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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.11.2021
Pronounced on : 17.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.2356 of 2017
and
C.M.P.Nos.12630 & 12631 of 2017

United India Insurance Co.Ltd.,
No.64, Armenian Street,
Chennai - 1.

.. Appellant / 2nd Respondent

Versus

1.Minor Pavithra

2.Minor Nitheshkumar

(Minor respondents are represented
by their guardian and friend Mrs.Pachiammal)

...Respondents 1&2 / Petitioners 1&2

3.S.Sudha

...3rd Respondent / 1st Respondent

4.Karunakaran

...4th Respondent / 3rd Respondent

5.State Transport Corporation,
Rep by its Managing Director,
Anna Salai, Chennai-2.

..5th Respondent / 4th Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.10.2016 made in M.C.O.P.No.1037 of 2012 on the file of Motor Accident Claims Tribunal, III Additional District Court, Poonamallee.



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For Appellant	:	Mr.S.Arun Kumar
For R1 & R2	:	Mr.K.Varadha Kamaraj
For R3	:	Vacated
For R4	:	NA
For R5	:	Mr.K.J.Sivakumar

JUDGMENT

The appellant/Insurance Company has come forward with this appeal questioning the validity and correctness of the award passed by the Tribunal, by which, the Insurance Company was directed to pay compensation of Rs.6,52,200/- for the death of the mother of the minor claimants by name Muthu Lakshmi, in an unfortunate road accident that had taken place on 26.02.2011. The minor claimants have lost their parents, therefore, for the death of their mother, the instant claim petition in M.C.O.P.No.1037 of 2012 has been filed by the guardian of the minors, by name Pachaiaammal. In other words, the guardian Pachaiaammal is the mother of the deceased Muthu Lakshmi and grand mother of the minor children.

2. As per the claim petition, on 26.02.2011, the deceased Muthu Lakshmi was traveling as a pillion rider in the motorcycle bearing Registration No.TN-07-BF-5265. The motorcycle was driven by Venkatesa Perumal, husband of the deceased Muthu Lakshmi. The two minor children were also traveling in the same vehicle at the time of accident. As per the claim petition, when the two wheeler was nearing a place called Sundar Hospital, opposite to Suruthi Complex, Trunk Road, Poonamallee, the driver of the motorcycle has attempted to overtake a bus belonging to the 4th respondent/corporation and in that process, it had hit the transport bus. In the impact, the driver Venkatesa Perumal as well as Muthu Lakshmi have sustained grievous injuries and the minor claimants have sustained bruises and escaped unhurt. According to the claimants, the accident had occurred due to the rash and negligent driving of the two wheeler by their father Venkatesa Perumal and therefore, the claim petition was filed claiming a sum of Rs.15,00,000/- as compensation for the death of the deceased Muthu Lakshmi.

3. The Insurance Company filed a counter affidavit before the Tribunal contending that it is false to contend that the driver of the two wheeler had crashed behind the bus and fell down. On the other hand, as per the first information report as well as the investigation conducted by the Insurance Company, it



was the driver of the bus who had driven it in a rash and negligent manner and hit the two wheeler, from behind. Therefore it was the driver of the bus belonging to the 4th respondent's corporation which had caused the accident and the Insurance Company is not liable to pay the compensation. Even otherwise in such a scenario the claimants ought to have filed the claim petition under Section 163-A of the Motor Vehicles Act. However, they have filed the present petition under Section 166 of the Motor Vehicles Act. Therefore, the Insurance Company would submit that the claim petition is not maintainable. Notwithstanding such a defense, the Insurance Company also contended that the compensation claimed is exorbitant and the particulars relating to employment of the deceased Muthu Lakshmi furnished in the claim petition are false. Therefore, the Insurance Company prayed for dismissal of the claim petition.

4. Before the Tribunal, on behalf of the claimants Pachiammal, the grand mother of the minor claimants examined herself as P.W.1 and eye witness by name Mr.M.Sundar was examined as P.W.2 and Exs.P1 to P10 were marked. On behalf of the claimants, one Nithiyanandam, Sub-Inspector of Police, Poonamallee Traffic Investigation Wing was examined as R.W.1 and Exs.R1 and R2 were marked.

