IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 05.07.2023

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.3493 of 2014

1. Marylatha
2. Jenifer Silvia
   (minor declared as major, and her natural guardian, first appellant is discharged from guardianship, vide Court's order, dated 21.06.2023, made in C.M.P.No.12198 and 12199 of 2023 of this Appeal.

3. Mervin Anto (minor)
4. Santhanamary
5. Madhalaimuthu ... Appellants

Vs.

1. Sundaramoorthy
2. Royal Sundaram Alliance Insurance Comp. Ltd.,
   Sundaram Towers,
   45 and 46, Whites Road,
   Chennai – 600 014. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree, made in M.C.O.P.No.314 of 2010 on the file of the Motor Accident Claims Tribunal (Principle District Judge), Dharmapuri, dated 18.03.2011.

For Appellants	:	Mr.S.Sathiaseelan
For Respondent -1	:	No appearance
For Respondent-2	:	Mr.M.B.Raghavan

Judgement

The present Civil Miscellaneous Appeal is filed challenging both quantum of compensation as well as fixation of 20% contributory negligence on the part of the deceased by the Motor Accidents Claims Tribunal (Principal District Judge) Dharmapuri (hereinafter, referred to as 'the Tribunal') in and by its award passed in M.C.O.P.No.314 of 2010, dated 18.03.2011

2. On 26.01.2010, at about 10.30 p.m. when the deceased Maria David was standing on the opposite side of Amiriya Petrol Bunk, waiting for the bus, a Lorry, bearing Regn.No.TN-39-AS-7420, which came from Bangalore in a rash and negligent manner, dashed against the deceased, due to which, the deceased sustained grievious injuries and died on the spot.

3. At the time of the accident, the deceased was aged 34 years and working as a Fitter, in Karnataka Engineering Solutions Company and earning Rs.9,200/-. Hence, the wife, two children and parents of the deceased Mr.Maria David, have filed a Claim Petition seeking a sum of Rs.20,00,000/- as compensation.

4. Before the Tribunal, in order to prove the claim, the first claimant examined herself as P.W.1, besides examining three other witness as P.Ws.2 to 4 and marked 14 documents as Ex.P.1 to Ex.P.14. On behalf of the Insurance Company, no witness was examined, however, one document was marked as Ex.R.1.

5. The Tribunal, after analyzing the entire evidence (both oral and documentary) has come to the conclusion that the accident occurred due to 20% negligence on the part of the deceased and 80% negligence on the side of the Offending Vehicle and held that the both first and second respondents are jointly and severally liable to pay 80% compensation to the claimants. By coming to such a conclusion, the Tribunal passed an award for a total compensation amount of Rs.6,38,960/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit of the award amount.

6. Mr.S.Sathiaseelan, learned counsel appearing for the appellants/claimants submitted that, accident had occurred solely due to the negligence act of the driver of the offending Vehicle, whereas, the Tribunal has given a finding that accident occurred both due to recklessness of the deceased and driver of the Offending Vehicle, and thereby, fastened 20% contributory negligence on the part of the deceased and 80% negligence on the side of the Offending Vehicle. The learned counsel submitted that the Tribunal, while determining the negligence aspect, completely ignored the evidence of two eyewitnesses to the accident, who were examined as P.W.2 and P.W.3 and gave high pedestal to Ex.A.1/FIR and Rough Sketch/Ex.R.1 and arrived at such a wrong conclusion.

6.1 The learned counsel contended that both P.W.2 and P.W.3 have given testimony that the accident had occurred when the deceased was standing on the left side of the road near the Bus Stand, waiting for the bus.

However, the Tribunal, based on Ex.P.1/F.I.R., wherein, it is stated that the deceased met with the accident, when he cross the road and Ex.R.1/Rough Sketch, wherein, it is stated that the accident had occurred in the middle of the road, disbelieved the evidence of P.W.2 & PW.3 and arrived at such wrong conclusion. The learned counsel contended that though both the eyewitnesses, during their cross-examination have not denied whatever shown in Ex.P.R.1/Rough Sketch, however, P.W.2, in his cross-examination has very clearly stated that, at the place of occurrence, there is no zebra crossing provision for the pedestrians to cross the road and similarly, P.W.3 stated that, "though the complainant has stated in the complaint that the accident occurred when the deceased was crossing the road, it is incorrect to say that, he (PW.3) has given false evidence to hide the same".

6.2 Therefore, the learned counsel contended that from the very testimony of P.W.2 and P.W.3, it is clear that accident occurred when the deceased was standing at the Bus Stop, waiting for the bus, however, the Tribunal, relying on Ex.P.1/FIR and Ex.R.1/Rough Sketch came to the wrong conclusion that the accident occurred due to 20% negligence on the part of the deceased. It is further contended by the learned counsel that statements of eyewitnesses were made before the Court on solemn affidavit, whereas, FIR is never lodged on solemn affirmation, and therefore, Tribunal ought not to have given much importance to the statement recorded in Ex.P.1/FIR and disregarded the evidence of eyewitnesses/P.W.2 and P.W.3. Therefore, learned counsel prayed to set aside the findings of the Tribunal with regard to 20% contributory negligence fastened against the deceased and consequently, to fix 100% negligence on the side of the driver of the Offending Vehicle.

