IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.04.2021

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1801 of 2020
and
C.M.P.No.13251 of 2020

M/s.The New India Assurance Company Ltd.,
No.45, Moore Street,
Chennai-600 001. ... Appellant/Ist Respondent

Versus

1.R.Revathy ...Ist Respondent/Claimant
2.S.P.Gopalakrishnan ...2nd Respondent/Ist Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.12.2019 passed in M.C.O.P.No.164 of 2013 by the Motor Accidents Claims Tribunal, (II Additional District Court), Tiruvallur at Poonamallee.

For appellant :Mr.J.Michael Visuvasam

For respondents:Mr.K.Varadha Kamaraj for R1
R-2 set ex-parte before the Tribunal

JUDGMENT

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

Challenging the quantum of compensation awarded by the Tribunal, this Civil Miscellaneous Appeal is filed by the Insurance Company as against the Award dated 13.12.2019 passed in M.C.O.P.No.164 of 2013 on the file of the Motor Accidents Claims Tribunal, (II Additional District Court), Tiruvallur at Poonamallee.

2. The first respondent in this appeal is the mother of the deceased Gobesh, who sustained injuries in the accident that had occurred on 22.08.2006, involving his motor cycle bearing Registration No.TN-20-J-8849 and the Tipper Lorry bearing

Registration No.TN-04-C-8929, owned by the second respondent, which was insured with the appellant-Insurance Company.

3. It is the case of the first respondent/claimant before the Tribunal that, on 22.08.2006 at about 17.30 hours, when the deceased Gobesh was riding his motor cycle bearing Registration No.TN-20-J-8849 on the Poonamallee By-Pass Road, near Alpha International Leather Company, the driver of the Tipper Lorry bearing Registration No.TN-04-C-8929, which was going in front of the deceased motor cycle, applied sudden brake, as a result of which, the motor cycle of the deceased hit the lorry on the left side back wheel. According to the claimant, since the driver of the lorry had suddenly applied brake without minding the vehicles coming behind the lorry, the deceased hit the lorry and sustained grievous and multiple injuries all over his body and died on the way to the hospital. It is the further case of the claimant that, at the time of accident, the deceased was earning a sum of Rs.200/- per day and Rs.6,000/- per month by engaging himself in coolie work. Therefore, the claimant filed the claim petition claiming a sum of Rs.8,00,000/- as compensation before the Tribunal.

4. The appellant-Insurance Company filed counter statement before the Tribunal denying the averments made by the claimant. The Insurance Company submitted that the second respondent's driver, who drove the lorry bearing Registration No.TN-20-J-8849, was not having a valid licence to drive the lorry, and therefore, the Insurance Company is not liable to pay any compensation to the claimant. Hence, the Insurance Company prayed for dismissal of the claim petition.

5. In order to prove the claim, the first respondent/claimant examined herself as P.W.1 before the Tribunal, besides P.W.2 was examined and Exs.P-1 to P-7 were marked. On the side of the appellant/Insurance Company, R.W.1 was examined, besides Ex.R1 and R2 were marked.

6. The Tribunal, after analysing the entire evidence available on record, had come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the offending lorry bearing Registration No.TN-20-J-8849, owned by the second respondent and insured with the appellant-Insurance Company. Accordingly, the Tribunal passed an Award for a sum of Rs.17,83,600/- as compensation and the break-up details of the same are tabulated below:

Sl. No.	Heads under which the amounts are awarded by the Tribunal	Amounts awarded by the Tribunal (in Rs.)
1	Total loss of income	17,13,600
2	Loss of estate	15,000
3	Loss of love and affection	40,000
4	Funeral expenses	15,000
	Total	17,83,600

Challenging the above said Award of the Tribunal, the Insurance Company had preferred this appeal.

7. The learned counsel appearing for the appellant-Insurance Company submitted that had the deceased driven his two wheeler by giving sufficient space, he would have survived the accident. But, on the other hand, he had driven the two wheeler with very close proximity, as a result of which, he could not have control over his vehicle when the driver of the lorry applied brake. Under such circumstances, the Tribunal ought not to have fixed entire negligence on the part of the driver of the lorry.

8. With regard to the quantum of compensation awarded by the Tribunal, the learned counsel appearing for the Insurance Company submitted that the Tribunal had taken Rs.9,000/- as notional monthly income of the deceased, which is extremely on the higher side. Since the accident had occurred in the year 2006, Rs.9,000/- fixed by the Tribunal as notional monthly income of the deceased, may be reduced to Rs.4,000/-. The learned counsel appearing for the appellant/Insurance Company further submitted that the Tribunal, while calculating the loss of income, has deducted only 1/3 towards personal expenses. Since the deceased was a Bachelor, the Tribunal ought to have deducted 50% of the income towards personal expenses. Thus, the quantum of compensation awarded by the Tribunal needs appropriate reduction.

