the lorry, had concluded that the driver of the lorry is wholly responsible for the accident and consequently mulcted the appellant/Insurance Company to pay the entire compensation amount. Therefore, it is the contention of the learned counsel for the appellant that the driver of the car was solely responsible for the accident and therefore, fixing the entire liability on the appellant Insurance company is legally not sustainable. Even assuming without admitting that there is any negligence on the part of the driver of the lorry in parking the vehicle, in a case of this nature, when the car had rammed into the stationed lorry, contributory negligence has to be fixed on the driver of the car and the entire liability fixed on the appellant/Insurance Company, is wholly untenable.

7. As regards the quantum of compensation awarded by the Tribunal, it is contended by the learned counsel for the appellant/Insurance Company that admittedly, there was no documentary evidence produced by the claimant to show the income of the deceased. Even though the deceased had obtained a Degree in Yoga and Naturopathy, it will not be sufficient to contend that the deceased was earning Rs.40,000/- per month and also earning substantially as a Yoga Tutor. The Tribunal, on assumption and surmises, fixed a notional income of Rs.35,000/- per month and added 40% as future prospects. In this regard, the learned counsel for the appellant/Insurance Company placed reliance on a decision of a Division Bench of this Court in the case of Jayakannan and others Vs. Divya Impex and another, reported in 2017 ACJ 2861, wherein, this Court has fixed only a notional sum of Rs.18,000/- per month for the death of a MBBS Student in the year 2010. Therefore, it is the contention of the learned counsel for the appellant/Insurance Company that, at best, a sum of Rs.18,000/- per month may be fixed as notional income of the deceased in this case. In Para No.8 of the said judgment, it was observed as follows:-

"8. Now, coming to quantum of compensation is concerned, it is the case of the appellants that at the time of accident, the deceased was studying in the second year M.B.B.S., Course in Tirunelveli Medical College. Hence, considering the future prospect of the deceased, the Tribunal fixed a sum of Rs.10,000/- as monthly income and after deducting Rs.5,000/- towards his personal expenses, by adopting the multiplier of '14', based on the age of the parents of the deceased, who were 45 years at the time of accident, the Tribunal has awarded a sum of Rs.8,40,000/- towards loss of income. Now, it is the case of the appellants that a sum of Rs.10,000/- fixed by the Tribunal as monthly income is extremely on the lower side. In this regard, the learned counsel for the appellants also relied upon a judgment of a Division Bench of this Court reported in 2014 ACJ 2693 [Managing Director, Metropolitan Transport Corpn. Ltd. v. S.Mariam Beevee]. In an identical situation, the Division Bench of this Court, for the death of a medical student, has fixed a sum of Rs.30,000/- as monthly income and hence, by fixing a sum of Rs.30,000/-, the Award of the Tribunal is to be enhanced under the head of loss of income and enhanced the compensation under the head of loss of income. However, considering the facts of the case, we are of the opinion that the fixation of Rs.18,000/- as monthly income is just and reasonable. After deducting 50% towards his personal expenses and adopting the multiplier of '18', the loss of income comes to Rs.19,44,000/- (Rs.9,000x12x18). Thus, the appellants are entitled to a sum of Rs.19,44,000/- towards loss of income. We find that the Tribunal has awarded only a sum of Rs.20,000/- towards loss of love and affection. The said amount appears to be on the lower side and the same is hereby enhanced to Rs.1,00,000/-. A sum of Rs.2,000/- awarded by the Tribunal towards transport expenses is hereby enhanced to 15,000/-. Similarly, Rs.5,000 awarded by the Tribunal towards funeral expenses is hereby enhanced to Rs.25,000/-. Further, a sum of Rs.16,000/- is hereby awarded under the head of loss of estate."

8. By placing reliance on the above decision of the Division Bench of this Court, it was contended by the learned counsel for the appellant/Insurance Company that the Tribunal erred in fixing a sum of Rs.35,000/- per month as notional income of the deceased and it led to award of excessive amount as compensation.

