IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.4369 OF 2019
AND
C.M.P.NOS.24881 OF 2019 AND 5627 OF 2020

The Branch Manager,
M/s.Iffco Tokio General Insurance
Company Limited,
No.141, Sri Shanthi Towers,
4th Floor, 3rd Main,
East NGEF Layout, Kasthuri Nagar,
Bangalore - 560 043, Karnataka. ... Appellant/
2nd Respondent

vs

1. D.Balraj
   S/o.Duraisamy

2. Mangammal
   W/o.Balraj

3. Radha
   W/o.Late Arunkumar

4. A.Devaprakash (minor)
   S/o.Late Arunkumar
   (R4 minor represented by mother
   and next friend the third respondent)

5. Sampath
   S/o.Balraj

6. Jayakumar
   S/o.Balraj

7. Sarathkumar
   S/o.Balraj

8. Barathkumar
   S/o.Balraj

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9. Sasi (Minor)
S/o.Arunkumar
(R9 minor represented by mother
and next friend the third respondent)

... Respondents 1 to 9/Claimants

R.Krishnan (died) ... 1st Respondent

10. Panjali
W/o.Late R.Krishnan

11. Selvam
S/o.Late Krishnan

12. Banupriya
D/o.Late R.Krishnan

13. Valarmathi
D/o.Late R.Krishnan

14. Arumugam
S/o.Late R.Krishnan

15. Sakthivel
S/o.Madhan ... Respondents 10 to 15/
Respondents 3 to 8

Prayer:

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2019 passed in M.C.O.P.No.48 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court, Hosur.

For Appellant : Mr.M.B.Raghavan

For Respondents: Mr.R.Jayaprakash [R1 to R9]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video Conferencing.

2. For the sake of convenience, appellant herein is referred to as 'Insurance Company' and respondents 1 to 9 herein are referred to as 'Claimants'.

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3. Questioning the liability as well as quantum of compensation awarded by the Tribunal in and by its judgment and decree dated 30.04.2019 passed in M.C.O.P.No.48 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court, Hosur, Insurance Company has filed the present appeal.

4. The brief facts of the case are as follows:

Respondents 1 to 4 and 9/claimants are parents, wife and minor children of the deceased Arunkumar respectively and respondents 5 to 8 are his brothers. On 22.04.2015, the deceased Arunkumar was riding pillion in a Suzuki Zeus Motor Bike bearing Registration No.TN-24-V-5572 ridden by one R.Krishnan and at about 21.00 hours, when they were proceeding near Perandapalli Forest Area at Krishnagiri to Hosur NH road, the rider of the two-wheeler ridden the same in a rash and negligent manner, lost his control and dashed against a TATA Sumo SE vehicle bearing Registration No.TN-38-E-5783, due to which both of them sustained grievous injuries and died on the spot. Hence, claimants filed a claim petition against the insurance company/ insurer of the two-wheeler and respondents 10 to 14/legal heirs of the deceased Krishnan (rider of the two-wheeler, who also died in the accident), seeking compensation in a sum of Rs.25,00,000/- for the death of Arunkumar.

5. Resisting the claim, Insurance Company had filed a counter statement inter alia contending that the accident had occurred owing to the rash and negligent driving of the TATA Sumo SE vehicle bearing Registration No.TN-38-E-5783 and there was no fault on the part of the rider of the two-wheeler. It was only the TATA Sumo SE vehicle, which came in the wrong side of the road, caused the accident. The criminal case was also registered only against the driver of the TATA Sumo SE vehicle. Since there was no insurance coverage for the TATA Sumo SE vehicle, the claim was made against the Insurance Company and the legal heirs of the owner of the two-wheeler. In the aforestated circumstances, the Insurance Company is not liable to pay compensation. They have also denied the age, occupation and income of the deceased Arunkumar. Hence, they prayed for dismissal of the claim petition.

6. To prove their claim, on behalf of claimants, PWs.1 and 2 were examined and 23 documents viz., Exs.P1 to P23 were marked. On the side of Insurance Company, RW-1 was examined and 4 documents viz., Exs.R1 to R4 were marked.

7. On appreciation of materials and the entire evidence on record, the Tribunal arrived at a finding that the accident had occurred owing to the rash and negligent driving of the two-wheeler and held that the Insurance Company, being the insurer

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of the two-wheeler, is liable to pay compensation. Accordingly, the Tribunal awarded a sum of Rs.19,87,840/- as compensation. The break-up details are as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	13,05,600/-
2.	Future prospects	5,22,240/-
3.	Loss of love and affection	80,000/-
4.	Loss of consortium	40,000/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
7.	Transportation	10,000/-
	Total	19,87,840/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of realisation. Challenging the liability as well as quantum of compensation, Insurance Company has filed the present appeal.

