

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 06.03.2020

Pronounced on : 04.06.2020

CORAM :

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

CMA No.3385 of 2019

1. M.Pushpa
2. R.Durai Raj ... Appellants/Claimants

-vs-

1. Banumathy
2. United India Insurance Co. Ltd.,
Silingi Building, New No.134,
Old No.40-45, Greams Road,
Chennai - 600 006. ... Respondents/Respondents
[R1-set expire before the claims tribunal]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 01.07.2019 made in M.C.O.P.No.1303 of 2016 on the file of the Motor Accident Claims Tribunal [Special Sub Court No.1, Small Causes Court], Chennai.

For Appellant : Mrs.Ramya V. Rao

For Respondents : Mr.A.Dhiraviyanathan (for R2)

सत्यमेव जयते
J U D G M E N T

R.PONGIAPPAN, J.

Aggrieved over the award passed by the Motor Accidents Claims Tribunal [Special Sub Judge-I, Small Causes Court], Chennai in MCOP No.1303 of 2016, the appellants herein, who are claimants in the claim petition have filed this appeal, seeking the relief to set aside the award passed by the claims tribunal and to enhance the award amount.

2. Before the claims tribunal, the appellants/claimants, have filed a claim petition under Section 166 of Motor Vehicles Act, under which, they claimed a compensation of Rs.50 Lakhs, towards the death of their son, Raguraman, who died in the road

accident. After elaborate enquiry, the claims tribunal awarded a compensation of Rs.50,000/- with interest at the rate of 7.5% per annum, against which the present appeal has been preferred.

3. For the sake of convenience, the parties are hereinafter referred to as per their litigative status, before the claims tribunal.

4. The case of the claimants in the claim petition, is as follows:

(i) on 22.09.2011, at about 22.00hrs, the deceased was proceeding towards Chennai in South to North Direction in GST Salai, near Airport over bridge, Trisulam, Chennai, in his motorcycle bearing Regn.No.TN22BV6055. At that time, a lorry bearing Regn.No.TN431793, was stationed in the No Parking area, without any indication and barry guard. Since the rear side parking light of the lorry was not switched on to give a caution to the plyers on the road, the rider of the motorcycle hit the backside of the lorry. As a result of which, the deceased succumbed to fatal injuries all over the body and died on the spot itself. For the said accident, a case has been registered against the rider of the motorcycle in Crime No.1462 of 2009 by the Traffic Investigation (South), Mount Traffic Investigation, Chennai, against the rider of the motorcycle/deceased. After investigation, the same was closed as 'further action dropped'. Owner of the lorry is the 1st respondent in this appeal and the 2nd respondent is the insurer of the said lorry. Since the accident had occurred, due to the negligent act of the lorry driver, both the 1st respondent and the 2nd respondent are jointly and severally liable to pay the compensation to the claimants with costs and interest.

5. Before the claims tribunal, the 1st respondent, who is the owner of the lorry, remained *exparte*.

6. Opposing the claim made by the claimants, the 2nd respondent-Insurance company filed the counter and states that only the deceased has driven his vehicle in a rash and negligent manner and dashed behind the stationed lorry, which was parked on the side of the road due to repair with sufficient caution signals. In fact, the deceased has no driving licence which fortifies that he is not aware of safe driving. Since the death of the deceased had occurred due to his own negligence, both the respondents are not liable to pay any compensation to the claimants. The age, avocation and income of the deceased are also denied. The amount claimed in the claim petition filed by the claimants, is exorbitant and excessive. Hence, the petition is liable to be dismissed.

7. Before the trial Court, in order to prove his claim, the 1st claimant Pushpa, has examined herself as PW1. An eyewitness John Bosco was examined as PW2. On the side of the claimants,

15 documents were exhibited as Exs.P1 to P15 to prove their claim. Per contra, on the side of the respondents, two witnesses have been examined as RW1, RW2 and 5 documents were exhibited as Ex.R1 to R5.

8. Having considered the materials placed before the tribunal, the learned Presiding Officer, Claims Tribunal, came to the conclusion that the accident had occurred only due to the rash and negligent act of the deceased and thereby under Section 140 of the Motor Vehicles Act, the claimants are entitled to a compensation of Rs.50,000/- alone and ordered as above.

9. Challenging the same, the claimants are before this Court with the present Civil Miscellaneous Appeal.

10. We heard the arguments advanced by Mrs.Ramya V. Rao, learned counsel appearing for the appellant/claimants and Mr.A.Dhiraviayanathan learned counsel appearing for the 2nd respondent-Insurance Company.

