



C.M.A.No.22 of 2014

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2024

CORAM

THE HON'BLE MRS. JUSTICE **R.KALAIMATHI**

C.M.A.No. 22 of 2014

1. Chitradevi

2. Minor Dhanvarsh

3. Minor Athiswar
(Minors rep. by their
mother 1st Petitioner)

... Appellants/Claimants

Vs.

1. C.Jayagopi

2. United India Insurance Co. Ltd.,
Lucky Towers,
Chennai – 50.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2013 made in M.C.O.P.No.479 of 2011 on the file of the Motor Accident Claims Tribunal/Additional District Court - II, Poonamallee.

For Appellants : Mr.Varada Kamaraj
For Respondents : No such Door No.
A.O.S not filed for R-1
Mr.S.Arun Kumar for R-2



C.M.A.No.22 of 2014

WEB COPY

JUDGMENT

Being aggrieved by the order of acquittal by judgment and decree dated 27.09.2013 made in M.C.O.P.No.479 of 2011 on the file of the Motor Accident Claims Tribunal/Additional District Court-II, Poonamallee, the legal heirs of the deceased Narayanan have preferred this Civil Miscellaneous Appeal.

2.The Claim Petition was filed under Section 166 of Motor Vehicles Act, 1988 and under Rule 3 of Motor Accidents Claims Tribunal Rules, claiming compensation of Rs.24,00,000/- for the death of Narayanan in a motor accident that occurred on 22.04.2011.

3.The Tribunal upon consideration, concluded that P.W-2 is a chance witness and his evidence was not accepted, that the claimants did not prove the accident occurred that due to the rash and negligent driving of the first respondent/driver and chose to dismiss the claim petition. Against the said judgment, this Appeal is preferred by the legal representatives of deceased Narayanan.



C.M.A.No.22 of 2014

WEB COPY

4.The learned counsel appearing for the appellants/claimants, Mr.Varadha Kamaraj vehemently argued that the deceased was riding pillion and was hit by a Car from behind. Eventually, he fell down and was ran over by a lorry. He would further contend that the Tribunal has totally relied upon the First Information Report and came to a wrong conclusion.

5.Per contra, the learned counsel appearing for the respondent strenuously contended that the Tribunal upon consideration of the oral and documentary evidence has chosen to dismiss the claim petition. It is a well-reasoned order and hence, needs no interference.

6.At trial, on the claimants' side, three witnesses were examined and 10 documents were marked. On the respondent's side, no witness was examined.

7. Ex.P-10 is the copy of the Insurance Policy of the two-wheeler bearing Registration No. TN-20-L-8857.

8. It is the evidence of P.W-2 ocular witness that on 22.04.2011 at



C.M.A.No.22 of 2014

WEB COPY

about 11.50 a.m., when he was standing near the Best Cast Company, Velappan Chavadi, on the extreme left side of the road, the rider of two-wheeler bearing Registration No.TN-20-L-8857 came in a rash and negligent manner and suddenly staggered and fell on the road. In the result, the rider of the vehicle sustained simple injuries and the pillion rider sustained head injuries and injuries through out the body. It is his further evidence that both of them were admitted in ACS Hospital, Velappan Chavadi, Chennai. Thereafter, the pillion rider was taken to KMC Hospital where it was reported as brought dead. When he was cross-examined by the Insurance Company, he has asserted that he witnessed the occurrence.

9. Contrary to the evidence of P.W-2, no other ocular witness was examined by the Insurance Company. Ex.P-1-FIR reads that when the rider of the two-wheeler bearing Registration No.TN-20-L-8857 was proceeding along the Poonamallee High Road at the point of Velappan Chavadi, Best Cast Company, a Car came with high speed from Madhuravoyal towards Poonamallee hit on the two-wheeler and the rider of the two-wheeler fell on the left side of the road. That the deceased Narayanan fell down on the right side of the road. And that he was run



C.M.A.No.22 of 2014

over by a lorry and the lorry did not stop at the spot.

10. It is a well settled principle of law that FIR is not a substantial evidence. The contents of the FIR may be utilised for the purpose of corroboration and for contradiction.

11. From the available evidence of P.W-2, it is inferable that due to the rash and negligent driving of the two-wheeler, the accident occurred and the Insurance Company of the two-wheeler and the owner thereof are jointly and severally liable to compensate the claimants.

12. The date of accident is 22.04.2011 which is not in dispute. Ex.P-10 is the copy of the Insurance Policy pertaining to the two-wheeler bearing Registration No.TN-20-L-8857. Ex.P-10-Insurance Policy is a package policy. A careful perusal of the details of policy, it appears that the limits of liability given in the policy is extracted hereunder:-

“Limits of liability:

Under Section-II-I (i) Death of or bodily injury in
respect of any one accident :
As per Motor Vehicles Act 1988

Under Section-II-I (ii) Damage to third party
property in respect of any one



C.M.A.No.22 of 2014

WEB COPY

claim or series of claims arising
out of one event

Rs.1,00,000.00

Personal Accident cover for Owner – Driver
CSI:Rs.1,00,000.00”

13.The policy contains 11 pages. Only one paper is filed as Ex.P-10. The deceased being a pillion rider, he would come under the death of or bodily injury in respect of any one accident as per Motor Vehicles Act, 1988. The liability is limited to Rs.1,00,000/- only in cases of damage, in cases of claim of damage to third party property or in cases of personal accident cover in cases of owner-driver.