5. Before the Tribunal it was contended on behalf of the Insurance Company that P.W.2 has stated that the driver of the two wheeler over took the vehicle driven by PW2 in a rash and negligent manner and thereafter, it hit the bus, which resulted in the accident. Such evidence tendered by P.W.2 is contrary to Ex.P1/first information report. Therefore, the Insurance Company is not liable to pay compensation. This submission of the Insurance Company was disbelieved by the Tribunal and held that it was the driver of the two wheeler who was negligent in driving the vehicle and caused the accident, as deposed by PW2, therefore as insurer, the Insurance Company is liable to pay compensation to the claimants. The Tribunal also refused to accept the plea that the claim petition ought to have filed under Section 163 (A) of the Motor Vehicles Act. The Tribunal observed that such a technical plea raised on behalf of the Insurance Company should not be put against the minor claimants to deny them the benefit of compensation. Even otherwise, when it was found that the accident was caused due to the negligent driving of the driver of the two wheeler, the petition filed under Section 166 is maintainable. As regards the quantum, in the absence of any documentary evidence to show the income of the deceased, the Tribunal has arrived at a notional income of Rs.40,000/- per annum. After giving 1/3rd deduction, the Tribunal arrived a sum of Rs.26,700/- as the yearly income of the deceased Muthu Lakshmi and by applying multiplier '16' referable to the age of her husband Venkatsa Perumal, the Tribunal has



awarded a sum of Rs.4,27,200/- as loss of income. The Tribunal further awarded a sum of Rs.1,00,000/- each to the minor claimants towards loss of love and affection and Rs.25,000/- towards funeral expenses. In all a total sum of Rs.6,52,200/- was awarded as a compensation which was directed to be paid by the appellant/Insurance Company.

6. As against the award of the Tribunal, the claimants have not filed any cross objection seeking enhancement. This appeal is filed by the appellant/Insurance questioning their liability to pay the compensation amount.

7. The main plank of argument advanced by the learned counsel for the appellant/Insurance Company is that the Tribunal without any valid reason has discarded from consideration the first information report in this case. This is more so that P.W.2 who was examined as an eye witness has deposed contrary to the contents of the first information report. Therefore, the Tribunal ought to have disbelieved the evidence of P.W.2 and dismissed the claim petition. The other limb of argument is that the claim petition ought not to have been filed under Section 166 of the Motor Vehicles Act instead it should have been filed under Section 163(A) of the Motor Vehicles Act. The Tribunal, given the nature of evidence tendered on behalf of the Insurance Company under Exs.R1 and R2 and also the deposition of R.W.1 ought to have directed the transport corporation to pay the compensation but it directed the appellant to do so. In any event, in the absence of any evidence to show that the income of the deceased Muthu Lakshmi, the sum of Rs.26,700/- taken as yearly income is exorbitant. The learned counsel for the appellant therefore prayed for allowing the above appeal.

8. On the above contentions, this Court heard the learned counsel for the respondent and perused the materials available on record.

9. Admittedly, in the first information report under Ex.P1 it was stated that the driver of the bus had hit the two wheeler from behind which caused the accident. On the other hand, P.W.2 has stated that the driver of the two wheeler overtook him and thereafter hit the bus which resulted in the accident. In other words, according to P.W.2, it was the driver of the two wheeler who, due to his negligent driving, has caused the accident.

10. It is well settled that a first information report is a piece of evidence to be considered and the contents contained thereof cannot be taken as a gospel truth. When there is oral evidence tendered to bring forth the manner in which the accident had taken place, it will always prevail over the contents contained in the first information report as held by the



Honourable Supreme Court in the case of National Insurance Company Limited vs. P. Rajalakshmi and others reported in 2019 (1) TNMAC 545 (Mad) wherein it was held that when there is contradiction in the deposition of witness and the contents contained in the first information report, the statement on oath alone has to be given evidentiary value and the first information cannot be given much credence. Therefore, in the light of the aforesaid decision, the plea of the counsel for the appellant-insurance company that the deposition of PW2 is contrary to the contents of the First Information Report and the accident had occurred only in the manner as narrated in the first information report cannot be countenanced. Even otherwise, in an application seeking compensation under Section 166 of the Motor Vehicles Act the Court cannot adopt a hard and fast rule to consider the manner in which the accident had occurred, the person who had contributed the accident etc., unless there is strong evidence to prove the same. The Honourable Supreme Court in the decision rendered in Bimla Devi and others vs. Himachal Road Transport Corporation and other reported in (2009) 1 TNMAC 700 (SC) wherein it was held that strict proof of accident is not necessary and it is sufficient if the claimant established their case on the touchstone of preponderance of probability.