6.3 The learned counsel further submitted that the deceased was working as Fitter, in a Karnataka Engineering Solutions Ltd., and was earning Rs.9,200/- and in support of the same, the owner of the said Company was examined as P.W.4. and the Salary Certificate was marked as Ex.P.10, however, the Tribunal, regardless of the evidence of P.W.4 and Ex.P.10, fixed the monthly income of the deceased only at Rs.5,000/-. The learned counsel also placed reliance on the decision of the Honourable Supreme Court, in the case of **Syed Sadiq Vs. United India Insurance**

Company, reported in **2014 (1) TNMAC 459 (SC),** wherein, the Honourable Supreme Court even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the notional monthly income at Rs.6,500/-.

6.4 Further, the learned counsel submitted that, the Tribunal also failed to add any amount towards future prospects, which also resulted in awarding an inadequate compensation of Rs.7,65,000/- towards Loss of Dependency. In support of his contention that 40% should be added towards Future Prospects, he has placed reliance on the law laid down by the Honourable Supreme Court, *in re* **National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601.** Therefore, the learned counsel prayed this Court to determine the compensation towards Loss of Dependency by fixing the notional monthly income of the deceased in accordance with the ratio laid down by the Hon'ble Supreme Court, in **Pranay Sethi's case (**cited supra) and to add 40% towards future prospect as per the decision rendered in **Syed Sadiq's case** (cited supra).

6.5 The learned counsel also submitted that the compensation awarded by the Tribunal towards Funeral Expenses at Rs.5,000/- is low and requires appropriate enhancement. It is also the grievance of the learned counsel that the Tribunal has failed to award compensation under other conventional heads, viz., Loss of Estate, Loss of Consortium, and Loss of Love and Affection, Transportation and hence, prayed for awarding just and fair compensation under the aforementioned heads.

7. Mr.M.B.Raghavan, learned counsel for second respondent/Insurance Company submitted that though P.W.2 and P.W.3, in their chief examination have stated that the accident occurred when the deceased was standing near the Bus Stand, however, during their cross-examination, both of them have admitted the fact that whatever stated in the Ex.R.1 are correct. Further, P.W.2 has deposed that, he was standing very far from the place, where, the accident occurred, and therefore, he was not able to see the occurrence clearly, which aspect was rightly taken note of by the Tribunal and has rightly disbelieved the evidence of P.W.2 and P.W.3/Eyewitnesses and relied on the statements made in Ex.P.1/FIR and

Ex.R.1/Rough Sketch and arrived at a finding that the accident occurred due to negligence of both the deceased and driver of the Offending Vehicle and rightly fixed 20% contributory negligence on the part of the deceased and 80% negligence on the driver of the Vehicle and held that both the first and second appellants are jointly or severally liable to pay the compensation and the said findings need not be interfered with.

7.1 The learned counsel for the second respondent/Insurance Company further submitted that the quantum of compensation awarded by the Tribunal is also just and fair and the same requires no interference.

8. I have given due consideration to the submissions made by Mr.S.Sathiaseelan, learned counsel appearing for appellants/claimants and .M.B.Raghavan, learned counsel for second respondent/Insurance Company and also perused the materials available on record.

i) Quantum of Liability:-

9. On a closure scrutiny of deposition of eyewitneses, viz., P.W.2 and P.W.3, it is clear that the accident took place when the deceased was standing near the Bus Stop. Though P.W.2 has given evidence in his chief-examination that, at the time of the accident, he was standing very far-off from the place, where, the accident occurred, and therefore, he was not able to see the occurrence clearly, however, during his cross-examination has stated that in the place of occurrence, there is no zebra crossing provision for the pedestrians to cross the road. In a similar way, when P.W.3 was posed with a question, "whether the deposition given by him is contrary to whatever contained in the FIR?, his reply, is 'No". Thus, when there is no provision at the place, where the accident had occurred for the pedestrians to cross the road, the question, as to whether the accident occurred while the deceased was crossing the road or otherwise itself would not arise. All these aspects were failed to be considered by the Tribunal and Tribunal has merely gone by the statements made in Ex.P.1/F.I.R. and Ex.R.1/Rough Sketch, and disbelieved the evidence of P.W.2 and P.W.3 for arriving at such wrong findings.

