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C.M.A(MD) No.156 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2021

Delivered on : 18.08.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.M.A(MD) No.156 of 2014

and

Cross Obj.(MD)No.13 of 2014

and

M.P.(MD)No.1 of 2014 in C.M.A(MD) No.156 of 2014

C.M.A(MD) No.156 of 2014

United India Insurance Company Limited,
Marthandam Branch,
Vilavancode Taluk,
Kanyakumari District.

Vs.

... Appellant /3rd Respondent

1.Rajammal
2.Preesha

... 1st & 2nd Respondents /
Petitioners

3.Subramaniyan @ Subramaniya Pillai
4.Abase

... 3rd & 4th Respondents /
1st & 2nd Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accidents Claims Tribunal, Sub Court, Kuzhithurai, made in M.C.O.P.No.94 of 2010, dated 01.10.2013 and allow the appeal.

For Appellant	: Mr.S.Royce Emmanuel
For R1 and R2	: Mr.K.N.Thampi
For R3 and R4	: No appearance

Cross Obj.(MD)No.13 of 2014

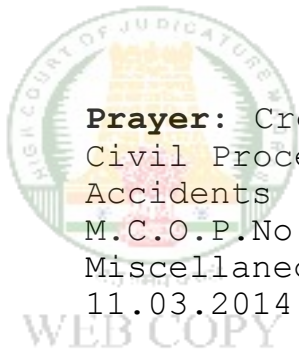
1.Rajammal
2.Preesha

.. Cross Objectors /(claimants)
1st &2nd Respondents

Vs.

1.United India Insurance Company Limited,
Marthandam Branch,
Vilavancode Taluk, Kanyakumari District.
2.Subramaniyan @ Subramaniya Pillai
3.Abase

...Respondents/Appellants and
3rd & 4th Respondents



Prayer: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, against the judgment and decree passed by the Motor Accidents Claims Tribunal, Sub Court, Kuzhithurai, made in M.C.O.P.No.94 of 2010, dated 01.10.2013, whereas notice of the Civil Miscellaneous Appeal was served on the cross objectors on 11.03.2014.

For Cross Objectors : Mr.K.N.Thampi
For R1 : Mr.S.Royce Emmanuel
For R2 and R3 : No appearance

COMMON JUDGMENT

This Civil Miscellaneous Appeal as well as the Cross objections are filed against the order, passed in M.C.O.P.No.94 of 2010, dated 01.10.2013, on the file of the Motor Accidents Claims Tribunal, Sub Court, Kuzhithurai.

2.The appellant herein is the third respondent and the respondents 1 and 2 are the claimants and the respondents 3 and 4 are the first and second respondents in the main M.C.O.P petition.

3.Brief substance of the petition in M.C.O.P.No.94 of 2010, is as follows:-

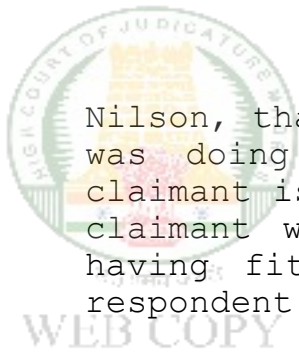
On 08.05.2009, at about 5.00 pm., when the deceased was riding his motor cycle, bearing Registration No.TN-74-X-1212 in a moderate speed observing all the road rules, the first respondent drove a Mahindra Maxi Cab bearing Registration No.TN-74-B-0079 in a rash and negligent manner and dashed against the Motor cycle. Due to that impact, the deceased sustained injuries and he was admitted in Isacc Hospital. After taking first aid, he was taken to Tiruvandram Medical College Hospital and he died. The deceased was doing Engineering in C.S.I. Engineering College. He was the only male heir in the family, already the father of the deceased died and the claimants lost their whole livelihood. The claimants claimed a sum of Rs.20,00,000/- as compensation.

4.Brief substance of the counter of the first respondent, in M.C.O.P.No.94 of 2010, is as follows:

The owner and Insurance Company of the Motor Cycle are necessary parties to the petition. The petition is bad for non-joinder of necessary parties. The first respondent drove the van in a moderate speed, observing the road rules. But, it was the deceased, who drove the motor cycle in a rash and negligent manner and he dashed against the Van. The first respondent vehicle was having valid driving licence and the van was having valid permit and the van was insured with the third respondent.

