



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2021

CORAM:

HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A.No.2196 of 2017 & C.M.P.Nos.11765 & 18346 of 2017
and Cross Objection No.3 of 2018

C.M.A.No.2196 of 2017:

M/s. United India Insurance Co.Ltd
1170, Mettur Road, Muthaiah Complex,
11 Floor, Erode - 638 011
Erode Taluk & District.

.. Appellant/2nd Respondent

Versus

1.Alamelu
2.Chitra
3.Kaveriammal
4.Kandasamy
5.S.Rajendran

...1 to 4 Respondents/Petitioners
..5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.04.2012 made in M.C.O.P.No.75 of 2007 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankari.

For Appellant : Mr.S.Arun Kumar

For R1 to R4 : Mr.C.Kulanthaivel
Mr.L.Muthusamy

Cross Objection No.3 of 2018:

1.Alamelu
2.Chitra
3.Kaveriammal
4.Kandasamy

..Cross Appellants/
Respondents 1 to 4

Versus



1. United India Insurance Company Limited
1170, Mettur Road, Muthaiah Complex,
11 Floor, Erode Taluk & District- 638 011

..1st Respondent/Appellant

WEB COPY

2. S. Rajendran

..2nd Respondent/5th Respondent

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 25.04.2018 made in M.C.O.P.No.75 of 2007 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Sankari.

For Cross Objectors : Mr.C.Kulanthaivel
Mr.L.Muthusamy

For Respondent : Mr.S.Arunkumar

COMMON JUDGMENT

The respondents in CMA No. 2196 of 2017, as claimants, filed M.C.O.P.No.75 of 2007 before the Motor Accident Claims Tribunal, Subordinate Court, Sankari. They are the wife, daughter and parents of the deceased Thangavel, who died in a road accident that had taken place on 23.08.2006.

2. As per the claim petition, the deceased Thangavel was riding a two wheeler - TVS 50 Moped bearing Registration No.TN-36-E-4489 near Mettu Muniappan Kovil, in the Jalagandapuram-Idappadi road from Jalagandapuram to Poolampatti. At that time, the 1st respondent in the claim petition was riding the TVS XL Super Moped bearing Registration No. TN-33-L-9932 in the opposite direction. Both the deceased and the 1st respondent have colluded head on. In the impact, the deceased sustained grievous injuries. He was immediately taken to the Government Hospital, Jalagandapuram, from where he was shifted to Government Mohan Kumaramangalam Medical College Hospital, Salem. Subsequently, the deceased was shifted to Sri Gokulam Hospital, Salem for better treatment. In spite of treatment the deceased succumbed to the injuries on 25.08.2006, after two days of the accident. Therefore, for the death of the deceased, the claimants have filed the claim petition claiming a total sum of Rs.10,00,000/- as compensation.



3. According to the claimants, the deceased was 40 years old at the time of accident. He was an agriculturist and keeping a robust health. Had the deceased been alive, he would have taken care of the claimants both financially and morally. Due to the death of the deceased, the claimants have totally lost their source of livelihood. Therefore, they have filed the claim petition.

4. On notice the 2nd respondent/Insurance Company filed a counter statement denying the averments made in the claim petition. It was specifically stated that the deceased did not possess a driving licence besides he had consumed alcoholic drinks at the time of accident. It was further stated that when the deceased was hospitalized he vomited and the Doctor smelled alcohol. Therefore, it was contended that the deceased, as a whole, has contributed to the accident. It was further stated that the First Information Report in Crime No.139 of 2006 was registered only against the deceased and therefore, the Insurance Company cannot be directed to pay compensation to the claimants. It was also stated that the first respondent also did not possess a valid driving licence and therefore, there is a violation of conditions of policy committed by the first respondent. Accordingly, the Insurance Company prayed for dismissal of the claim petition.

5. Before the trial Court, on behalf of the claimants, the 1st claimant examined herself as P.W.1 and one eye-witness, who said to have witnessed the accident, was examined as P.W.2. On behalf of the Insurance Company, one Mr.Siva Subramaniam, retired Superintendent of Police and working as Investigation Officer with the Insurance Company was examined as R.W.1. Mr. Marimuthu, Administrative Officer of the Insurance Company was examined as R.W.2. Mr.Manickam, Sub-Inspector of Police was examined as R.W.3. The Tribunal considered the above oral and documentary evidence and concluded that R.W.1 has conducted investigation into the accident only on 17.07.2007 and submitted his report to the Insurance Company on 06.08.2007. When admittedly investigation was conducted after a year of accident, the deposition of R.W.1 or the report filed by him cannot be taken note of. Similarly, R.W.2 was examined only to state that the vehicle owned by the 1st respondent was insured with them. However, R.W.2 has stated that even the 1st respondent did not possess a valid driving licence at the time of accident and therefore there was a breach of policy condition. R.W.3 Manickam has only stated that he has registered the First Information Report and based on the statement recorded from the Doctor, who treated the deceased, has concluded that the deceased consumed