11. In respect to the liability, the learned counsel appearing on behalf of the appellants/claimants would contend that during the time of accident, without any indication and parking lights, the driver of the lorry parked his vehicle, in the overbridge. Though, there was Hymas light, near to the place of occurrence, since the accident occurred in the midnight, it is impossible for the rider to see whether the lorry was parked or the same was proceeding towards North direction. Though, the said contention was raised, before the claims tribunal, the Presiding Officer of the said tribunal has not appreciated the evidence let in by the claimants and came to the conclusion as stated above, which is erroneous in law.

12. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance company would contend that only because of the reason that the rider of the motorcycle / deceased was negligent and he himself invited the accident, the police has not registered the case against the driver of the lorry. The final report filed by the police officer in respect of the accident pertaining to the claim petition was not challenged before the competent forum by the claimants. Therefore, without challenging the proceedings of the police officers, now the claimants have come to this Court, only with the intention to claim more compensation. Therefore, the claimants are not entitled to receive any compensation from the 2nd respondent.

13. On considering the rival submissions made by the learned counsel on either side, it is an admitted fact that during the time of accident, the lorry which belongs to the 1st respondent was parked on the left side of South to North Road. On going through the evidence of PW2, who is the eyewitness to

the occurrence, no parking lights or indicators were placed on the back side of the lorry. In otherwise, the parking of the vehicle, in the occurrence place is not disputed, on the side of the 1st and 2nd respondents. All are aware the accident pertaining to the claim petition has happened in a busy road, near to the Airport, Chennai. Thousands of vehicles passes through the occurrence place throughout day and night. So, it is necessary and also the duty vested upon the lorry driver, to keep the parking lights on, immediately after parking the vehicle on the said road and also place barry guard or other indicator, for the purpose that the lorry was parked in that area. Though there was Hymas light situated near to the place of occurrence, since there was no specific indication with respect to the parking of vehicle, it is impossible for any rider, either two wheeler or four wheeler to decide at the moment when the offending vehicle was parked or proceeded towards North.

14. Only in the circumstances when the lorry driver, violated the duties and responsibility i.e. parked the lorry without parking lights on and no indication or barry guard at the backside of the lorry, the accident had occurred. Though the case was registered against the rider of the motorcycle / deceased, the same was not the reason to uphold the contention of the 2nd respondent that the accident had occurred only due to the sole rash and negligent act of the deceased. In fact, if the parking lights were on and if indication or barry guard was placed on the left side of the lorry, it is very easy for the rider of the motorcycle, to understand that at the time of accident, the lorry was parked on the left side of the road.

15. Though there was a contention on the side of Insurance company as sufficient space was available in the occurrence place to overtake the lorry, that alone is not the ground to accept the case of the 2nd respondent-Insurance Company. More than that, registration of the case against the deceased is also not a ground to accept the case of the 2nd respondent-Insurance Company.

16. The claims tribunal when at the time of deciding the claim petition filed by the claimants, dismissed the same, for the sole reason that the pillion rider of the two wheeler, who is the eye witness to the occurrence was not examined on the side of the claimants. In this occasion, as already observed, as an eyewitness, one person viz., John Bosco was examined as PW2. In fact, in his evidence the said John Bosco, has stated that the deceased Raguraman, is a Dance Master. Only, as per the direction given by the deceased Raguraman, he went to Raker Dance Academy and took the costumes, which are necessary for the Dance Programme. The said evidence given by PW2 is sufficient to hold that his evidence is natural one, though he does not

know the phone number of the deceased, which was admitted by him in his cross examination. Now a days, after registering/saving the name of the other person in the mobile phone, nobody knows others mobile numbers. So, disbelieving the evidence of PW2 for the abovesaid sole reason is not appreciable.

17. More than that, on going through the entire evidence given by the PW1 and PW2, assuming that PW2, has not seen the occurrence, considering the facts and circumstances, reveals the fact that the accident had occurred only as per the evidence given by PW2.

18. In this regard, it is necessary to see the evidence of one T.Suresh, who was examined as RW1 on the side of the 2nd respondent. In his evidence, he has clearly stated that in Ex.R2, Rough Sketch there was no mentioning about the barry guard or indicators, which has to be necessarily placed on the backside of the lorry. Further he has specifically admitted that near to the occurrence place, there is no electric tower lamps [kpd; nfhg[u tpsf;F].

