



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2020

Pronounced On : 24.02.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.567 of 2016

and

C.M.P. (MD)No.6631 of 2016

United India Assurance Company Limited.,
through its Branch Manager,
No.7-A, West Veli Street,
Madurai District.

... Appellant / 2nd
Respondent

Vs.

1.K.Krishnaveni
2.R.Karuppaiah (died)
3.K.Selvakumar : Respondents1 to 3/Petitioners1 to 3
4.C.Kulasekarapandain : 4th Respondent/ 1st Respondent

(Respondent No: 4 given up)

(Respondent No.2 was reported to dead on 19.04.2017)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Motor Accident Claims Tribunal cum VI Additional District Court, Madurai made in M.C.O.P.No.1115 of 2005, dated 11.03.2015 and allow the appeal.

For Appellant : Mr.C.Jawahar Ravindran
For Respondents : Mr.N.Sudhagar Nagaraj,
for R1 to R3

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, challenging the order of the Motor Accident Claims Tribunal cum VI Additional District Court, Madurai made in M.C.O.P.No.1115 of 2005, dated 11.03.2015 .

2.The Appellant/insurer, who was made liable to pay compensation of Rs.9,55,082.51/- with interest at 7.5% per annum to the claimants, the legal heirs of the deceased Saravanakumar, who died in an accident occurred on 01.04.2004, challenged the liability



mulcted on it and also the quantum awarded at by the Tribunal.

3.The case of the claimants is that on 01.04.2004 at about 01.00 pm, when the deceased Saravanakumar was travelling in a two wheeler Hero Honda bearing Registration No.TN 67 X 5761 as a pillion rider from Rajapalayam to Sivakasi Main Road and at the place nearby S bend of Rajapalayam, the rider of the two wheeler drove the vehicle in a rash and negligent manner and dashed against the parapet wall of the bridge, that all of them fell down in the 15 feet pit, that the pillion rider Saravanakumar has sustained serious injuries and later succumbed to the injures at the hospital, that the accident was occurred only due to the rash and negligent driving of the two wheeler rider and that therefore, a case has been registered against him in Crime No.240 of 2004 of Rajapalayam Police Station under Section 279, 377, 398 and 304 IPC and the criminal case is pending on the file of the Court of Judicial Magistrate, Rajapalayam.

4.It is their further case that the deceased Saravanakumar was aged 20 years at the time of accident, that he was studying second year B.SC in Ayyanar Nadar College, Sivakasi at that time, that they have lost their main member of the family and that since the two wheeler was owned by the second respondent/first respondent and the same was insured with the Appellant, both are jointly and severally liable for the claim.

5.The defence of the Appellant/Insurer is that the Insurance Policy does not cover the risk of pillion rider and no additional premium has been paid to cover the risk of the pillion rider, that the rider of the two wheeler has no effective driving license on the date of accident, that totally four persons have travelled in the two wheeler at the time of accident and the accident was occurred only due to the negligence of the pillion rider of the two wheeler and that therefore, the insurer is not liable for the claim.

6.During enquiry before the tribunal, the claimants have examined the second claimant Karupppiah and one Raj kumar alleged to be the occurrence witness as P.W.1 and P.W.2 respectively and exhibited nine documents as Ex.P.1 to Ex.P.9. The second respondent/first respondent owner of the two wheeler had remained ex-parte. On the side of the Appellant/insurer, they have examined their Executive Officer, Arumugam as R.W.1 and exhibited the copy of the Insurance Policy as Ex.R.1.

7.Though the claimants have filed their claim petition under Section 166 as well as under section 163(A) of Motor Vehicles Act, they have chosen to participate in the enquiry as if the petition is filed under Section 166 of Motor Vehicles Act and the trial Court has also proceeded as if the petition is filed under Section 166 of the Motor Vehicles Act.



