

(2013) 11 MAD CK 0239
In the Madras High Court
Case No : C.M.A. No.735 of 2010

United India Assurance Company Limited	APPELLANT
Vs	
P. Girija	RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2014) 1 TNMAC 576

Hon'ble Judges : Mr. P.R. Shivakumar, J.

Bench : Single Bench

Advocate : Mr. V. Kabirdas, Advocate, for the Appellant; Mr. C. Munusamy, Advocate, for the Respondent No. 1 and 2; Mr. M. Kamalanathan, Advocate, for the Respondent No. 4 and 5

Final Decision : Allowed

Judgement

Mr. P.R. Shivakumar, J.—M.P.No.1 of 2013 has been allowed and the service of notice on the third respondent has been dispensed with.

2. This civil miscellaneous appeal is directed against the award of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes), Chennai dated 24.07.2008 made in M.C.O.P.No.524 of 2005. The claimants in the above said M.C.O.P are the respondents 1 and 2 in the civil miscellaneous appeal. Respondents 1, 3 and 4 in the M.C.O.P. are the respondents 3 to 5 herein.

3. The respondents 1 and 2 in the civil miscellaneous appeal are respectively the widow and minor son of the deceased N.Prabhakaran. The respondents 4 and 5 herein are respectively the mother and father of late Prabhakaran. The third respondent was the owner of the alleged offending vehicle, which admittedly stood insured with the appellant insurer (United India Insurance Company Limited). The said Prabhakaran, while riding his Hero Honda motorcycle bearing Registration No.TN 01 T 8842 at the junction of Pantheon Road and Whannels Road, Egmore, Chennai at about 8.00 hours on 12.10.2004, was hit by the Auto-Rickshaw bearing Registration NO.TN-01 T-8842, as a result of which he fell

down and sustained injuries, which later on proved to be fatal.

4. The insurer of the vehicle namely Auto Rickshaw bearing Registration No.TN-01-T-8842, which belonged to the third respondent as on the date of the accident, has brought forth this appeal challenging the award of compensation made by the Tribunal in M.C.O.P.No.524 of 2005 awarding a sum of Rs.19,86,825/- as compensation for the death of the said Prabhakaran S/o. Neelamegan (5th respondent)/husband and father of the respondents 1 and 2 respectively.

5. According to the respondents 1, 2, 4 and 5, when the deceased Prabhakaran was proceeding in his Hero Honda Motorcycle bearing Registration No.TN 02 M 7099 on 12.10.2004 at about 8.00 a.m, at the junction of Pantheon Road and Whannels Road, Egmore, Chennai-8, the Auto-Rickshaw bearing Registration No.TN-01-T-8842 belonging to the third respondent herein, which stood insured with the appellant Insurance Company, came there driven by its driver in a rash and negligent manner and caused the accident by dashing against the Motorcycle in which the deceased was proceeding and the said impact led to the fall of deceased Prabhakaran resulting in grievous injuries, which later on proved to be fatal. According to them, the above said accident occurred solely due to the fault on the part of the driver of the above said Auto Rickshaw belonging to the third respondent herein. He did not contest the case and he remained ex-parte before the Tribunal. In MCOP No.524/2005, the claim was made by the respondents 1 and 2 herein, being the wife and child of the deceased, on their own behalf and on behalf of the respondents 4 and 5, namely the parents of the deceased. The respondents 4 and 5 herein were arrayed as respondents 3 and 4 in the M.C.O.P. because, they did not join with the respondents 1 and 2 in making the claim and on the other hand, they chose to file a petition in M.C.O.P.No.520 of 2005. They have not impleaded the respondents 1 and 2 herein before the Tribunal in M.C.O.P.No.520 of 2005.

6. Section 166 of the Motor vehicles Act provides that in a case of claim for compensation for the death of a person, all or any of the legal representatives of the deceased can make the claim, but in case one or more of the legal representatives of the deceased does not/do not join with the claimants, such of the legal representatives should be arrayed as respondents and the claim should be made on behalf of all the legal representatives of the deceased.

7. In view of the said provision alone, the Tribunal chose to dismiss M.C.O.P.No.520 of 2005 filed by the respondents 4 and 5 herein, as it was not filed on behalf of all the legal representatives of the deceased Prabhakaran and all the legal representatives, who did not join with them as claimants were not made even as party-respondents. At the same time since M.C.O.P.No.524 of 2004 filed by the respondents 1 and 2 herein, being the comprehensive case in which all the legal representatives of the deceased had been made parties, the award in favour of all of them came to be passed by the Tribunal in the said M.C.O.P.No.524 of 2005.

