IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1965 of 2016
and
CMP No.14240 of 2016

United India Insurance Company Ltd.,
Rep. by its Divisional Manager,
Divisional Office at
104-A, Peramanur Road,
Salem - 7. .... Appellant

versus

1. Vimala
2. Minor Sugavaneswaran
(amended as per order in
I.A. No.558/14, dated 4.3.2014)
Minor represented by N/F Mother Vimala
3. Mahesh
4. G. Manimegalai ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 02.06.2016 made in O.P. No.318 of 2012 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem.

For Appellant : Mr.D. Bhaskaran

For Respondents : Mr.M.Sivakumar for R1 to R3
R4 - No such address

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award dated 02.06.2016 passed by the Motor Accident Claims Tribunal, (Special District Court), Salem in

M.C.O.P. No.318 of 2012.

2.A person by name Prabhu died on 12.01.2012 as a result of an accident caused by an Auto bearing Registration No.TN 30 AH 9396 owned by the 4th respondent and insured with the Appellant. The accident happened when the deceased was riding a two wheeler (TVS Star City) bearing Registration No.TN-30-U-6331 in Trichy Main Road from Salem Town towards Dadagapatty when the insured Auto bearing TN 30 AH 9396 came in a rash and negligent manner on the extreme right side in the opposite direction of the deceased vehicle and suddenly turned to his right to pickup the passengers on the right side of the road and thus dashed against the two wheeler and as a result of the same, Prabhu sustained grievous injuries and he died in the hospital.

3. The Tribunal under the impugned award directed the appellant / Insurance Company to pay the respondents / claimants a compensation of Rs.9,51,000/- for the death of Prabhu caused by the vehicle insured with the appellant.

4. The details of the compensation awarded by the Tribunal are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Pecuniary Benefits (Rs.6,000/- Less 1/3rd x 12 x 17)	8,16,000/-
Loss of Consortium	50,000/-
Loss of Love and affection - son	50,000/-
Loss of love and affection - mother	10,000/-
Funeral expenses	25,000/-
Total compensation	9,51,000/-

5. Out of the total compensation, the Tribunal determined the amount payable to the first claimant, being the wife of the deceased at Rs.5,51,000/- the second claimant being the minor son of the deceased at Rs.3,00,000/- and the third claimant being

the mother of the deceased at Rs.1,00,000/-.

6a. The first ground of challenge raised by the appellant / Insurance Company under the impugned award is that the Tribunal has erroneously fixed the contributory negligence on the Driver of the Auto insured with the appellant / Insurance Company. According to them, FIR has been registered only against the deceased and hence the driver of the insured Auto was not responsible. Further, according to them, even as per spot sketch, the deceased came to extreme right side of the road and hit against rear right portion of the auto and fell down and sustained fatal injuries and thus, they are not liable to compensate the claim of respondents / claimants. According to them, the Tribunal has erroneously mulcted the liability on the appellant / Insurance Company despite the fact that the evidence available on record conclusively establishes that only due to the negligence of the deceased, the accident happened which resulted in the fatal accident.

6b. The second ground of challenge raised by the appellant / Insurance Company is that the quantum of compensation awarded by the Tribunal is excessive.

7. Heard Mr.D. Bhaskaran, learned counsel for the appellant and Mr.M.Sivakumar, learned counsel for the respondents 1 to 3. Since no adverse orders are going to be passed against the 4th respondent, notice to the 4th respondent is dispensed with.

8. This Court has perused the materials and evidence available on record before the Tribunal.

9. Before the Tribunal, the claimants have filed three documents, which were marked as Exs.P1 to P3 and two witnesses were examined on their side viz., Vimala, the wife of the deceased (PW1) and Ganesan, an eye witness to the accident (PW2). On the side of the appellant / Insurance Company two documents were marked as Ex.R1, copy of the insurance policy and Ex.R2, copy of sketch and two witnesses were examined viz., the Driver of the Auto as RW1 and Insurance Company Official as RW2.

10. FIR (EX.P1) has been registered only against the deceased, who was the rider of the two wheeler bearing

Registration No. TN-30-U-6331. The spot sketch which was marked as Ex.R2 also reveals that the deceased would have been equally responsible for the cause of the accident. A consistent stand has been taken by the appellant / Insurance Company before the Tribunal that the deceased as a rider of the motor cycle came to the extreme right side of the road and hit against the rear right portion of the insured Auto and fell down which resulted in his death. The Tribunal has failed to take note of these factors before coming to the conclusion that the insured Auto is alone responsible for the cause of the accident. This Court is of the considered view that the evidence available on record will clearly indicate that the deceased who was the rider of the motor cycle was also equally responsible for the cause of the accident along with the Driver of the Insured Auto. Hence, this Court sets aside the finding of the Tribunal that the insured Auto is alone responsible for the cause of the accident by modifying the said finding by holding that the deceased is also equally responsible for the cause of the accident along with the driver of the insured Auto. Therefore, the contributory negligence of the deceased is fixed by this Court at 50% along with Driver of the insured Auto whose contributory negligence is also fixed at 50%.