5.Brief substance of the counter filed by the third respondent, in M.C.O.P.No.94 of 2010, is as follows:

The vehicle of the deceased belong to one George Shagaya



Nilson, that vehicle was not insured. It is denied that the deceased was doing Engineering at the time of accident and the second claimant is not depending on the income of the deceased. The second claimant was maintained by the first claimant. The van was not having fitness certificate at the time of accident. The third respondent is not liable to pay compensation.

6. One witness was examined and Sixteen documents were marked as on the side of the petitioners. One witness was examined and no document was marked on the side of the respondents.

7. The Tribunal after hearing both sides, awarded a sum of Rs.9,36,000/- as compensation to the claimants. Against the award, the appellant filed this Civil Miscellaneous Appeal and the Claimants filed a Cross Objection in Cross Objection (MD)No.13 of 2014.

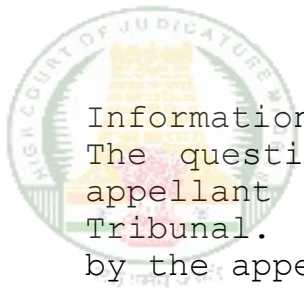
8. On the side of the appellant, it is stated that the accident was caused only by the negligence of the deceased. Fixing negligence only on the part of the appellant is wrong. The owner and the Insurance Company of the motor cycle was not impleaded and the Tribunal failed to consider that the claimant examined no eye witness. The compensation fixed by the Tribunal is excessive and the salary fixed by the Tribunal is wrong. 50% has to be deducted. Fixing the multiplier is also wrong. The deceased was not wearing helmet and 50% contribution negligence has to be fixed.

9. A judgment of this Court in CM.A.(MD)No.1777 of 2017, dated 11.04.2018, is cited, wherein, it is stated as follows:-

6. Though the parking of lorry without parking lights is one of the main reason, at the same time, the rider of the two wheeler should have been careful enough to ride the vehicle safely, that too in the mid day. Without noting the parked vehicle, the rider of the two wheeler dashed against the same and invited the accident. Therefore, 50% negligence should also be attributed to the deceased. The Tribunal only fixed 25% negligence on the part of the rider, since he was not wearing the Helmet. However, the said finding is erroneous as the rider of the two wheeler was wearing Helmet as proved by P.W.2/eye witness.

7. Therefore based on Ex.P1/F.I.R. and the evidence of P.W,2/ eye witness, this Court comes to the conclusion that the driver of the lorry as well as the deceased are equally responsible and also contributed negligence equally for the accident. Therefore 50-50 negligence is fixed both on the driver of the lorry as well as the deceased two wheeler rider.

10. On the side of the respondents, it is stated that the deceased was aged about 22 years at the time of accident. The First



Information Report was registered against the driver of the Van. The question as to the wearing of helmet was not raised by the appellant in the counter or at the time of trial before the Tribunal. Even in the grounds of appeal, no such ground was taken by the appellant.

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11.It is further stated that there was no decision made in the citations produced by the appellant regarding the wearing of helmet. Even from the judgment cited by the appellant, it is stated that no negligence was attached to the deceased for non-wearing of helmet. In that case, the deceased dashed against the lorry from behind and hence 50% contributory negligence was fixed and that citation is not applicable to the facts of the present case.

12.The appellant has not raised this point either in the counter or in the grounds of appeal. The appellant has not produced any documents to show that the deceased was not wearing helmet at the time of accident. For the said reasons, this contention raised by the appellant at the time of argument is not maintainable.

13.On the side of the respondents, it is stated that the deceased was an Engineering student and Ex.P14 was filed to prove the same. The father of the deceased worked as a driver in TNSTC and he died during his service and the deceased has given an application for a job on compassionate ground. After completion of his Education, the deceased might have joined the job and there was a possibility for the deceased to have earned more than Rs.20,000/- per month. Ex.P16 reveals the same. But, the Tribunal has wrongly fixed the notional income as Rs.6,000/- per month and prayed the same to be enhanced.

