



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1285 of 2018
and
CMP.No.10292 of 2018

United India Insurance Company Limited,
Zonal Office,
HUB Ranga Building,
Peramanur Main Road,
Peramanur, Salem-636 007.

.. Appellant /2nd Respondent

Vs.

1.Duraisamy

2.Minor Saravanan

... Respondents/Claimants

Minor represented by next friend/Guardian
Duraisamy 1st Respondent

3.Ulaganatha

... Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2017 made in M.C.O.P.No.1499 of 2015 on the file of the Motor Accidents Claims Tribunal, First Additional District Court, Salem.

For Appellant	:	Mr.A.Dhiraviyanathan
For R1 & R2	:	Mr.C.Paraneedharan

JUDGMENT

This appeal is filed by United India Insurance Company Limited, Salem questioning the validity and/or correctness of the award dated 22.09.2017 passed in MCOP No. 1499 of 2015 on the file of the Motor Accidents Claims Tribunal (First Additional District Judge), Salem.

2.In and by the award dated 22.09.2017, the Tribunal awarded a total sum of Rs.7,85,000/- as compensation for the claimants/respondents 1 and 2 herein for the death of the deceased Sarasu.

3.The facts narrated in the claim petition reveals that



the deceased Sarasu was employed as a Helper in a construction site. On the fateful day namely 02.05.2015 at about 2.00 pm, she was riding pillion in the two wheeler bearing Registration No. TN 29 AC 6455 driven by Ulaganathan, who is working as a Mason in the very same construction site. At the time when the two wheeler was proceeding near a placed called Ottapalli, near Omkalamman Temple in Pallipalayam - Kokkarayanpettai Road, it is alleged that the said Ulaganathan had driven the two wheeler in a rash and negligent manner. In the impact, the deceased, who was riding pillion, fell down from the two wheeler and sustained grievous injuries on her head. She was immediately taken Pallipalayam Government Hospital, but the Doctors, who examined her, declared her as brought dead.

4. According to the claimants, the deceased was aged 45 years at the time of her death. She was working as a helper in a construction site and contributed the entire earnings to the family. It is also stated that her death has deprived the claimants of her love, care and affection besides her income. Therefore, the claimants, who are the husband and minor son of the deceased, have filed the MCOP No. 1499 of 2015 claiming a sum of Rs.25 lakhs as compensation.

5. The claim petition was resisted by the appellant-Insurance Company by filing a counter statement. It was contended by the appellant-Insurance Company that even though the two wheeler was insured with them, while travelling as a pillion rider in the two wheeler, attempted to change the tiffin bag from one hand to the other and in that process, she fell down from the two wheeler and sustained injuries. Therefore, it was contended that due to carelessness and negligence, the deceased herself had invited the accident. Notwithstanding such a defence, the Insurance Company also contended that the age, income and contribution of the income of the deceased to the family have been inflated to claim a huge amount as compensation. The Insurance Company also placed reliance on the final report filed by the Inspector of Police, Pallipalayam Police Station stating that the accident did not happen due to the fault of the driver of the two wheeler and therefore, further action in the criminal case has been dropped. By placing reliance on the final order, the appellant-Insurance company contended that the driver of the two wheeler driven it slowly and cautiously and therefore, they prayed the Tribunal to dismiss the claim petition.

6. Before the Tribunal, the husband of the deceased and who is the first claimant, examined himself as PW1 along with



two other witnesses as PWs 2 and 3 and Exs. P1 to P9 were marked. On behalf of the Insurance Company, Mr. Varadharajan was examined as DW1, the driver of the ill-fated two wheeler was examined as DW2 and one Dheenkarunakaran was examined as DW3. The final report filed by the Inspector of Police, Pallipalayam on 28.05.2015 closing the First Information Report, was marked as Ex.D1.

7.The Tribunal, on consideration of the oral and documentary evidence, awarded a total sum of Rs.7,85,000/- as compensation to the claimants, the break up of which is as follows:-

Transportation expenses	:	Rs. 5,000.00
Funeral expenses	:	Rs. 20,000.00
Love and affection to first claimant	:	Rs. 20,000.00
Love and affection to minor 2nd claimant:		Rs. 20,000.00
Loss of income (Rs.4,000 X 12 X 15)	:	Rs.7,20,000.00

		Rs.7,85,000.00

8.Contending that the amount of Rs.7,85,000/- awarded by the Tribunal is onerous and disproportionate to the evidence made available, the present appeal is filed by the appellant-Insurance Company.

