BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2021

CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.1122 of 2017
and
C.M.P(MD)Nos.11415 of 2017 & 9616 of 2018

The Branch Manager,
I.C.I.C.I Lombard General Insurance Company,
Cuddalore. ... Appellant/2nd Respondent

Vs.

1.Karuthapandi

2.Valliammal ... Respondents 1 & 2/Claimants

3.C.Kalavathi ... 3rd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.77 of 2008 dated 29.02.2016, on the file of the Motor Accident Claims Tribunal(Sub Court), Kovilpatti.

For Appellant : Mr.K.K.Ramakrishnan

For RR 1 & 2 : Ms.Porkodi Karnan
for M/s.Polax Legal Solutions

JUDGMENT

(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA,J.)

Challenging the award, dated 29.02.2016, passed in M.C.O.P.No.77 of 2008, on the file of the Motor Accidents Claims Tribunal/ Sub-Court, Kovilpatti, the appellant/General Insurance Company has preferred this Civil Miscellaneous Appeal.

2.In the said M.C.O.P, the respondents 1 and 2/claimants are the parents of the deceased-Madasamy.

3.The brief facts relevant for the consideration of the above case are that the deceased-Madasamy was working as a Driver in Kashmir Baba Road Transport Company and on the fateful day on 08.02.2008, the deceased-Madasamy was driving the lorry bearing Registration No.TN-C-8193 to Chennai Harbour. While so, the deceased stopped his lorry on the Western side near Benny Plot and walked to pass on to the Northern side. At that time, a tipper lorry bearing Registration No.TN-28-L-3548, which was driven by its driver in a rash and negligent manner, insured with the appellant, dashed on the deceased. Due to the said impact, the deceased died on the spot due to the head injury. Hence the respondents 1 and 2/claimants, as legal heirs of the deceased, has filed this claim petition claiming a compensation of Rs.28,42,000/-.

4.Resisting the claim petition, the appellant-Insurance Company has filed a counter affidavit contending that as per the F.I.R., the deceased had abruptly crossed the road without noticing the on- coming lorry and as a result, the accident had taken place. If the deceased would have taken due care and diligence while crossing the main road, the accident would have been averted. The appellant-Insurance Company had also denied the age and income of the deceased stating that the deceased was aged about 19 years and he had obtained the driving licence when he was a minor and he has not earned a sum of Rs.10,000/- per month and the quantum of compensation as claimed by the claimants is highly excessive and without any basis.

5.Before the Tribunal, the father of the deceased, the first respondent herein was examined as P.W.1 and Exs.P1 to Ex.P.6 were marked. On the side of the appellant, no witness was examined and no document was marked.

6.The Tribunal, after considering the oral and documentary evidences, held that the accident had occurred due to the rash and negligent driving of the driver of the third respondent/first respondent and that the deceased died on the spot. The Tribunal further held that the appellant/Insurance Company is liable to pay compensation to the claimants and had awarded a total compensation of Rs.16,78,000/- under various heads.

7.The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal, without considering the manner of the accident, had erroneously fixed the liability on the appellant; that the Tribunal failed to see that there was no evidence adduced to establish that the accident had happened due to the negligence of the driver of the third respondent; that the Tribunal erroneously fixed the monthly income of the deceased at Rs.9,000/- and added 50% towards future prospects and calculated the monthly income at Rs.13,500/-; that the Tribunal erroneously further added Rs.4,500/- towards future prospects. The learned counsel would further submit that the quantum awarded by the Tribunal is on the higher side.

8.The further contention of the learned counsel for the appellant/Insurance Company is that the respondents 1 and 2 have to prove the negligence of the third respondent in causing the accident and has relied on the decisions of the Hon'ble Supreme Court in Minu B. Mehta v. Balkrishna Ramchandra Nayan & Anr., reported in ***(1977) 2 SCC 441; Oriental Insurance Company Limited Vs. Meena Variyal and others*** reported in ***[2007 (2) TN MAC 9 SC]*** and **Kamlesh and others Vs. Attar Singh and others** reported in **2015 (2) TN MAC 577 (SC)**.

(i) In ***Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*** reported in ***[(1977) 2 SCC 441]***, wherein, it has been held as follows:-

> *"22.The liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the Law of Tort. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent.*
>
> *.................*
>
> *28...........The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in a public place cannot justify fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a care in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the linch pin to recover compensation."*

(ii) In ***Oriental Insurance Company Limited Vs. Meena Variyal and others*** reported in ***[2007 (2) TN MAC 9 SC]***, wherein it has been held as follows:-

"9.Before we proceed to consider the main aspect arising for decision in this Appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would except the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed? As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. ...."

(iii) ***In Kamlesh and others Vs. Attar Singh and others*** reported in ***2015 (2) TN MAC 577 (SC)***, wherein it has been held as follows:-

"8. We have heard learned counsel for the parties

and perused, inter alia, the evidence on record of Ram Parshad PW2 and Devender PW.3. The method and manner in which the accident has taken place leaves no room for doubt that it was a case of composite negligence of drivers of both the vehicles, that is the driver of Maruti car and driver of tempo. Though Police has registered a case against driver of the tempo Attar Singh and has filed a chargesheet but the same cannot be said to be conclusive. Though, Attar Singh has stated that it was in order to oblige the driver of the Maruti car, a case was registered against him. Be that as it may. It appears both the drivers have tried to save their liability. In such circumstances, the version of eye-witnesses, PW.2 and PW.3 assumes significance. The fact remains that car had dashed the tempo on the middle portion near footstep. Thus the method and manner in which the accident has taken place leaves no room for doubt that both the drivers were negligent. Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. No effort has been made by the High Court to appreciate the evidence and method and manner in which the accident has taken place. Both the aforesaid witnesses have stated Maruti Car was in excessive speed. However, it appears driver of tempo also could not remove his vehicle from the way of Maruti Car. Thus, both the drivers were clearly negligent. It appears from the facts and circumstances that both the drivers were equally responsible for the accident. Thus, it was a case of composite negligence. Both the drivers were joint 'tort-feasors', thus, liable to make payment of compensation."