14.On the side of the respondents, it is stated that the age of the deceased is only 22 years and multiplier '18' has to be taken into consideration. But, the Tribunal has applied only multiplier '17'. It is stated the Tribunal failed to consider the future prospects and prayed 40% to be fixed towards future prospects. In this regard, the learned counsel for the respondents would rely upon the following judgments of the Hon'ble Supreme Court:-

1.2019 (20) SCC 688 [Sunita Tokas and another Vs. New India Insurance Company Limited]

2.2020 (7) SCC 256 [Rajendra Singh and other Vs. National Insurance Company Limited and others],

3.2020 (4) SCC 413 [Kajal Vs. Jagdish Chand and others].

15.Ex.P1 and Ex.P4, F.I.R and Charge sheet were filed against the driver of the Van. Exs.P2, P3 and P5 reveals the mode of accident and vehicle involved in the accident. No record was filed on the side of the respondent. In the above circumstances, the Tribunal is correct in deciding that the Van driver is responsible for the accident. The judgment cited by the appellant is not



applicable to the facts of the present case. Hence, it is decided that the accident took place only due to the rash and negligent driving of the Van driver.

16. Copy of the permit is marked as Ex.P8, driving licence of the driver was marked as Ex.P9. Driving license of the deceased was marked as Ex.P10. Insurance copy was marked as Ex.P7. There was no policy violation and the policy was in force and hence, the appellant is liable to pay compensation.

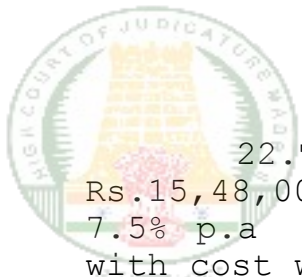
17. On the side of the appellant, it is stated that the deceased is only a student and fixing notional income for a student is wrong. On the side of the respondents, it is stated that the deceased was an Engineering student and there was a chance for getting an appointment on compassionate ground and he is capable of earning Rs.20,000/- per month.

18. A perusal of Ex.P13 to Ex.P15 reveals that the deceased was doing Engineering at the time of accident. A perusal of Ex.P16 reveals that he has given application for a job in TNSCT on compassionate ground. In the above circumstances, without considering all these facts, the Tribunal has fixed only Rs.6,000/- per month as notional income, which is wrong. Hence, the income of the deceased is hereby fixed at Rs.7,500/-.

19. From Ex.P6 and Ex.P10, it is clear that his date of birth is 04.11.1987 and the deceased was aged about 22 years at the time of accident. Multiplier '17' fixed by the Tribunal is correct. As per the judgments of the Hon'ble Supreme Court, reported in **2019 (20) SCC 688 [Sunita Tokas and another Vs. New India Insurance Company Limited]** and **2020 (7) SCC 256 [Rajendra Singh and other Vs. National Insurance Company Limited and others]**, the claimant being a student, 40% of future prospects has to be added. After including the future prospects, the salary has to be calculated as Rs.10,500/- per month.

20. On the side of the appellant, it is stated that 50% of income has to be deducted for the own expenses of the deceased. As per the Sarla Verma case, two persons are depending on the deceased and hence, deducting 1/3rd towards the own expenses of the deceased is correct. After deducting 1/3rd, the earnings comes to 7,000/- per month. Hence, by applying multiplier '17', it is decided that the loss of income is Rs.14,28,000/- [Rs.7,000*12*17= Rs.14,28,000/-]. The compensation fixed by the Tribunal under other heads Tribunal is confirmed.

21. Hence, this Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed and the award is enhanced from Rs.9,36,000/- to Rs.15,48,000/-. Consequently, connected M.P. is closed.



22.The appellant / Insurance Company is directed to deposit Rs.15,48,000/- as compensation along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, after deducting amount, if any, already received by them. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

Ls

To

1.The Sub Court,
Motor Accidents Claims Tribunal,
Kuzhithurai.

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.N.THAMBI, Advocate (SR-26798[F] dated 19/08/2021)

C.M.A(MD) No.156 of 2014

and

Cross Obj.(MD)No.13 of 2014

18.08.2021

RK (22.09.2021) 6P 5C