8.The tribunal upon considering the evidence, both oral and documentary, has passed the impugned award, dated 11.03.2015, holding that the two wheeler rider was responsible for the accident and directing the Appellant/insurer to pay the award to the claimants and then to recover the same from the owner of the offending vehicle. Aggrieved by the said award, the insurer has filed the appeal, now under challenge.

9.Though the appellant/Insurer has taken a plea in the counter statement as well as in the appeal memorandum that there was no insurance coverage for the pillion riders and as such, insurer is not liable for the claim, the same was not pressed into service. Moreover, the learned counsel for the appellant would submit that the appellant is not questioning the findings of the Tribunal regarding the driving license, pay and recovery order and that the appellant restricts the grounds in respect of contributory negligence and quantum.

10.The points for considerations are:

(1) Whether the Tribunal erred in not deciding that the deceased had contributed to the accident and would be liable for the contributory negligence, when admittedly four persons had travelled in the two wheeler at the time of accident?

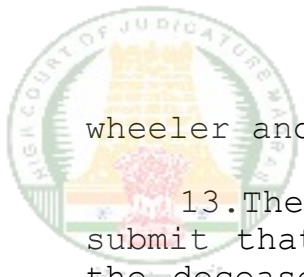
(2) Whether the Tribunal erred in deducting the 1/3 of the income towards personal expenses of the deceased instead of 50% of the income as declared by the Hon'ble Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104.**?

(3) Whether the quantum of the compensation awarded at by the Tribunal is just and is in accordance with law?

Point No.1:

11.At the out set, It is pertinent to note that the Appellant/Insurer has not challenged the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the two wheeler rider and it is their further case that the travelling of the three pillion riders in a motorcycle was also the reason for the accident. Admittedly the two wheeler was owned by the fourth respondent/first respondent and that the two wheeler was driven by one Vairaprakasam, and that three persons including the deceased Saravanakumar had travelled in that two wheeler as pillion riders at the time of accident. It is the admitted case of the claimants that the two wheeler rider had driven the vehicle in a rash and negligent manner, without observing the traffic rules, dashed against the parapet wall of the bridge and that all the four fell down into the 15 feet pit.

12.The learned counsel for the Appellant would strongly contend that four persons including the rider have travelled in the two



wheeler and caused the accident.

13.The learned counsel for the respondents/claimants would submit that the question of contributory negligence on the part of the deceased does not arise at all and relied on a decision of our Hon'ble Supreme Court in **Mohammed Siddique and another Vs. National Insurance Company Limited and others**, reported in **2020(1) TN MAC 161 (SC)**. In the said case, the accident was occurred at 02.00.am and the motorcycle in which, the deceased was travelling, was hit by a Car from behind. The Hon'ble Apex Court has held that the fact that a person was a pillion rider on a motorcycle along with driver and one more person on pillion, may be a violation of the law, but such violation by itself, without anything more, cannot lead to a finding of Contributory Negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. In para No.14, the Hon' ble Apex Court has held as follows:

"14.Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of Contributory Negligence. Hence, the reduction of 10% towards Contributory Negligence, is clearly unjustified and the same has to be set aside."

14.The learned counsel for the Appellant has relied on the decision of this Court reported in **2012 (1) TN MAC 713 [Oriental Insurance Company Limited Vs. Sivakami and others.]**

In para No.10:

"10.In spite of warning of this Court earlier, deprecating the practice of the drivers of Two-wheelers carrying more number of passengers, unfortunately, as rightly pointed out, they do not care about their lives when they take the entire family in a Two-wheeler, which has to be deprecated and therefore, as rightly held by the Hon'ble Supreme Court, this Court only would say that by carrying extra person, the injured person definitely has contributed to the accident and 50% is liable to be borne by the injured person as he has violated Section 128 of the Motor Vehicles Act. Hence, this Court is of the view that contributory negligence can be fixed at 50%."