alcohol at the time of accident. It was further stated that the charge sheet was filed before the Jurisdictional Magistrate. However since the deceased died, the First Inspection Report as well as the charge sheet were closed. Taking note of the above depositions of R.W.1 to R.W.3, the Tribunal refused to take note of their deposition on the ground that R.W.1 conducted investigation one year after the accident. Similarly, R.W.2 has only stated about the validity of the insurance policy in the name of the 1st respondent. The Tribunal also noted that there was a head on collusion in which two vehicles colluded against each other in which the deceased died. Therefore, the Tribunal held that the 2nd respondent/Insurance Company is statutorily and vicariously liable to pay the compensation to the claimants.

6. As regards the quantum of compensation, even though it was claimed that the deceased was earning Rs.10,000/- per month, the Tribunal has taken only Rs.4,500/- as income per month, after giving 1/3 deduction, the Tribunal taken a sum of Rs.3,000/- per month as the actual income of the deceased. By applying multiplier '15' the Tribunal awarded a total sum of Rs.5,40,000/- as loss of income of the deceased. The Tribunal also awarded various other amounts and awarded a total sum of Rs.6,00,000/- as compensation. The compensation awarded by the Tribunal is tabulated below:

Loss of income	Rs.5,40,000/-
Consortium to wife	Rs. 25,000/-
Love & affection	Rs. 30,000/-
Funeral expenses	Rs. 5,000/-
Transportation	Rs. 5,000/-

	Rs.6,05,000/-
Rounded off to	Rs.6,00,000/-

7. Assailing the award passed by the Tribunal, the learned counsel for the appellant-Insurance Company would vehemently contend that the deceased had driven the vehicle under the influence of alcohol. The deceased did not possess a valid driving licence to drive the two wheeler. There was no contra evidence to prove that the deceased was in fact in possession of the driving licence. Even as per R.W.3 the Doctor who treated the deceased, he smelled alcohol when the deceased vomited. When that be so the Tribunal ought not to have awarded any amount as compensation payable by the Insurance Company to the claimants. Further, the 1st respondent owner of the other two wheeler also did not possess a valid driving licence to drive the two wheeler. Thus, there is a violation of conditions of policy. Therefore



also the learned counsel for the appellant prayed for setting aside the award passed by the Tribunal.

8. On notice the respondents in CMA No. 2196 of 2017, have filed Cross Objection No.3 of 2018 seeking enhancement of compensation. According to the Cross Objectors/claimants, for the death of the deceased who was aged 40 years at the time of accident, the amount of Rs.6,00,000/- awarded by the Tribunal is very meagre and it is not proportionate to the earnings of the deceased. Even though it was claimed on behalf of the respondents that the deceased had driven the two wheeler under the influence of alcohol, there is no material records forthcoming to substantiate the same except the ipsi-dixit of R.W.3 who merely stated that the Doctor, whom he examined, has stated that he had smelled alcohol when the deceased vomited. In the absence of any credible evidence to show that the deceased was under the influence of alcohol at the time of accident, the defense raised by the Insurance Company cannot be countenanced. It was further stated that the deceased died leaving behind his wife, minor daughter and parents as dependents while so, the Tribunal ought to have taken atleast a sum of Rs.10,000/- as the monthly income of the deceased to award a reasonable amount as compensation. The learned counsel for the respondents/claimants therefore prayed for enhancing the compensation awarded by the Tribunal proportionately by allowing the Cross Objection.

9. Heard the learned counsel for the appellant as well as the learned counsel for the respondents and perused the materials available on record.

10. Admittedly, this is a case where two vehicles colluded head on Due to the injuries sustained in the accident, the deceased died two days after the accident. Even though, it was claimed on behalf of the Insurance Company that the deceased had driven the vehicle at the time of accident under the influence of alcohol, there is no evidence produced to substantiate the same, except the deposition of R.W.3-Sub-Inspector of Police. According to R.W.3, when he went to the hospital and recorded the statement of Doctor, he was informed by the Doctor that he smelled alcohol when the deceased vomited. Except this statement of R.W.3 there is nothing to suggest that the deceased had driven the two wheeler in an inebriated condition. Further, RW3 did not obtain any medical record from the Doctor to bringforth the fact that the deceased was under the influence of alcohol at the time of the accident. Therefore, the Tribunal did not accept the evidence on the side of the respondents and rejected it, which, in the opinion of this Court,



is legally sustainable.

