



C.M.A.(MD)No.1002 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 23.01.2023

Delivered On : 23.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1002 of 2018

1.Palraj

2.Udhaya

.. Appellants /claimants

Vs.

1. Babu

.. 1st Respondent / 1st Respondent

2.The Third Party claim officer,

Sriram General Insurance Company,

E8, EPIP, RLLCO,

Industrial Area, Sitaura,

Jaipur, Rajasthan State.

.. 2nd Respondent /2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 12.04.2017, made in M.C.O.P.No. 45 of 2016, on the file of the Motor Accident Claims Tribunal - II Additional District Court and Sessions Court, Theni.



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For Appellants : Mr.G.Gomathi Sankar
For Respondents : Mr.D.Sivaraman for R2
: No appearance for R1

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 12.04.2017, made in M.C.O.P.No. 45 of 2016, on the file of the Motor Accident Claims Tribunal - II Additional District Court and Sessions Court, Theni. The appellant herein is the claimant and the respondent herein is the respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No. 45 of 2016, is as follows:-

On 27.11.2015, at about 12.45 noon, when the deceased – Kawishar was riding his two wheeler bearing Registration No.tN-42-B-1054 and when he try to overtake a lorry bearing Registration No.TN-43-D-8425, the lorry driver drove the vehicle in a rash and negligent manner and hit against the deceased. The deceased was aged about 21 years, he was working as a building worker and was earning Rs.700/- per day. The petitioners are his dependants and they claim a sum of Rs.30,00,000/- as compensation.



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3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No. 45 of 2016, is as follows:-

The petitioner has to prove that the vehicle was insured with the second respondent and the policy was valid on the date of accident. The petitioner has to prove that the first respondent was having valid driving licence. They have to prove that they are the dependants of the deceased. The age, income and profession of the deceased are to be proved. The accident was not due to the rash and negligent driving of the first respondent's driver. The first respondent's driver drove the vehicle in a slow and cautious manner. It was the deceased, who was rash and negligent and he fell in front of the vehicle and invited the accident. The petitioners have to prove that the deceased was having valid driving licence. The owner and the insurance company of the vehicle - two wheeler bearing Registration No. TN-42-B-1054. are necessary parties to the case. The claim is excessive.

4. 3 witnesses were examined and 9 documents were marked on the side of the petitioners. No witness was examined and no document was marked on the side of the respondents. After considering both sides, the Tribunal has fixed 50% liability on the deceased and has awarded a sum of Rs. 4,48,000/- as compensation.



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5. Against the award, the appellants- claimants have filed this Appeal on the following grounds:-

The Tribunal is wrong in calculating the compensation based on the age of the parents of the deceased. The age of the deceased ought to have been taken into account. The deduction of 50% for the own expenses of the deceased is against law. The Tribunal ought to have deducted only 1/3rd of the income. The factor adopted by the Tribunal is not correct. The entire negligence is on the driver of the lorry. The Tribunal wrongly fixed 50% of contributory negligence on the deceased. The compensation to be enhanced to Rs.10,00,000/-.

6. On the side of the appellants, it is stated that no eye witness was examined on the side of the respondents. Motor vehicle inspection report was not filed. Observation mahazer was not filed. Without any evidence or document, the Tribunal is wrong in fixing the contributory negligence on the deceased.

7. On the side of the second respondent, it is stated that it was the deceased, who tried to over take a lorry and in that process, the deceased



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invited the accident. P.W.2 and P.W.3 were not eye witnesses. Admittedly the deceased tried to overtake the lorry. There was no damage to the lorry. The deceased is responsible for the accident.

8. On the side of the appellants, it is stated that it is the duty of the respondents to disprove the case of the claimants. The respondents did not examine any witness or mark any document. A judgment of the Hon'ble Supreme Court reported in **2014-4-SCC-511 (Meera Devi V. H.R.T.C)** is cited, wherein, it is stated as follows:-

“10.To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.”

9. In Ex.P1-F.I.R and Ex.P6-charge sheet and in the claim petition, it was stated that the deceased tried to over take the lorry. The Tribunal has



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decided that P.W.2 and P.W.3 were not eye witnesses. M.V.I. report for the two wheeler was not marked as a document on the side of the claimants. Observation Mahazer was not marked on the side of the claimants. Since the accident has taken place, when the deceased tried to overtake the offending lorry, it is decided that the fixation of 50% contributory negligence on the deceased is reasonable.