15.In a similar case, where four persons had travelled in a two wheeler, this Court in CMA (MD)No.358 of 2016, dated 04.02.2021, has observed as follows:

14.Generally, two wheeler popularly called as Motor bike or motorcycle is designed and is meant for travelling of two persons. If anyone takes more than 2 persons and violates two only rule, then he will be committing an offence and is punishable under Section 128 of the Motor Vehicles Act.



15. That is one aspect of the matter. Let us discuss the other aspect. Suppose if a two wheeler rider takes two grown-up persons or weighty and bulky persons or three grown-up persons in the pillion which is only meant for one person, what would be the effect or impact? Firstly, rider has to necessarily move forward towards petrol tank so as to give some place to those pillion riders which forces him to sit and ride in an unusual position and posture. Secondly if 2 or 3 persons are seated in the pillion, then they have to necessarily sit in a cramped or jam-packed position along with rider and the rider will definitely feel or suffer pressure behind, which in turn, will definitely affect or disturb his rhythm of driving and consequently balancing of the vehicle. Thirdly, if any one of 2 or 3 pillion riders makes any movement usual or unusual, that would make the rider to loose his control over the vehicle. In the above scenario, the movement of rider's legs and hands would get restricted and consequently he can't have full control over the vehicle.

16. Now coming to the technical side, there are many factors like weight, aerodynamics, gearing, etc. which contribute to determining a vehicle's top speed and acceleration. But Power and Torque are the most important factors, Power determines the vehicle's top speed and Torque helps the vehicle in its acceleration. In automobile industry, it is commonly said that higher the power of a vehicle, higher is its top speed and that better the torque of a vehicle, better is its acceleration. Various automobile manufacturers are releasing their two wheelers with different maximum power and maximum torque and with lot of facilities for easy and convenient riding and for safe and comfortable travelling, even for very long distances. But whatever be the power or torque and whatever be the facilities made, the two wheeler is only meant to take a rider and a pillion rider and not more than two at any cost. If the rider takes 2 or 3 persons in his vehicle, then he has to give more acceleration to increase the pulling capacity so as to take more weight. The efforts required from the rider to maintain the acceleration level would affect or divert his attention and concentration.

17. Despite the penal laws and awareness programmes conducted by the Governments and various NGOs, people have not changed. Every road user owes a duty of care and caution and is duty bound to drive their vehicles in such a way not to endanger themselves and more importantly not to endanger the pedestrians, cyclists, two wheelers and other vehicle users.

18. As per the statistics available for the past two



years excluding the Corona year of 2020, in 2018 India ranked 1st in the road accidents across 199 countries with total accidents at 4,67,044 in which two wheeler accidents accounted for 35.2%, the highest in all categories of vehicles. It is pertinent to note that in India, the state of TN stood 1st in the number of accidents. In 2019, total accidents occurred were 4,37,396 in which 38% of victims of road accidents were riders of two wheelers.

19.It is high time for all stakeholders to review our mind-set that in cases of road accidents involving big and small vehicles, fixing the driver of the big vehicle as tort-feasor, as in majority of cases FIRs came to be registered against the driver of the big vehicle and investigations are being carried out in such a way to make that driver is responsible for the accident. It is also high time for all who are dealing with motor accident claims to review our mentality in considering the plight of the injured victim or the legal heirs of the deceased victim sympathetically and awarding of compensation in the accidents occurred by violating the Laws and Rules.

20.No doubt, as already pointed out, taking more than 2 persons in a two wheeler, by itself is an offence but whether it would amount to negligence or not is required to be decided on the facts and circumstances of the given case. If a rider takes 2 persons as pillion riders, that itself would not amount to negligence. For example, if a rider takes his wife and a child or if he takes 2 small boys or lean persons, that by itself would not amount to negligence. But if the rider takes 2 or 3 grown-up persons or obese persons, that by itself would amount to negligent driving since the rider can lose his control of the vehicle at any point of time. In the case on hand, since four grown-up students had travelled in the two wheeler, I have no hesitation to hold that the rider and all the pillion riders are guilty of negligent riding / travelling.

