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C.M.A.(MD) No.315 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A(MD)No.315 of 2021

and

C.M.P(MD)No.2620 of 2021

M/s.The New India Assurance Company Ltd.
Rep.by its Branch Manager,
Having Branch Office at 43-A/2,
Promenade Road,
Cantonment
Trichy - 620 001.

... Appellant / Respondent No.2

Vs.

1.Krishnamoorthy
2.Chikkammal
3.Minor Prathiba

... Respondents 1 to 3 /
Petitioners 1 to 3

4.S.Thangan ... 4th Respondent / 1st Respondent
*(R3 Minor is represented through
her Father and next friend R1)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Award made in M.C.O.P.No.739 of 2015, dated 09.06.2020, on the file of the Motor Accidents Claims Tribunal, Special District Judge, Tiruchirappalli.

For Appellant : Mr.D.Sivaraman

For Respondents : N.Sudhagar Nagaraj

JUDGMENT

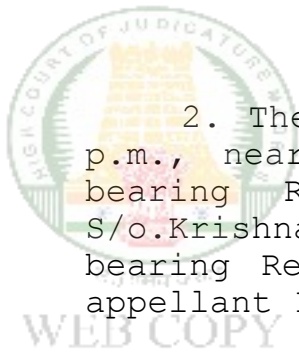
S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

The appeal is filed by the Insurance Company being aggrieved by the Award of the Motor Accidents Claims Tribunal, passed in favour of the claimants both on quantum as well as negligence.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The facts of the case is that on 17.11.2014, at about 3.45 p.m., near Kunnumedu, Edumalai Road, Thirupattur, the motorcycle bearing Registration No.TN-48-2-7822, driven by one Sathish S/o.Krishnamoorthy, met with an accident by dashing against a Car, bearing Registration No.TN-48-V-5109, which was insured under the appellant Insurance Company.

3. A claim petition was filed seeking compensation of Rs.36,00,000/- by the parents and the minor sister of the deceased Sathish, who succumbed to the injuries on 22.11.2014. In the claim petition it was pleaded by the claimants that at the time of accident, the deceased was earning a sum of Rs.15,000/- per month, as Trailer Operator, in M/s.Namakkal Transport Career Pvt.Ltd., Chennai and the accident occurred due to rash and negligent driving of the car, bearing Registration No.TN-48-V-5109, which was coming from the opposite direction that is from west to east.

4. The claim petition was contested by the Insurance Company, denying the negligence on the part of the driver of the car, which was insured with their Company. Contrarily, it is the case of the Insurance Company that the deceased was riding the two wheeler in a drunken state with hectic speed. He was driving his vehicle in a zigzag manner losing the control and dashed the Maruthi Car, bearing Registration No.TN-48-V-5109. Therefore, the claimants, who are dependents of the deceased, cannot have the advantage of getting compensation for the wrong done by the deceased, who is the tortfeasor. It is pleaded by the Insurance Company that Siruganur Police, soon after the accident, alleging that the deceased Sathish was riding the two wheeler in a rash and negligent driving manner, registered the First Information Report against him in Crime NO.353 of 2014, under Sections 279 and 337 IPC. However, the case got abated, since the two wheeler rider Sathish died subsequently.

5. Further, on the quantum of claim, it was contended by the Insurance Company that the claimants have no proof for the income of the deceased at Rs.15,000/- per month and therefore, the claim of Rs.36,00,000/- for the death of 23 years old bachelor is untenable.

6. Before the Tribunal, the claimants relied upon 9 documents, as Exs.P1 to P9, examined 3 witnesses, as P.W.1 to P.W.3. On behalf of the respondent Insurance Company 2 witnesses were examined as R.W.1 and R.W.2 and one exhibit was marked as Ex.R1. The attested copy of the Accident Register for the deceased Sathish was called for and marked as Ex.X1.

7. The Tribunal taking note of the driving licence in the name of the deceased and his SSLC qualification, fixed his monthly income notionally at Rs.8000/., applying the principle laid down by the Hon'ble Supreme Court in **National Insurance Company Ltd., Vs. Pranay Sethi and Others** reported in (2017 MACD 137), after adding 40%



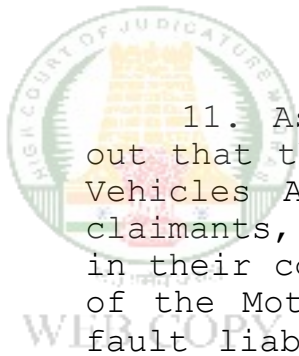
towards the future prospects and deducting 1/3rd for his personal expenditure, fixed Rs.16,12,872/- for loss of dependency. In Addition, for loss of consortium, a sum of Rs.1,20,000/- was awarded. In Addition an another Rs.1,00,000/- under the head love and affection was awarded.