10. On the side of the appellants, it is stated that the Tribunal adopted multiplier based on the age of the parents of the deceased and the age of the deceased at the time of accident is to be taken into consideration in fixing the multiplier.

11. On the side of the appellants, a judgment of the Hon'ble Supreme Court reported in **2018-3-SCC-18 (Sube Singh V. Shyam Singh (Died))** is cited, wherein, it is stated as follows:-

4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on



the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the 2009 (6) SCC 121 2015 (6) SCC 347 parents of the deceased. The legal position, however, is no more res integra. In the case of Munna Lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants. We may usefully refer to the exposition in paragraph Nos. 11 and 12 of the reported decision, which read thus:

“11. The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependents or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three Judge Bench decision in Reshma Kumar (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependents is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average etc. is to be taken. To quote “36. In Sarla Verma, this Court has



endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section

166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish

(a) age of the deceased.

(b) income of the deceased; and

(c) the number of dependents. To arrive at the loss of dependency, the Tribunal must consider

(i) additions/deductions to be made for arriving at the income;

(ii) the deductions to be made towards the personal living expenses of the deceased; and

(iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma.”

12. In Sarla Verma (supra), at paragraph-19 a two Judge Bench dealt with this aspect in Step 2. To quote:

“19.xxxx xxxxxx xxxx Step 2 (ascertaining the multiplier) Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean



ascertaining the number of years he would have lived or worked out for the accident having regard to several imponderables in life and economic factors, a table of multipliers with reference to age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.” Considering the aforementioned principle expounded in Sarla Verma (supra), which has been affirmed by the Constitution Bench of this Court in National Insurance Company Ltd. Vs. Pranay Sethi and Ors.⁴, the appellants are justified in insisting for applying multiplier 18.“

12. On the side of the appellants, it is stated that the Tribunal is wrong in deducting 50% of the salary of the deceased towards his own expenses. On the side of the second respondent, it is stated that the deceased was a bachelor and hence, deduction of 50% towards own expenses of the deceased is reasonable.

13. The law is well settled in a case of unmarried deceased, 50% ought to have been deducted for the own expenses of the deceased. Hence, deduction of 50% towards the own expenses of the deceased is reasonable.



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14. Now the law is well settled. The age of the deceased is to be taken into account for fixing the multiplier. The age of the deceased at the time of accident is 22 years and hence, multiplier '18' is applicable.

15. On the side of the appellants, it is stated that the deceased was a building worker, he was earning Rs.700/- per day. The Tribunal fixed only as Rs.6,000/- per month, which is very low. Considering the date of accident and considering the nature of work of the deceased, it is decided that the notional monthly income is fixed as Rs.12,000/-. After deducting 50% towards the own expenses, the deceased might have contributed Rs.6,000/- to his family.

16. The Tribunal fixed the future prospects at 50%, which is not reasonable. As a private employee, the future expenses is to be added only at the ratio of 40%. After adding 40% (Rs.2,400/-) towards future expenses. In total, the monthly income is calculated as Rs.8,400/- p.m. After applying multiplier '18', the loss of income is calculated as Rs.18,14,400/- (Rs.8,400/- X 12 X 18).



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17. The Tribunal has awarded Rs.50,000/- for each of the claimants towards loss of love and affection, Rs.25,000/- towards funeral expenses, Rs.5,000/- towards loss of estate, Rs.10,000/- towards transport expenses. As per the dictum of the Hon'ble Supreme Court in Pranay Sethi's case, the claimants are entitled to Rs.70,000/- towards conventional charges.

18. The total compensation is calculated as follows:-

Loss of income	:	Rs. 18,14,400/-
Conventional charges	:	Rs. 70,000/-
		
Total compensation	:	Rs. 18,84,400/-
		

19. After deducting 50% (Rs.9,42,200/-) towards the own negligence of the deceased, the claimants are entitled to Rs.9,42,200/- as compensation.

20. This appeal is partly allowed. No costs. The compensation is enhanced from Rs.4,48,000/- to Rs.9,42,200/-.



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(i) The claimants / appellants is entitled to Rs.9,42,200/- as compensation. Each of the claimant is entitled to Rs.4,71,100/- with accrued interest and costs.

(ii) The second respondent herein - insurance company, is directed to deposit the entire compensation of Rs.9,42,200/- (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the Insurance Company, the appellants / claimants are permitted to withdraw their share amount along with interest and costs as apportioned by this Court, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

23.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To



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II Additional District Court and Sessions Court,
Theni.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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