9.The learned counsel appearing for the respondents 1 and 2 would submit that the Tribunal had correctly awarded the compensation under various heads and the same need not be interfered with.

10.Challenging the award of the Tribunal, both on negligence as well as quantum, the appellant/Insurance Company has filed this Civil Miscellaneous Appeal.

11.Heard the learned counsel appearing on either side and perused the materials available on record.

12.The learned counsel appearing for the appellant/Insurance Company submitted that considering the manner of the accident, as evidenced from the records, it is clearly proved that the accident happened not due to the negligence of the third respondent/lorry driver, but the Tribunal fixed the liability upon the appellant/Insurance Company. It was further mentioned that the accident had occurred due to the negligence of the deceased as he crossed without noticing the oncoming lorry and hence contributory negligence theory should have been applied and quantum may be reduced.

13.Though the learned counsel appearing for the appellant/Insurance Company argued on the point of negligence, a perusal of the award would show that after considering the evidence, the Tribunal had come to the right conclusion that the Driver of the Lorry bearing Registration No.TN-28-L-3548 was responsible for the accident and had directed the appellant/insurer to pay the compensation. Therefore, we find no reason to interfere with the findings on the negligence aspect and the Judgments relied on by the learned counsel for the appellant/Insurance Company are not relevant to the facts and circumstances of the present case.

14.With regard to the quantum of compensation is concerned, on a perusal of the materials available on record, it is seen that though the appellant/Insurance Company denied the age and income of the deceased, neither any witness was examined nor any document was marked on the side of the appellant/Insurance Company. As per Ex.P.5-post mortem report, the Tribunal had correctly fixed the age of the deceased as 22. Though the deceased had earned a sum of Rs.10,000/- per month as a driver, no documentary evidence has been produced with regard to the same and the Tribunal had erroneously fixed the income of the deceased as Rs.9,000/-, which needs interference.

15.Since no documentary evidence has been produced on the side of the deceased, we are of the view that a sum of Rs.8,000/- per month can be fixed as monthly income of the deceased. Though the Tribunal had added 50% towards future prospects, we are inclined to add 40% towards future prospects, which arrive at Rs.11,200/- (Rs.8,000 + Rs.3,200). The Tribunal had correctly deducted 50% towards personal expenses, which arrive at Rs.5,600/- In all, the loss of income of the deceased would arrive at Rs.12,09,600/- (Rs.5,600 X 12 X 18).

16.As far as the loss of love and affection is concerned, the Tribunal had awarded a sum of Rs.1,00,000/- each to the respondents 1 and 2/claimants, which is on the higher side. As per the decision in ***Magma General Insurance Co. Ltd., v. Nanu Ram & Others.,*** reported in ***2018 (1) TN MAC 452 (SC),*** the respondents 1 and 2 each are entitled to Rs.40,000/- which comes to Rs.80,000/- (Rs.40,000 x 2=Rs.80,000/-).

17.The amounts awarded by the Tribunal under the other heads, viz., a sum of Rs.10,000/- towards funeral expenses is enhanced to Rs.25,000/- and a sum of Rs.10,000/- towards transport expenses seems to be very reasonable and is confirmed.

18.Since the Tribunal had not awarded any sum under the head of 'loss of estate', a sum of Rs.15,000/- is awarded towards 'loss of estate'. Accordingly, the total compensation is arrived at a sum of Rs.13,39,600/-. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

19.Accordingly, the Award of the Tribunal is modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	14,58,000/-	12,09,600/-	reduced
2.	Loss of love and affection to the respondents 1 and 2	2,00,000/- (1,00,000 X 2)	80,000/- (40,000 X 2)	reduced
3.	Transportation charges	10,000/-	10,000/-	confirmed
4.	Loss of Estate	......	15,000/-	Awarded
5.	Funeral Expenses	10,000/-	25,000/-	Enhanced
	Total	Rs.16,78,000/-	Rs.13,39,600/-	Reduced by Rs.3,38,400/-

20.In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The Award of the Tribunal is reduced to Rs.13,39,600/- *from* Rs.16,78,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The Award amount is apportioned as per the ratio of apportionment made by the Tribunal.

(iv) The appellant-Insurance Company is directed to deposit the award amount to the credit of claim petition, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order.

(v) The Tribunal is directed to refund the excess award amount, if any, to the appellant-Insurance Company.

(vi) On such deposit being made, the respondents 1 and 2/claimants are entitled to withdraw the above compensation as per the ratio of apportionment made by the Tribunal with proportionate accrued interest and costs.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

<u>Note :</u>

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal/
Subordinate Court,
Kovilpatti.

2.The V.R Section (Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-13959[F] dated 26/03/2021)

+1 CC to MR.K.K.RAMAKRISHNAN, Advocate (SR-14162[F] dated 29/03/2021)

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