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8. In this appeal, the counsel for the appellant raised a pointed ground in respect of negligence that the Tribunal has failed to take note of the fact that the Accident Register marked as Ex.X1 indicates that the patient was unconscious, smell of Alcohol in his breath and the rough sketch, which form part of Ex.R1, shows that the rider of the two wheeler, while riding on the wrong side, had hit the Maruthi Car. When the deceased is the tortfeasor, his dependents cannot take advantage and seek compensation. That apart, regarding quantum, the learned counsel for the appellant would submit that the notional income of Rs.8000/- itself is without any basis, since except the driving licence Ex.P9, which is only for LMV and not for operating Trailer, as alleged by the claimants, the notional income ought to have been Rs.6000/- per month. Also the learned counsel would submit that it is well settled principle of law that while determining the loss of dependency, if the deceased is a bachelor, 50% of his income should be deducted for his personal expenditure, whereas in this case, the Tribunal has deducted only 1/3rd, which is on the face erroneous.

9. Per contra, the learned counsel appearing for the respondents / claimants would submit that the rough sketch prepared by the Police is not a conclusive proof for negligence. Further, the FIR was registered while the deceased was taken to the hospital in an unconscious stage and died in Coma after few days of the accident. Since the first respondent in the claim petition, who is the owner of the Maruthi Car, being an influential person, the FIR was registered against the deceased after a day of the accident. The criminal prosecution or complaint will have no bearing on the claim petition filed under the Motor Vehicles Act, 1988, therefore would submit that the Award of the Tribunal has to be confirmed.

10. On considering the rival submissions made on behalf of the respective parties and on perusing the record, this Court finds that fixation of notional income of Rs.8000/- for a boy, aged about 22 years, holding LMV licence is not excessive, since the accident is of the year 2014. However, on considering the other material facts before us like the Case Diary in Crime No.353 of 2014 registered in respect of the said road accident by the Siruganur Police, marked as Ex.R1, and the Accident Register Ex.X1, we find that the accident has took place due to the negligence of the deceased, who was under intoxication while driving the two wheeler, went other side of the road losing balance and hit the Maruthi Car insured under the appellant.



11. As the learned counsel for the appellant rightly pointed out that the claim petition is filed under Section 166 of the Motor Vehicles Act, therefore, the negligence has to be proved by the claimants, when it is specifically denied by the Insurance Company in their counter. Unlike the petition is filed under Section 163(a) of the Motor Vehicles Act., or under Section 140 of M.V.Act., no fault liability, it is the burden of the claimant to *prima facie* prove that the negligence was on the part of the offending vehicle.

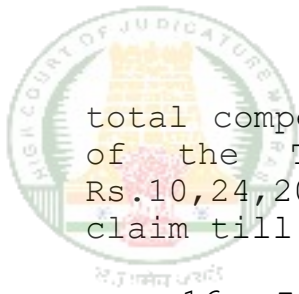
12. This Court has no difficulty in agreeing with the said legal principle, but however, in the present case, except the accident register and the case diary, which gives an inference about the contributory negligence on the part of the deceased, we are unable to accept the plea of the counsel representing the appellant that the accident was entirely due to the negligence of the deceased. Therefore, this Court is of the view that certain percentage for contribution can be deducted, but the claimants cannot be totally deprived just because the deceased had driven the vehicle on the wrong side of the road, under influence of alcohol.

13. Apart from the error in fixing negligence, this Court also find that the Tribunal had erred in deducting only 1/3rd of the income instead of 50% towards personal expenditures of the deceased bachelor. Also we find, awarding Rs.1,20,000/- towards the loss of consortium for the parents and sister, the Tribunal has also awarded a sum of Rs.1,00,000/-, which is nothing but duplication for the loss of consortium.

14. Therefore, for the above said reasons, the Award of the Tribunal requires interference and modifications. Accordingly, the same is modified as below:-

S.No.	Description	Amount Awarded by Tribunal	Amount Awarded by this Court	Award status
1	Loss of Income	16,12,872	12,09,600	Reduced
2	Loss of Consortium to claimants 1 to 3	1,20,000	1,20,000	Confirmed
3	Love and Affection	1,00,000	-	Not Granted
4	Loss of Estate	15,000	15,000	Confirmed
4	Funeral Expenses	15,000	15,000	Confirmed
5	Transportation Expenses	6,000	6,000	Confirmed
	TOTAL	18,68,872	13,65,600	

15. Since there is contributory negligence on the part of the deceased for the accident, 25% of the Award amount is to be deducted from the total compensation and after deducting 25%, the



total compensation is arrived at Rs.10,24,200/-. Thus, the Award of the Tribunal is modified and restricted to a sum of Rs.10,24,200/- payable with interest at 7.5% p.a., from the date of claim till the date of realization.

16. In the result, the Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal is reduced to Rs.10,24,200/- from Rs.18,68,872/-. The appellant Insurance Company is directed to deposit the Award amount, now fixed by this Court, less the amount already deposited, if any, with interest at 7.5% p.a., from the date of claim petition till the date of deposit, in M.C.O.P.No.739 of 2015, on the file of the Motor Accident Claims Tribunal, Special District Judge, Tiruchirappalli, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit is being made, the claimants are permitted to withdraw their share in the award amount together with proportionate accrued interest and costs, in equal apportionment, by filing necessary application before the Tribunal. If the entire Award amount is already deposited, the appellant Insurance Company is permitted to withdraw the excess award amount with accrued interest. No order as to costs in the appeal. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

MPK

To

- 1.The Special District Judge,
Motor Accidents Claims Tribunal,
Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-37891[F] dated 09/12/2021)

C.M.A.(MD) No.315 of 2021

08.12.2021

RK(05/01/2022) 5P/5C