9.1 This Court is inclined to point out that, when eyewitnesses are available, the Tribunal is expected to go by the evidence given by the eyewitneses, and has to find out whether the oral evidence is corroborated by documentary evidence. In the event, no eyewitnesses are available, in such case, the Tribunal may take into consideration FIR or Rough Sketch or any other documentary evidence, that too, depending upon the facts and circumstances of the case. As far as this case is concerned, eyewitnesses are very much available, and hence, the Tribunal ought to have taken into consideration the deposition of eyewitneses, while finding out the negligence aspect, however, the Tribunal based on Ex.P.1/F.I.R. and Ex.R.1/Rough sketch, attributed 20% contributory negligence on the part of the deceased, which is unsustainable. Therefore, this Court is hereby, set aside the findings of the Tribunal, whereby, 20% of contributory negligence was fastened on the deceased and holds that the accident had occurred solely due 100% negligence on the part of the driver of the Offending Vehicle.

ii) Quantum of Compensation :-

10. As far as quantum of compensation towards Loss of Dependency is concerned, it is seen that the Tribunal fixed the monthly income of the deceased as Rs.5,000/-. It is case of the claimants that the deceased was working as Fitter, in Karnataka Engineering Solutions Company and earning Rs.9,200/-. As proof to the same, Proprietor of the said Company was examined as P.W.4, who deposed that the deceased was working in their Company four years prior to the occurrence and was earning Rs.8,400/- and batta of Rs.950/- p.m and the Salary Certificate was marked as Ex.P.10. However, since objection was raised by the respondent/Insurance Company by stating that had the deceased was employed in the said Company, he would have been issued with appointment order for having been appointed there and the claimants also failed to produce any documentary evidence to show that at the relevant point of time, (i.e., at the time of the accident) deceased was earning Rs.9,200/-,Tribunal has taken the monthly income of Rs.5,000/- only.

10.1 However, in view of the law laid down by the Hon'ble Apex

Court, in the case of ***Syed Sadiq's*** case (cited supra), wherein, the Hon'ble Apex Court fixed the notional monthly income even for a vegetable vendor at Rs.6,500/-, who sustained injuries in the accident occurred in the year 2008, in the absence of any proof for income, this Court deems it fit to fix the notional monthly income of the deceased, at Rs.8,000/-, since in the present case, the deceased was stated to have worked as a Fitter in a Company and earned an monthly income of Rs.9,200/-.

10.2 Thus, by fixing the monthly income of the deceased at Rs.8,000/-; adding 40% towards his future prospects; deducting 1/4th towards his personal expenses (since the deceased was a married person, having wife and two children as dependents), and adopting the multiplier of '16' (since the deceased is aged 34 years), the total Loss of Dependency is calculated as under:-

Notional Monthly income + 40% future prospects

works out to **Rs.11,200/- (i.e. Rs.8,000/- + Rs.3,200)**

Multiplier of '16' and Deduction of 1/4th towards personal expenses
Rs.11,200 x 12 x 16 x ¼ = Rs.16,12,800/-

Loss of Dependency = Rs.16,12,800/-.

10.3 As rightly pointed out by the learned counsel for the appellants/claimants, the Tribunal has failed to award any compensation under the conventional heads and the compensation awarded under the head Funeral Expenses at Rs.5,000/- is low. Therefore, this Court is inclined to award a sum of Rs.40,000/- as compensation towards Loss of Consortium to the wife of the deceased, and Rs.40,000/- each towards Love and Care of two children and Rs.40,000/-towards Love and Affection of the deceased's parents. As far the failure of the Tribunal to award compensation under Funeral Expenses and Loss of Estate are concerned, this Court is inclined to fix a sum of Rs.15,000/- under each heads. So far the compensation to be awarded under Transportation is concerned, this Court is inclined to award Rs.10,000/-.

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,98,700/- to Rs.18,12,800/-, out of which, the first appellant/wife is entitled to a sum of Rs.8,12,800/-; second and third appellants, viz., children of the deceased are entitled to a sum of Rs.3,50,000/-each, and the parents of the deceased, viz., the fourth and fifth appellants are entitled to a sum of Rs.1,50,000/- each.

12. In the result, the Civil Miscellaneous Appeal filed by the appellants/claimants is partly allowed on the following terms:-

(i) Second respondent/Royal Sundaram Alliance Insurance Company Ltd., is directed to deposit the entire amount awarded by this Court equally along with interest at 7.5% p.a. from the date of claim petition till the date of deposit and costs before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Insurance Company, the Tribunal shall transfer the amount, as per the apportionment mentioned supra to the claimants' respective bank account through RTGS within a period of three weeks thereon or from date of which, the RTGS particulars are furnished by the claimants, whichever is later.

(iii) The claimants are entitled to withdraw their respective share as apportioned by this Court with proportionate interest accrued thereon by making necessary application before the Tribunal.

iv) The claimants are further directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(v) The compensation amount payable to the minor claimant, viz., the third appellant is concerned, the same is directed to be deposited in any one of the Nationalised Banks in a fixed deposit in an interest bearing account and till the minors attain majority. Out of such deposit, the first claimant/mother, viz. the first appellant herein is permitted to withdraw accrued interest once in three months.

(vi) Connected Miscellaneous Petition is closed. No costs.

05.07.2023

Index ; Yes/No
Internet : Yes/No
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To

1. The Motor Accident Claims Tribunal/
(Principal District Judge) Dharmapuri.

Krishnan Ramasamy,J.,
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C.M.A.No.3493 of 2014

05.07.2023