11. In the present case, reliance was placed on the first information report as well as the deposition of R.W.1/Investigation Officer attached to the appellant/Insurance Company. R.W.1 had come to the scene of occurrence much after the accident and therefore his evidence may not be of any use to show the manner in which the accident had taken place. Though in the first information report, it was stated that the bus which came in a rash and negligent manner hit the two wheeler and caused the accident, the fact remains that the first information report itself was registered on the basis of the complaint given by PW2. However, PW2 in his deposition before the Tribunal has stated that it was the driver of the two wheeler who was instrumental in causing the accident. The Insurance Company also did not bring anything material during the time of cross examination of P.W.2 and he stood firm in his statement in his chief examination. Therefore, the Tribunal in the opinion of this Court, has rightly considered the evidence of P.W.2, to take note of the manner in which the accident has occurred. Even otherwise, the 4th respondent has filed a counter before the Tribunal stating that the so called bus said to have involved in the accident does not belong to them and it belonged to Vellore depot. Therefore, also the Tribunal, in the opinion of this Court, has rightly decided the negligence aspect and directed the Insurance Company to pay the compensation amount. In such circumstances, the plea with regard to filing an application under Section 166 or 163(A) raised by the Insurance Company was



also rightly brushed aside by the Tribunal. Moreover, in an application seeking compensation for the death of an individual there cannot be any straight jacket formula to be adopted and the Tribunal adopted the liberal theory to entertain the application under Section 166 of the Motor Vehicles Act.

12. As regards the quantum even though it was stated that the deceased was running a Tiffin centre and earning a sum of Rs.10,000/- per month, in the absence of any proof forthcoming from the appellants, the Tribunal has in fact taken a meager amount of Rs.40,000/- per annum and after giving 1/3rd deduction arrived at a sum of Rs.26,700/- as the monthly income and awarded a measly amount. In fact, the deceased Muthu Lakshmi had left behind her two minor children who are the minor childrens in this case even assuming that the deceased was a home maker and she did not carry on a Tribunal business as alleged. As a home maker, the contribution of the deceased cannot be belittled the deceased Muthu Lakshmi had she is been alive had enormous tasks to be shouldered by her to nurser the children has also to undertake domestic shows in the house, unpaid. In this context, I am fortified by a decision of the Division Bench of this Court in the case of National Insurance Company Limited vs. Gayathri and another) reported in 2021 (1) TNMAC 1 (DB) (Madras) wherein, the Division Bench had highlighted the role played by home makers and the effect of death of such home makers in a house hold. In that case before the Division Bench, it was admitted by the claimants that the deceased is not an earning member and she is a home maker. The Division Bench concurred therefore held that in such a case the compensation must be awarded not in terms of money, but in terms of the contribution of the deceased to the family in terms of physical labour. In that case, the Division Bench concurred with the award passed by the Tribunal, which has taken a sum of Rs.5,000/- as notional income of the deceased, who was a home maker. In Para No.21, the Division Bench held as follows:-

"21. The deceased was a home maker. The claimants admitted that she is not an earning member. In such a situation, the Tribunal has to decide the claim petition by taking note of the contribution of the deceased to the family, not in terms of money, but in terms of her physical labour, while awarding compensation. As a female, aged 27 years, the responsibility to be shouldered by the deceased is enormous and manifold. She is an unpaid servant employed in the house throughout the day. She has to take care of the children, engage in cooking, cleaning the house, buying the goods that may reasonably be required for running the show etc., Further, the task shouldered by the



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home maker to uphold the virtues of the family is endless. It is also to be mentioned that even an employee who is employed in a firm for wages or a businessman engaged in business, may get rest during weekends and on public holidays, but the nature of work of a home maker demands that she has to continuously engage herself in household work in some form or the other throughout the year. Therefore, the responsibility shouldered by a house wife cannot be curtailed or belittled in any manner. In the present case, the claimant had lost her mother at a young age, inter-alia, deprived of the parental care. Taking note of the above, for the purpose of compensating the death of the deceased in this case, Tribunal has notionally fixed a meagre sum and arrived at a just and fair compensation. We are not, therefore, inclined to interfere with the amount awarded by the Tribunal in favour of the claimant, which in our opinion is a just and fair compensation."

13. In this case, the Tribunal has taken only a sum of Rs.26,700/- as yearly income. If the ratio laid down by the Division Bench in this Case is applied, the loss of earning of the deceased has to be taken as Rs.60,000/- per year. In the absence of any cross-objection by the claimants, this Court is not inclined to enhance the compensation. In any event, the amount awarded by the Tribunal towards loss of income of the deceased Muthu Lakshmi does not call for any interference by this Court.

14. In the result, the judgment and decree dated 03.10.2016 made in M.C.O.P.No.1037 of 2012 on the file of Motor Accident Claims Tribunal, III Additional District Court, Poonamallee is confirmed. The Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gbi



To

1. The III Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee.

2. The Section Officer
V.R. Section, High Court,
Chennai.

+lcc to Mr.S.Arun Kumar, Advocate, S.R.No.10670

C.M.A.No.2356 of 2017

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