9.The learned counsel for the appellant would contend that the accident had occurred due to the negligence of the deceased herself, who attempted to shift the tiffin box from one hand to the other. It is in that process, the driver of the two wheeler could not balance the vehicle and she fell down. Therefore, it is suggested by the learned counsel for the appellant that the accident had occurred mainly due to the negligence of the deceased, while so, the appellant Insurance Company cannot be mulcted with the liability to pay a huge sum as compensation. It is also submitted that the Tribunal brushed aside Ex.RW1, final report filed by the investigation officer, which clearly disclosed that the two wheeler was driven slowly and cautiously and it was due to the negligence of the deceased, she sustained the injuries. In this context, the evidence of the driver-RW2 was relied on to suggest that the deceased contributed to the accident wholly and therefore, the learned counsel for the appellant prayed for setting aside the award.

10.On the above contention this Court heard the learned counsel for the respondents-claimants and perused the records.

11.On perusal of the order passed by the Tribunal, in para No.12, it was clearly recorded that DW2 - driver of the two



wheeler, in his deposition has stated that at the time of accident, a dog had suddenly darted across the road, therefore, he could not negotiate the vehicle in a proper manner. At the same blush, DW2 also stated that the deceased attempted to change her tiffin box from one hand to another and this has also resulted in the accident. Upon consideration of the deposition of DW2, the Tribunal, in the opinion of this Court, has rightly concluded that if the version of DW2 is true that he had driven the vehicle slowly and cautiously, the deceased could not have sustained grievous injuries in her head and which has caused her death instantaneously. Therefore, the Tribunal concluded that the vehicle was driven in a rash and negligent manner without which the deceased could not have suffered such injuries, which would result in her death. Such a reasoning assigned by the Tribunal, does not call for any interference by this Court. This Court is in complete agreement with the findings given by the Tribunal, which is a possible inference to suggest that the intensity and magnitude of the injuries sustained by the deceased can also be taken note of to conclude the speed with which the two wheeler could have been driven by DW2. While so, this Court does not find any reason to overturn the findings rendered by the Tribunal.

12. The learned counsel for the appellant also argued that the final report filed by the Inspector of Police, Pallipalayam is a pointer to suggest the manner in which the two wheeler was driven by DW2, which was not taken note of by the Tribunal. I am not inclined to agree with such submissions of the learned counsel for the appellant. For arriving at a finding of guilt in the investigation conducted by the Inspector of Police, it requires evidence relating to mens rea on the part of the DW2 to cause the accident or other acceptable evidence to prosecute DW2. In the absence of the same, the criminal investigation cannot be proceeded with. However, for awarding compensation under the Motor Vehicles Act, strict applicability of Rules or evidence are not mandatory. If the evidence suggest that there is prima facie negligence on the part of the driver of a motor vehicle, it is sufficient to hold that there is negligence attributable on the part of the driver of a motor vehicle to award compensation to the victims. In the present case, DW2 has stated that a dog had suddenly darted across the road and in the process of his attempts to avoid hitting it, he had lost balance. This portion of the deposition of DW2 would only disclose that he had not driven the two wheeler in a normal speed or slowly and there is prima facie negligence on the part of the driver of the two wheeler and therefore, the award passed by the Tribunal is well-merited.



13.As regards compensation, even though there was no proof of income filed by the claimants, the fact remains that DW2, who had driven the two wheeler, himself is the Mason under whom the deceased worked as a helper in the construction site. The deposition of DW2, who was examined on the side of the appellant-Insurance Company, itself clearly proves that the deceased was employed as a Helper in the construction site to keep the wheels of her family moving and/or supported her family financially. Therefore, by reason of her death, the claimants are deprived of the income of the deceased to some extent. Therefore, the employment of the deceased is clearly proved by the deposition of DW2. Taking note of the above, even though the claimants claimed that the deceased was earning Rs.20,000/- per month, the Tribunal has taken only a sum of Rs.4,000/- per month as income of the deceased to award the compensation towards loss of income. There is absolutely no infirmity or irregularity in the Tribunal awarding compensation to the claimants. This Court, therefore, is not inclined to interfere with the award passed by the Tribunal.

14.Therefore, for the reasons mentioned above, the Civil Miscellaneous Appeal filed by the Insurance Company fails and it is dismissed. A sum of Rs.7,85,00/- awarded by the Tribunal as compensation to the respondents 1 and 2/claimants along with interest and costs is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount 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 to the credit of M.C.O.P.No.1499 of 2015. On such deposit, the 1st respondent is permitted to withdraw his share of the award amount as per the ratio of apportionment fixed by the Tribunal along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. The award amount of the minor 2nd respondents is directed to be deposited in any one of the Nationalized Bank, till they attain majority. The first respondent, being the father of the minor 2nd respondent is permitted to withdraw the accrued interest once in every three months for the welfare of the minor respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gbi



To

1.The First Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

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

+1cc to Mr.A.Dhiraviyanathan, Advocate SR.No.58249

C.M.A.No.1285 of 2018

SR II(CO)
GN(11/01/2022)