9. Per contra, the learned counsel appearing for the first respondent/claimant made his submissions supporting the Award passed by the Tribunal.

10. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

11. It is an admitted fact that the accident had occurred only on the left side back wheel of the lorry. As contended by the learned counsel for the appellant/Insurance Company, had the

deceased driven the two wheeler by maintaining sufficient space, he would have survived the accident. At the same time, had the driver of the lorry taken some caution while applying brake, the deceased would not have hit the lorry. Therefore, we are of the opinion that contributory negligence may equally be fixed on the part of the rider of the two wheeler as well as on the part of the driver of the lorry. Accordingly, the negligence is fixed at 50% on the part of the driver of the lorry and 50% on the part of the rider of the two-wheeler.

12. So far as the quantum of compensation is concerned, the Tribunal, fixed Rs.9,000/- as the notional monthly income of the deceased and added 40% towards future prospectus and arrived at Rs.12,600/- (9000 + 3600) as the monthly income of the deceased. Absolutely, we do not find any infirmity in fixing Rs.9,000/- by the Tribunal as the monthly income of the deceased. Hence, we are not inclined to reduce the monthly income of R.9,000/- fixed by the Tribunal to any other lesser sum. However, we are of the opinion, as contended by the learned counsel for the appellant that, since the deceased was a Bachelor, 50% has to be deducted towards personal expenses, whereas, the Tribunal has deducted only 1/3 towards the personal expenses of the deceased. Hence, we are inclined to re-calculate the compensation amount by deducting 50% towards the personal expenses of the deceased. If 50% is deducted from Rs.12,600/-, it comes to Rs.6,300/-. The annual income of the deceased works out to Rs.75,600/- (6300 x 12). As per the judgment of the Apex Court in the case of Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another reported in 2009 (6) SCC 121, the multiplier to be applied is "17" for the age group of 21 to 25 years. Since the deceased died at the age of 25 years, the loss of income works out to Rs.12,85,200/- (75,600 x 17). Accordingly, a sum of Rs.12,85,200/- (6300 X 12 x 17) is hereby fixed under the head "total loss of income" as against Rs.17,13,600/- awarded by the Tribunal.

13. Considering the factual aspects of the case, we are inclined to award a sum of Rs.15,000/- under the head "transportation charges", since the Tribunal has not awarded any amount under the above head. Accordingly, Rs.15,000/- is hereby awarded under the head "transportation charges".

14. Except the above modification, the amounts awarded under the other heads by the Tribunal, will remain unaltered and therefore, they are confirmed. In effect, the amounts awarded by the Tribunal, in comparison with the amounts now awarded by this Court, are tabulated hereunder:

Sl. No.	Heads under which the amounts are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court (in Rs.)
1	Total loss of income	17,13,600	12,85,200
2	Loss of estate	15,000	15,000
3	Loss of love and affection	40,000	40,000
4	Funeral expenses	15,000	15,000
5	Transportation charges	-	15,000
	Total	17,83,600	13,70,200

15. Accordingly, the appeal is partly allowed. The total amount of compensation awarded by the Tribunal at Rs.17,83,600/- is hereby reduced to Rs.13,70,200/-. Since there is contributory negligence on the part of the deceased, the claimant is entitled only for 50% of the compensation amount now awarded by this Court. Therefore, the claimant/first respondent is entitled to get Rs.6,85,100/- (50% of Rs.13,70,200) as total compensation, which shall carry interest at 7.5% per annum from the date of claim petition till the date of payment. The appellant/Insurance Company is directed to deposit the above said sum of Rs.6,85,100/- along with interest, and costs, within a period of six weeks from the date of receipt of a copy of this order, if the Award amount is not yet deposited so far. On such deposit being made by the appellant/Insurance Company, the first respondent/claimant is permitted to withdraw the entire award amount as computed above, along with accrued interest, and costs, after adjusting the amount(s) if any already withdrawn by her, in accordance with law. Any amount lying in excess in the deposit, is permitted to be withdrawn by the Insurance Company. There shall be no order as to costs in the present appeal. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vga/cs

To

The Motor Accidents Claims Tribunal,
(II Additional District Court,
Tiruvallur at Poonamallee.

Copy to

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

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.24917
+1cc to Mr.J.Michael Visuvasam, Advocate Sr.24876

C.M.A.No.1801 of 2020

BS(CO)
srg 11/10/2021