11. As regards the quantum, it is vehemently contended by the appellant/Insurance Company that when there is head on collusion between two vehicles atleast the Tribunal ought to have directed 50% of contributory negligence on the part of the deceased. This submission of the learned counsel for the appellant has considerable force. It is well settled that when two vehicles colluded head on, then the Court cannot venture to find out as to which vehicle has contributed more than the other. In such circumstances, it is appropriate for the Court to fix 50% negligence on the part of the both the vehicles. In this context, the Division Bench of this Court in the Judgment dated 05.11.2020 passed in CMA Nos. 3776 and 3778 of 2019 in the case of Shriram General Insurance Company Limited, Villupuram vs. Arumugam and others held in para No.11 that "since it was a head on collision, the contribution of both the vehicles cannot be mitigated". In this case also, as there was a head on collision between two vehicles, this Court is of the view that the negligence on the part of both the vehicles has to be fixed in the ratio of 50 : 50. Accordingly, following the aforesaid decision of the Division Bench of this Court, the contributory negligence of the deceased is fixed at 50%.

12. As regards the quantum of compensation, admittedly, the claimants did not produce any evidence to show the income of the deceased. It was merely stated that the deceased was earning Rs.10,000/- per month as an agriculturist. In such circumstances, the Tribunal has taken a sum of Rs.4,500/- per month towards notional income of the deceased and awarded a sum of Rs.6,00,000/-. This in the view of this Court is improbable and not in consonance with the age and number of dependents left by the deceased. If the number of dependents left by the deceased is noted this Court can presume that the deceased can atleast contributed a sum of Rs.6,000/- per month to his family after all his personal expenses. Therefore, this Court hereby awarded a sum of Rs.6,000/- as notional income of the deceased. If one forth of this amount is deducted towards personal expenses, a sum of Rs.4,500/- per month can be fixed as notional income of the deceased and thus, the loss of income is arrived at (Rs.4,500/- X 12 X 15) Rs.8,10,000/-.

13. For consortium to wife, the Tribunal fixed a sum of Rs.25,000/- which is contrary to the decision of the Honourable Supreme Court in the off-quoted decision in Pranay Sethi's case. Therefore, the consortium to wife is hereby increased to Rs.40,000/-



14. Similarly, for loss of love and affection, the Tribunal has awarded a sum of Rs.30,000/- to four claimants, which is very low. Having regard to the cumulative facts and circumstances of the case, this Court hereby awards a sum of Rs.30,000/- each and a total sum of Rs.1,20,000/- is hereby awarded towards loss of love and affection.

15. Similarly, for funeral expenses and transportation, the Tribunal awarded a sum of Rs.5,000/- which requires enhancement. Accordingly, a sum of Rs.15,000/- under each is head is granted.

16. For Loss of estate, the Tribunal ought to have awarded some amount taking into account the fact that the deceased had left the claimants at a crucial stage in their life, when he was 40 years old at the time of his death. Therefore, a sum of Rs.15,000/- is hereby awarded towards loss of estate.

17. The Tribunal awarded Rs.14,750/- towards medical expenses, which are based on medical bills. Therefore, the amount of Rs.14,750/- is hereby confirmed.

18. Admittedly, the deceased died two days after the accident. The deceased was aged 40 years at the time of his death. The pain and suffering which he would have undergone would be enormous prior to his death. Therefore, even though this is the case of death, taking note of the above facts this Court hereby award a sum of Rs.50,000/- towards pain and sufferings. Thus, the compensation awarded by the Tribunal is modified as follows:

Loss of income	Rs.8,10,000.00
Consortium to wife	Rs. 40,000.00
Loss of love and affection	Rs.1,20,000.00
Funeral expenses	Rs. 15,000.00
Transportation	Rs. 15,000.00
Pain and suffering	Rs. 50,000.00
Loss of Estate	Rs. 15,000.00
Medical expenses as per Ex.P4	Rs. 14,750.00

	Rs.10,79,750.00
Rounded off to	Rs.10,79,800.00

19. As the contributory negligence of the deceased is fixed at 50%, the claimants, in effect, are entitled to a total sum of Rs.5,39,900/- as against the sum of Rs.6,00,000/- awarded by the Tribunal.



20. In the result, the Civil Miscellaneous Appeal filed by the appellant is partly allowed. The Cross Objection filed by the claimants are dismissed. No costs. The Insurance Company is directed to deposit the sum of Rs.5,39,900/- as determined in this appeal to the credit of M.C.O.P.No.75 of 2007 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankari, with accrued interest within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/respondents 1 to 4 are entitled to withdraw the same. The wife/first claimant is entitled to withdraw 40% of the compensation amount, the daughter is entitled to 30% and the parents each are entitled to 15% each of the total compensation amount with accrued interest.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

gbi

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal, Sankari.

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.65376

C.M.A.No.2196 of 2017

SRA(CO)
CB(01/03/2022)