9. Per contra, the learned counsel for the respondents 1 to 3/claimants contended that before the Tribunal, the appellant/Insurance Company has not examined any witness to disprove the case of the claimants. In such circumstances, the Tribunal is right in placing reliance on Ex.P1, First Information Report and Ex.P6, charge sheet filed against the driver of the lorry. Further, it is not disputed by the appellant/Insurance Company that the deceased had obtained a Decree of Bachelor of Naturopathy and Yoga Sciences (B.N.Y.S.) as could be evident from Ex.P7. Therefore, the Tribunal, taking note of the prospects of a person who had completed such a course, had rightly fixed the notional income at Rs.35,000/- and it does not call for any interference by this Court.

10. We have heard the learned counsel for both sides and perused the documents placed on record. Admittedly, on the fateful day, the car, in which the deceased was travelling as an occupant, had rammed the rear side of the stationed lorry and it led to loss of two young lives, including the deceased. The First Information Report was registered under Ex.P1, as against the driver of the lorry, which was insured with the appellant. The charge sheet under Ex.P6 was also filed as against the driver of the lorry before the competent Court. Even though the learned counsel for the appellant/Insurance Company had contended that the lorry was parked on the extreme left side of the road at the time of accident, to substantiate the same, the appellant/Insurance Company has not examined any witness to the accident. On the other hand, the claimants have examined PW2, an eye witness to the accident. The Tribunal, on an appreciation of the deposition of PW2, has concluded that the deposition of PW2 is fully supporting the averments made in the claim petition, meaning thereby, the lorry was parked in a manner prejudicial to the other motorists who were plying on the road. In any event, in the absence of any contra evidence produced by the appellant/Insurance Company, before the Tribunal, it is futile on the part of the appellant to contend that the accident was as a result of the negligence on the part of the driver of the car. At the same time, it is an admitted fact that the lorry was stationary at the time of accident. Even assuming that the lorry was parked in an endangered manner on the road, the driver of the car, in which the deceased was travelling as an occupant, ought to have exercised some care and caution while driving the car. Had the driver of the car exercised some caution, he could have averted the accident.

11. In such circumstances, when the car rammed into a stationary lorry, the Tribunal is not justified in fixing the entire liability on the appellant/insurance company. We are, therefore, of the view that liability also has to be fixed on the driver of the car for the accident as well. Therefore, we

hold that the accident is the result of negligence on the part of the driver of the car as well as the driver of the lorry. However, the claimants, who are the legal heirs of the deceased, who was travelling as an occupant of the car, can make a claim as against any one of the owners of the vehicles and its insurer. In the instant case, though the claimants have impleaded the owner of the lorry and its insurer, they have not impleaded the owner of the car and its insurer as parties to the claim petition. However, it will not disentitle the claimants from getting the compensation amount from the appellant/insurance company. At the same time, the appellant Insurance Company can recover the compensation amount paid to the claimants, proportionate to the negligence attributable on the part of the driver of the Car, from the owner or its insurer by initiating separate legal proceedings where the extent of negligence on the part of the driver of the car could be decided inasmuch as we are not in a position to decide the extent of negligence in the absence of impleading the owner of the car and its insurer. In this regard, we are relying upon the judgment of the Supreme Court in the case of Khenyei Vs. New India Assurance Co. Ltd. and others, reported in 2015 ACJ 1441 = 2015 (9) SCC 273, wherein it was held as follows:-

"18. This Court in Challa Upendra Rao [(2004) 8 SCC 517 : 2005 SCC (Cri) 357] and Nanjappan [(2004) 13 SCC 224 : 2005 SCC (Cri) 148] has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the Tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the Tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle-trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to the claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in

execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.