16.In the case on hand, four college students have travelled in the two wheeler. As rightly contended by the Appellant side, the mode and the manner, in which the accident was occurred, would go to show that the rider as well as the pillion riders were not in control of the vehicle and as such, I have no hesitation to hold that the rider and all the pillion riders are guilty of negligent riding/travelling. Considering the above, this Court is of the view that the contributory negligence can be fixed at 25% on the part of the deceased and is fixed accordingly.

Point Nos.2 and 3:

17.Regarding the quantum, the learned counsel for the Appellant would contend that the Tribunal has deducted 1/3 of the income

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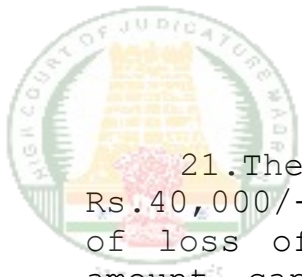


towards personal expenses of the deceased, that the Tribunal ought to have deducted 50% of the income towards personal expenses of the deceased, that the Tribunal has wrongly taken the age of the deceased for determining the multiplier, that the Tribunal has excessively awarded Rs.1 lakh towards loss of love and affection and that the compensation awarded is highly excessive. Admittedly, the deceased was a second year Engineering student and as such fixing of monthly salary at Rs.6,000/- by the Tribunal cannot be found fault with. It is pertinent to mention that the Tribunal has not added any amount towards future prospects. As per the decision of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, 40 % of the income is to be added toward future prospects.

18.Regarding deductions, the Tribunal has deducted 1/3 of the income towards personal expenses of the deceased. But as per legal dictum laid down by the Hon'ble Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, when the deceased is a bachelor, 50% of the income has to be deducted towards personal expenses of the deceased.

19.The Tribunal by taking into account age of the parents of the deceased had taken the multiplier 16, but the same is very much against to the dictum laid in **Sarla Varma's** case. Since the deceased was aged 19 years at the time of accident and as per the **Sarla Varma's** case, the applicable multiplier would be 18%.

20.The trial Court has awarded Rs.1 lakh towards loss of love and affection, Rs.25,000/- towards funeral expenses; Rs.5,000/- for transportation charges; Rs.500/- towards clothing and ornaments and Rs.56,582.51/- towards medical expenses. Our Hon'ble Supreme Court in **Pranay Sethi's** case has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, Hon'ble Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Hon'ble Apex Court in **The New India Assurance Company Ltd. Vs. Smt.Somwati and others**, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in **Pranay Sethi's** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.



21.The claimants 1 and 2 being the parents are entitled to get Rs.40,000/- towards loss of consortium. Since amount under the head of loss of consortium is awarded as per **Pranay Sethi's** case, no amount can be granted for loss of love and affection. If the compensation is calculated as above, the same would exceed the amount already awarded by the Tribunal. The respondents/claimants have neither challenged the quantum fixed by the tribunal nor advanced any arguments in this regard. Hence, this Court decides that the quantum of amount fixed by the Tribunal is liable to be sustained. Considering the other facts and circumstances of the case, this Court further decides that the parties are directed to bear their own costs and the above points are answered accordingly.

22.In the result, this Civil Miscellaneous Appeal is partly allowed, directing the claimants to bear 25% of the amount awarded by the Tribunal for contributory negligence. In case, if the Appellant/Insurer has already been deposited the entire amount, they are at liberty to withdraw the 25% of the amount with proportioned interest and the claimants are permitted to withdraw their share amounts with interest and costs on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

To

1.The Motor Accident Claims Tribunal cum
VI Additional District Court,
Thiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-7353[F] dated 25/02/2021)

C.M.A(MD)No.567 of 2016
24.02.2021

KK(14.07.2021) 8P 5C