14.As per the evidence of P.W-1, Chitra Devi w/o. Deceased Narayanan that her husband was working at Johnson Lift Private Limited as a Senior Technician for the past 10 years and earning a sum of Rs.15,000/- per month.

15.In order to prove the avocation of the deceased, the HR Manager of Johnson Lift Company was examined as P.W-3. It is the testimony of P.W-3 that the deceased Narayanan joined his service on 01.09.2001. His pay slip for the month of March, 2011, is Ex.P-8. As per Ex.P-8, he was working as a Technician and his gross salary is



C.M.A.No.22 of 2014

WEB COPY

Rs.15085/- p.m. As regards, the components of the salary, amounts given for attendance allowance, performance allowance, professional enrichment allowance, conveyance and washing allowance are given for benefit of the worker. Therefore, those allowances are not added while computing the monthly income. Leaving these details, his gross salary comes to Rs.7,325/- p.m.

16.As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Company Ltd., -vs- Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** the Hon'ble Supreme Court has standardised the details of future prospects in respect of persons in permanent job or on a fixed salary. Ex.P-9 is the order of confirmation issued to the deceased Narayanan. As per Ex.P-3-death report, Ex.P-4-Post-mortem Certificate, his age is mentioned as 44 years and the same is taken as the age of the deceased. In Pranay Sethi case, the Hon'ble Supreme Court has standardised the future prospects in respect of the persons in permanent job for the age group of 40 to 50 years is 30%.

17.As per the law laid down by the Hon'ble Supreme Court in ***Sarla Verma & others vs. Delhi Transport Corporation & another***



C.M.A.No.22 of 2014

WEB COURT

reported in **2009 (2) TNMAC 1 SC**, the relevant multiplier to be adopted is 14. The claimants 1 to 3 are the wife and minor sons. With regard to the deduction for personal and living expenses of the deceased married 1/3 to be taken if number of dependants of family members are three.

18. With the above said details, loss of income is calculated as given hereunder:

Age of the deceased	:44 years
Monthly income fixed	:Rs.7,325/-
Deduction for Personal & Living Expenses	:1/3
Multiplier to be adopted	:14
For Future Prospects	:30%
Loss of income	:Rs.7,325/- X 30% = Rs.2197/-
	:Rs.7,325/-+Rs.2,197/-=Rs.9,522/-
After deduction	:Rs.9522/- X 1/3 = Rs.3,174/-
	:Rs.9522/- – Rs.3,174/- = Rs.6,348/-
For Pecuniary Loss	:6348/- X 12 X14 = 10,66,464/-

19. As the accident occurred in the year 2011, the amount of Rs.7,000/- is granted under each head for Loss of Estate and for Funeral



C.M.A.No.22 of 2014

Expenses.

20. For Loss of Consortium as per the law laid down by the Hon'ble Supreme Court in ***National Insurance Company Ltd., -vs- Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** as mentioned supra, Rs.40,000/- each to the claimants is granted.

21.The Compensation is tabulated below:

Sl. No.	Description	Amount awarded by this Court
1	For Loss of Income	Rs.10,66,464/-
2	For Loss of Consortium	Rs. 1,20,000
3	For Funeral Expenses	Rs. 7,000
4	For Loss of Estate	Rs. 7,000
	Total	Rs.12,00,464

Rounded off to Rs.12,00,000/-

22. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The Respondent/Insurance Company is directed to deposit the compensation amount i.e., **Rs.12,00,000/-** together with interest at the



C.M.A.No.22 of 2014

WEB COPY

rate of 7.5% per annum from the date of filing of petition till the date of realisation to the credit of M.C.O.P.No.479 of 2011 on the file of the Motor Accident Claims Tribunal/Additional District Court - II, Poonamallee, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the first petitioner/first claimant is at liberty to withdraw a sum of Rs.6,00,000/- (Rupees Six Lakhs only) together with the interest accrued thereon and the second and third petitioners/2nd and 3rd claimants are at liberty to withdraw a sum of Rs.3,00,000/- (Rupees Three Lakhs only) each together with the interest accrued thereon, by making necessary cheque application before the Tribunal. The appellants are directed to pay appropriate Court fees within a period of two months, failing which, they are not entitled to claim interest on the award amount. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2024

dh
Index: Yes/No
Speaking Order/Non Speaking order



C.M.A.No.22 of 2014

WEB COPY

- To
1. The Motor Accidents Claims Tribunal,
II Additional District Court, Poonamallee.
 2. The Section Officer,
V.R Section,
High Court, Madras.

R.KALAIMATHI.J.,

dh



WEB COPY



C.M.A.No.22 of 2014

C.M.A.No.22 of 2014

28.03.2024