What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis-à-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/Tribunal, in the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

12. With respect to quantum of compensation arrived at by the Tribunal, it is true that the claimants did not produce any documentary evidence to show the actual income of the deceased. The claimants have produced the Degree Certificate issued to the deceased under Ex.P7, his Transfer Certificate under Ex.P8 and

Ex.P10 to show that the deceased had won first prize in Yoga competition. The claimants have also produced Ex.P11, a certificate issued to the deceased which shows that the deceased was trained in Hand Balancing art in Yoga. Ex.P12 is yet another certificate which shows that the deceased had won Gold medal in Yoga competition. Above all, Ex.P13, a news paper publication was marked to show that the deceased had conducted Yoga Classes to students. Even though the claimants did not produce any documentary evidence as a proof of the actual income of the deceased, the aforesaid educational testimonials of the deceased do point out that the deceased was having the educational qualification, prospects and ability to earn more. At the same time, we are of the view that the sum of Rs.35,000/- fixed by the Tribunal is on the higher side, in the absence of even bank statement in the name of the deceased. Had it been produced by the claimants, there would have been some material to show the actual income of the deceased. In the absence of any Bank Statement, we are of the view that the notional income fixed by the Tribunal at Rs.35,000/- shall be reduced to Rs.25,000/- per month and yearly earnings of the deceased could be worked out to Rs.3,00,000/-. Since at the relevant point of time earnings above Rs.2,50,000/- will come within the purview of Income Tax, the sum of Rs.50,000/- is taxable. If a sum of Rs.5,000/- is deducted towards Income Tax, then the actual earnings of the deceased per year can be determined at Rs.2,95,000 (Rs.3,00,000 - Rs.5,000). Out of this amount, 40% has to be awarded towards future prospects taking note of the young age of the deceased. This will take the yearly income of the deceased to Rs.4,13,000/- (Rs.2,95,000/- + 1,18,000/-). As the deceased died as a bachelor, 50% of the yearly income has to be deducted towards his personal expenses. If 50% is deducted out of the sum of Rs.4,13,000/- then the actual loss of income could be determined at (Rs.4,13,000/2) = Rs.2,06,500/-. By applying multiplier '18' the loss of income of the deceased could be arrived at (Rs.2,06,500 X 18) Rs.37,17,000/-. Thus, the sum of Rs.52,95,000/- awarded by the Tribunal towards loss of earning is reduced to Rs.37,17,000/- which will be the fair and reasonable compensation payable to the claimants for the death of the deceased.

13. The amount awarded by the Tribunal towards non-pecuniary compensation such as loss of love and affection, transportation charges, loss of estate and funeral expenses, in our view, are adequate and fair. Therefore, we see no reason to interfere with the amount awarded thereof by the Tribunal.

14. Accordingly, the compensation amount awarded by the Tribunal is modified as follows:-

Loss of earnings	Rs. 37,17,000.00
Loss of love and affection	Rs. 2,50,000.00
Transportation expenses	Rs. 10,000.00
Loss of estate	Rs. 15,000.00
Funeral expenses	Rs. 15,000.00

Total	Rs. 40,07,000.00

15. In the result, the Judgment and Decree dated 01.02.2019 passed in MCOP.No.7 of 2016 on the file of Motor Accident Claims Tribunal (Sub Court), Sangagiri, awarding compensation in favour of the claimants is modified from Rs.55,85,000/- to Rs.40,07,000/- (Rupees forty lakhs and seven thousand only) as aforesaid. The appeal is partly allowed. The appellant/ Insurance Company is directed to deposit the amount determined by us in this appeal, namely Rs.40,07,000/-, to the credit of MCOP No. 7 of 2016 before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited. On such deposit, the claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal in its ratio, with accrued interest. The excess amount, if any, shall be withdrawn by the appellant/Insurance Company. It is open to the appellant/Insurance Company to initiate appropriate proceedings to fix the extent of percentage of negligence attributable on the part of the driver of the car as well as the driver of the lorry and recover the appropriate amount in such proceedings. No costs. Consequently, connected CMP No. 21879 of 2019 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsh/cs

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal, Sangagiri.

Copy To

The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.29304

CMA.No.3809 of 2019

SV(CO)
CS/22/01/2021