8. Learned counsel for Insurance Company submits that the evidence on record would clearly show that the accident had occurred due to the rash and negligent driving of the TATA Sumo SE vehicle bearing Registration No.TN-38-E-5783. In fact, Ex.R1 - Rough Sketch and Ex.P1 - First Information Report would show that it was the TATA Sumo SE vehicle bearing Registration No.TN-38-E-5783, which came on the wrong side of the road, caused the accident. Since the said vehicle did not possess valid insurance coverage, the claim was made against the Insurance Company and the legal heirs of the owner of the two-wheeler (since the owner died in the accident). However, the Tribunal, by assigning vague and bald reasoning, had fixed the entire liability on the part of the rider of the two-wheeler and consequently, directed Insurance Company to pay the compensation. Hence, learned counsel prays this Court to exonerate the Insurance Company from liability. The alternate submission of learned counsel is that in the event of this Court coming to the conclusion that there was negligence also on the part of the rider of the two-wheeler, 50% negligence may be fixed on the part of the rider of the two-wheeler.

9. Per contra, learned counsel for claimants made his submissions supporting the finding rendered by the Tribunal.

10. This Court has considered the rival submissions. Perused the materials on record.

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11. It is a case of head-on collision. This Court finds that the records in the criminal case reveal that the negligence was on the part of the TATA Sumo SE vehicle bearing Registration No.TN-38-E-5783. In such circumstances, this Court is of the view that the TATA Sumo SE vehicle was also responsible for the accident. At the same time, it is also to be noted that, had the rider of the two-wheeler been vigilant, he could have avoided the accident. Therefore, there was negligence on the part of the rider of the two-wheeler also. However, the Tribunal, without analysing the records and evidence, in proper perspective, had fixed the entire negligence on the part of the rider of the two-wheeler and directed the Insurance Company to pay compensation. This Court is of the view that it would be appropriate to fix 60% negligence on the part of the rider of the two-wheeler and 40% on the part of the driver of the TATA Sumo SE vehicle bearing Registration No.TN-38-E-5783.

12. The next question that is to be decided is with regard to quantum of compensation. Though it was the case of claimants, before the Tribunal, that the deceased was employed at Amutham Transports at Hosur and was earning Rs.20,000/- p.m., the Tribunal had fixed only a sum of Rs.8,000/- as the monthly income of the deceased on the reasoning that no documentary evidence was produced to prove the income of the deceased. Considering the fact that the accident had occurred in the year 2015 and the cost of living that was prevailing during that time, this Court is of the view that it would be appropriate to fix a sum of Rs.12,000/- as the monthly income of the deceased. Accordingly, this Court fixes a sum of Rs.12,000/- as the monthly income of the deceased. The amount of Rs.5,22,240/- awarded under the head 'future prospects' is very much on the higher side and hence, the same is set aside. Instead, 40% of monthly income is added towards future prospects. Accordingly, the compensation payable under the head 'loss of dependency' is re-calculated as follows:

Monthly Income	:	Rs. 12,000/-
Add: Future Prospects 40% of Rs.12,000	:	Rs. 4,800/-
		Rs. 16,800/-
Less: Personal expenses 1/4 of Rs.16,800/-	:	Rs. 4,200/-
		Rs. 12,600/-
Annual Income (12600 * 12)	:	Rs. 1,51,200/-
Multiplier	:	17
Loss of dependency(151200 * 17)	:	Rs.25,70,400/-

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13. As the minor children of the deceased lost their father at their tender age and similarly, the parents of the deceased also lost their son at a young age, this Court finds that the compensation of Rs.80,000/- awarded under the head 'loss of love and affection' is on the lower side and hence, the same is enhanced to Rs.1,60,000/- (Rs.40,000/- each). The amount awarded under the other heads is reasonable and the same is hereby confirmed.

13. Accordingly, the modified compensation is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)	Amount (in Rs.)
1.	Loss of dependency	13,05,600/-	25,70,400/-
2.	Future prospects	5,22,240/-	-
3.	Loss of love and affection	80,000/-	1,60,000/-
4.	Loss of consortium	40,000/-	40,000/-
5.	Funeral expenses	15,000/-	15,000/-
6.	Loss of estate	15,000/-	15,000/-
7.	Transportation	10,000/-	10,000/-
	Total	19,87,840/-	28,10,400/-
	60% of Rs.28,10,400/-	-	16,86,240/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.19,87,840/- awarded by the Tribunal is reduced to Rs.16,86,240/- [Rupees Sixteen Lakhs Eighty Six Thousand Two Hundred and Forty only]. Insurance Company is directed to deposit the modified compensation of Rs.16,86,240/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit being made by Insurance Company, respondents 1 and 2/parents of the deceased are entitled to a sum of Rs.2,00,000/- each; third respondent/wife of the deceased is entitled to a sum of Rs.6,00,000/- and respondents 4 and 9/minor children of the deceased are entitled to a sum of Rs.3,43,120/- each. Respondents 1, 2 and 3/parents and wife of the deceased respectively are permitted to withdraw their respective shares, along with accrued/proportionate interest and costs, less the amount, if any already withdrawn by them, by filing necessary application before the Tribunal. The share of respondents 4 and

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9/minor children of deceased shall be deposited in a fixed deposit in any nationalised bank till they attain majority. Third respondent/mother of the minors is entitled to withdraw interest thereon once in three months towards taking care of the minors. Since respondents 5 to 8/brother of the deceased are married, they are not legal heirs of the deceased and hence, they are not entitled to get compensation. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Motor Accident Claims Tribunal,
Additional District Court,
Hosur.

Copy To

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

C.M.A.No.4369 of 2019

RSV(CO)
CS/28/09/2021

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