11. The deceased Prabhu was aged 29 years at the time of the accident. In the claim petition filed by the appellants / claimants, who are the legal Representatives and the dependants of the deceased, they have pleaded that Prabhu was self employed and doing business in making silver ornaments and was earning Rs.10,000/- p.m. The accident happened on 12.01.2012. However, the Tribunal fixed the notional monthly income of the deceased Prabhu at Rs.6,000/- This Court is of the considered view that the Tribunal failed to give due consideration to the year of the accident before fixing the notional monthly income of the deceased. Therefore, after giving due consideration to the year of the accident, this Court fixes the notional monthly income of the deceased at Rs.8,500/- instead of Rs.6,000/- fixed by the Tribunal. However, the Tribunal has failed to award any compensation towards loss of future prospects, which the appellants / claimants are legally entitled to as per Constitution Bench judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi & others reported in 2017 16 SCC 680. The deceased was aged 29 years at the time of the accident. For a person aged 29 years,

the loss of future prospects payable is 40%. Accordingly, this Court awards 40% towards loss of future prospects to the appellants / claimants. The Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased, after giving due consideration to the number of dependants. The Tribunal has rightly adopted the correct multiplier. Therefore, the loss of pecuniary benefits awarded to the appellants / claimants is enhanced from Rs.8,16,000/- to Rs.15,23,000/- (Rs.8,000 + 40% – 1/3 x 12 x 17).

12. Insofar as the compensation awarded by the Tribunal under various other heads viz., Rs.50,000/- towards loss of Consortium, Rs.50,000/- towards loss of love and affection to the minor son and Rs.25,000/- towards funeral expenses are concerned, this Court is of the view that the same are on the higher side and accordingly, this Court reduces the same to Rs.40,000/-; Rs.40,000/- and Rs.15,000/- respectively.

13. However, the Tribunal has awarded only a sum of Rs.10,000/- towards loss of love and affection to the 3rd appellant / 3rd claimant, which in the considered view of this Court is low, considering her age. In the considered view of this Court, a sum of Rs.40,000/- will be an adequate compensation towards loss of love and affection instead of Rs.10,000/- fixed by the Tribunal.

14. The Tribunal has also failed to award any compensation towards loss of estate to the appellants / claimants, which they are legally entitled to in accordance with the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi & others reported in 2017 16 SCC 680. In accordance with the said judgment, this Court awards a compensation of Rs.15,000/- to the appellants / claimants towards loss of estate.

15. Accordingly, the total compensation awarded by the Tribunal has to be reduced.

16. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount reduced by this Court (Rs.)
Loss of Pecuniary Benefits *Rs.6,000/- Less 1/3rd x 12 x 17 # Rs.8,000/- + 40% - 1/3rd x 12 x 17	8,16,000/- *	15,23,000/- #
Loss of Consortium	50,000/-	40,000/-
Loss of Love and affection - son	50,000/-	40,000/-
Loss of love and affection - mother	10,000/-	40,000/-
Funeral expenses	25,000/-	15,000/-
Loss of estate	-	15,000/-
Total compensation	9,51,000/-	16,73,000/-
Less 50% towards own negligence of the deceased		8,36,500/-
Award against the appellant	9,51,000/-	8,36,500/-

17. In the result, the appeal filed by the appellant / Insurance Company, stands partly allowed by reducing the compensation from Rs.9,51,000/- to 8,36,500/- as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

18a. The second respondent / Insurance Company is directed to deposit the modified award amount (Rs.8,36,500/-), as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.318 of 2012 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem, within a period of four weeks from the date of receipt of a copy of this Judgment. It is made clear that the appellant / Insurance Company is permitted to withdraw excess amount, if any paid by them.

18b.On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents 1 and 3 /claimants 1 and 3, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. Insofar as the share of the second respondent / minor claimant is concerned, the same shall be deposited in Fixed deposit in any one of the Nationalized Banks, till he attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. If the second respondent / minor claimant has attained the age of majority, it is open to him to file formal petition before the Tribunal to get his share of apportionment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To :

The Special District Court,
Motor Accidents Claims Tribunal,
Salem.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.1965

C.M.A. No.1965 of 2016

AK-II(CO)
SB(12/10/2021)