19. Though, RW2, has stated in his evidence that near to the occurrence, place there was Hymas light, if the same was really true one, necessarily the same ought to have been shown in the rough sketch prepared by him. Hence, in respect to the presence of Hymas light, there was no clear evidence on the side of the respondents.

20. In the said circumstances, since the Motor Vehicles Act is a beneficial legislation, the facts and circumstances of the case reveals the fact that only due to the negligence act of the lorry driver, the accident occurred. However, it is also to be borne in mind that the deceased has also carelessly driven his motorcycle and contributed negligence to the accident. Accordingly, we are of the considered opinion that, in the accident occurred, 75% of negligence is attributed to the lorry driver, who parked the vehicle without parking lights on and 25% of negligence is attributed to the deceased. Consequently, being the owner and insurer of the lorry, both of them, viz., respondents 1 and 2 are jointly and severally liable to pay 75% of the compensation, if any fixed.

21. Secondly, on going through the quantum of compensation arrived at by the claims tribunal, as already observed Rs.50,000/- alone has been allowed under the provisions of Section 140 of the Motor Vehicles Act. As per the discussion made in the earlier paragraphs, since the accident had happened due to the act of the lorry driver, it is necessary to calculate the quantum of compensation, under Section 166 of the Motor Vehicles Act.

22. In respect to the monthly income earned by the

deceased, before the Claims Tribunal, 1st claimant has stated in her proof affidavit that before the accident, the deceased earned Rs.2,000/- per day i.e., Rs.50,000/- to Rs.60,000/- per month. In order to prove the said contention on the side of the claimants, the bank pass book which stands in the name of the deceased was marked as Ex.P9. Further, the PAN Card and passport belonging to the deceased were marked as Ex.P10 and P11. Further, the copy of the bank pass book, which stands in the name of the 1st claimant was marked as Ex.P8.

23. Though it was alleged on the side of the claimants that the deceased earned money and deposited the same into the bank account maintained by his mother [PW1]/1st claimant, it cannot be accepted for the reason that it is the case of the claimants that the deceased has paid income tax by using the PAN card [Ex.P10]. In otherwise, in order to prove the actual income, the claimants have not exhibited the copy of the Income Returns filed by the deceased. So, only based on the surrendering circumstances, the income of the deceased has to be determined.

24. The specific case of the claimants before the claims tribunal is that the deceased was a Dancer. The said contention raised by the claimants were supported through the evidence of PW2, who is also a worker in the cinema field. Though, the deceased was working in the cini field, without any proof, we cannot accept the submission made by the learned counsel appearing for the claimants that the deceased earned Rs.50,000/- to Rs.60,000/- per month. In fact, in the cross examination of PW1, though she has stated so, in Ex.P9, there is no entries in respect to the earning of Rs.50,000/- to Rs.60,000/- by the deceased. Therefore, we are of the opinion that the deceased would have earned Rs.15,000/- per month and accordingly, fix Rs.15,000/- as the monthly income of the deceased.

25. In respect to the future prospects, it is admitted by either side and as per the entries made in Ex.P2, Postmortem certificate the deceased was aged 27 years, at the time of accident. So, by following the judgment of our Hon'ble Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017 ACJ 2700 (SC), it is necessary to add Rs.6,000/- i.e. 40% of the monthly income of Rs.15,000/-, to the income of the deceased, as future prospects. Accordingly, the annual income of the deceased is calculated as Rs.2,52,000/- [(Rs.15,000/- + Rs.6,000/-)x12]

26. Another one aspect in this claim petition is that the deceased was a bachelor at the time of accident. During the time of death, the claimants herein, who are the parents to the deceased are the dependants. Therefore, based on the judgment of our Hon'ble Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another, reported in 2009 (4) MLJ (SC) 997, 50% of the annual income of the deceased has to be

deducted. Therefore, the annual income of the deceased, excluding 50% towards personal expenses of the deceased is Rs.1,26,000/-. Further, the appropriate multiplier as per Sarla Verma's case [cited supra] is 17 and the loss of dependency is calculated as = Rs.21,42,000/-[Rs.1,26,000/- x 17]

27. Now, coming to the point of conventional heads, in Pranay Sethi's case [cited supra], the Constitutional Bench of our Hon'ble Apex Court has allowed Rs.15,000/- towards "loss of estate" and Rs.15,000/- towards "Funeral Expenses". By following the said judgment, herein also Rs.15,000/- each was allowed under the above two heads. Another one aspect which is necessary to be decided in this case is the claimants have lost their only son at the age of 27 and the said circumstances has also to be compensated by giving a reasonable compensation. Hence, Rs.50,000/- each to the claimants are awarded under the head of "loss of love and affection". More than that Rs.10,000/- was allowed under the head "Transport charges". Therefore, award made by the tribunal is modified and determined to a sum of Rs.22,82,000/-, as detailed below.

Loss of dependency	: Rs.21,42,000/-
Loss of love and affection	: Rs. 1,00,000/-
Loss of Estate	: Rs. 15,000/-
Funeral Expenses	: Rs. 15,000/-
Transport charges	: Rs. 10,000/-
Total	: Rs.22,82,000/-

From the above compensation, in view of the contributory negligence attributed on the part of the deceased, as stated already, the claimants are entitled to 75% of the award amount [Rs.22,82,000/-], now fixed, i.e. Rs.17,11,500/- only.

28. In view of the modification of the award of the claims tribunal, it is ordered as follows:

(i) the compensation of Rs.50,000/- awarded by the Claims Tribunal is modified to the extent of Rs.22,82,000/-, out of which the claimants are entitled to 75% of the same i.e. Rs.17,11,500/-.

(ii) The modified compensation of Rs.17,11,500/- has to be apportioned among the claimants equally.

(iii) The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

(iv) The 2nd respondent-Insurance Company is directed to deposit the entire award amount along with interest and costs, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment.

(v) On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of Claimants through RTGS/NEFT within a period of one week.

(vi) The appellants/claimants are directed to pay the Court fee for the enhanced compensation, if any.

29. In the result, this Civil Miscellaneous appeal is partly allowed. No Costs.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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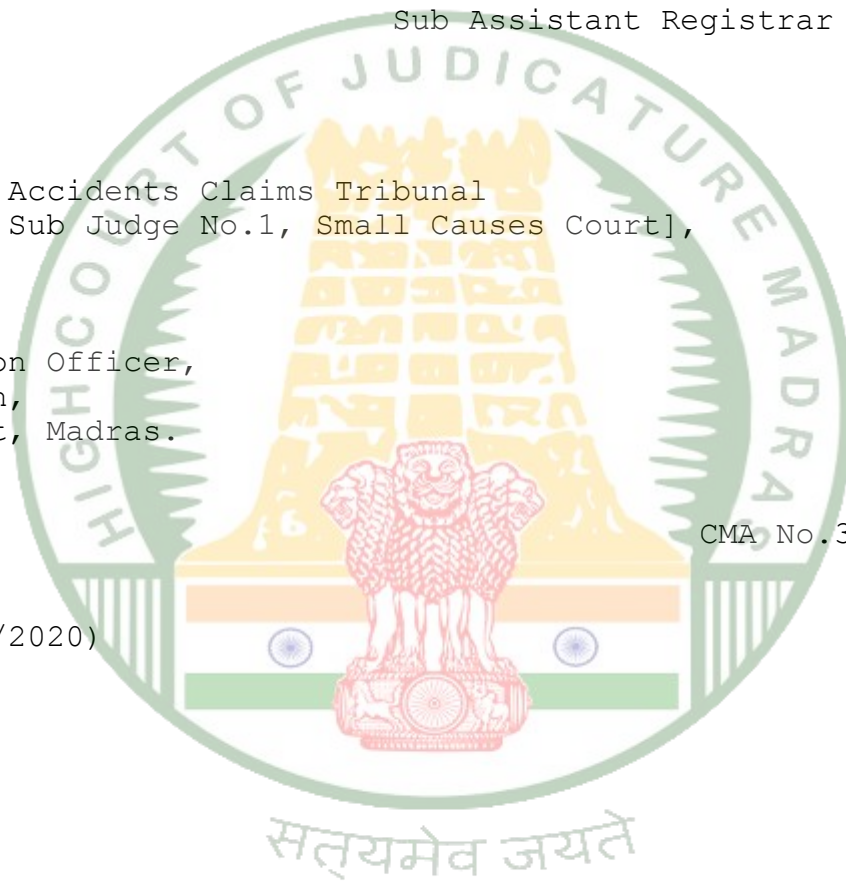
To

The Motor Accidents Claims Tribunal
[Special Sub Judge No.1, Small Causes Court],
Chennai.

Copy To
The Section Officer,
VR Section,
High Court, Madras.

CMA No.3385 of 2019

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