8. The Tribunal, on an appreciation of evidence, rendered a finding that the driver of the Auto-Rickshaw bearing Registration No.TN-01-T-8842, which belonged to the third respondent herein and stood insured with the appellant herein, was at fault and it was due to his rash and negligent driving of the said vehicle, the accident took place. Though the appellant-insurer would have taken a stand that the driver of the Auto-Rickshaw was not at fault and the accident took place solely due to the negligent driving of the motorcycle by the deceased and that in any event, the deceased himself contributed towards the accident by his own part of negligence, the appellant did not let in any evidence in proof of the said contention. On the other hand, the respondents 1 and 2 herein let in evidence through P.W.1 (first respondent) and P.W.2- V.P.Sivaraman (Head Constable) in order to prove that a criminal case was registered against the driver of the Auto-Rickshaw for the offences punishable under Section 304-A IPC and Section 184 of the Motor Vehicles Act, 1988. Ex.P.11-certified copy of the charge sheet submitted in the criminal case registered regarding the accident in question, came to be marked to show that the driver of the Auto-Rickshaw was prosecuted for the above said offences. A copy of the First Information Report certified by the Station House Officer and a copy of the rough sketch prepared by the Investigating Officer, which was also certified by the Inspector of Police, have been marked as Exs.P.1 and P.2. Prabhakaran, who sustained injuries was given treatment at Appollo Multi Speciality Hospital and he died after six days. A copy of the death certificate issued by the Appollo Speciality Hospital and a copy of the post-mortem certificate have been marked as Exs.P.3 and P.4. The death certificate issued by the Corporation of Chennai has been produced as Ex.P.6.

9. P.W.1 in his testimony asserted that the accident took place due to the rash and negligent driving of the Auto-Rickshaw by its driver and that the police registered a case in Cr.No.356/Ts/2004 of Traffic Investigation, D-6, Anna Square Police Station, Chennai-5. The fifth respondent Neelamegan, while deposing as R.W.1, also asserted that the accident took place due to the rash and negligent driving of the Auto-Rickshaw by its driver. Of course, it is true that neither P.W.1 nor R.W.1 claimed to be an eye witness for the occurrence. The same is the case of P.W.2. But, the mere fact that no eye witness to the occurrence had been examined will not justify the conclusion that the accident did not take place as spoken to by the claimants' side witnesses. Their oral testimony is supported by the contents of the First Information Report and also by the fact that the driver of the Auto-Rickshaw alone was prosecuted. In the absence of any evidence adduced on the side of the owner of the Auto-Rickshaw and the insurer of the Auto-Rickshaw, who is the appellant herein, the necessary inference based on the available materials shall be that the driver of the Auto-Rickshaw was at fault and the accident took place due to the rash and negligent driving of the Auto-Rickshaw by its driver. Such inference gets strengthened by the particulars found in the rough sketch prepared by the Investigating Officer showing the exact part of the road wherein the accident took place. As such, the finding of the Tribunal that the accident took place solely due to the rash and negligent driving of the

Auto-Rickshaw by its driver cannot be said to be either infirm or defective warranting interference by this Court. Perhaps that may be the reason, why the learned counsel for the appellant chose to confine his arguments regarding quantum of compensation alone and refrained from putting forth any argument on the question of negligence. For the reasons stated above, this Court comes to the conclusion that the finding of the Tribunal holding that the rashness and negligence on the part of the driver of the Auto-Rickshaw to be the sole cause of the accident is based on proper appreciation of evidence. The same cannot be interfered with by this Court and on the other hand, the same deserves to be confirmed.

10. According to the claimants, the age of the deceased at the time of death was 38 years. A copy of the driving licence has been produced as Ex.P.9. But, particulars including the Date of Birth found in the said document are not legible. However, a copy of the Pan Card issued by the Income Tax Department has been produced as Ex.P.7. In the Pan Card, the date of birth has been noted as 16.5.1966. In the absence of any contra evidence, the said document has to be relied on to fix the age of the deceased as on the date of his death. Based on the said evidence alone, the Tribunal has fixed the age of the deceased at 38 completed years. There is also no controversy regarding the age of the deceased and in fact no challenge has been made to the fixation of the age of the deceased at 38 years. However, it is the contention of the learned counsel for the appellant that the Tribunal committed a grave error in fixing the monthly income of the deceased at Rs.17,000/- on the basis of the Income Tax return filed by the first respondent after the death of the deceased marked as Ex.P.8. The learned counsel for the appellant would contend that for the previous two years, namely 2002-2003 and 2003-2004, the deceased had shown his income to be Rs.52,500/- and Rs.53,000/- respectively and there was a sudden spurt in the income tax return filed by the wife of the deceased after the death of the deceased Prabhakaran and that the same was done only with a view to claim more amount as compensation. The learned counsel for the appellant would further contend that the Tribunal ought not to have taken Income tax return filed by the first respondent for the year 2004-2005 to fix the income of the deceased for the purpose of computing compensation and on the other hand, it should have rejected the said document as one prepared and filed for the purpose of claiming more compensation and that the tribunal should have relied on the previous years' income tax returns as the basis for fixing of the annual income of the deceased. It is the further contention of the learned counsel for the appellant that, apart from committing a mistake in taking the income tax return for the year 2004-2005 as the basis for fixing the income of the deceased, the Tribunal also committed an error in adding to the said amount 50% towards future prospects and thus, fixing Rs.17,000/- as the monthly income of the deceased.

11. As against the said contention of the learned counsel for the appellant, the learned counsel for the respondents 1 and 2 and the learned counsel for the

respondents 4 and 5 have argued that there was nothing wrong on the part of the Tribunal in relying on the latest income tax return and that the contention of the appellant in this regard should be rejected as untenable, since the tribunal has rightly rendered a finding that the deceased was doing business as Travel Agent in the name and style of N.P.K Tours and Travels and the said finding has not been challenged by the appellant. The above said contention raised on behalf of the respondents is sustainable regarding the finding of the Tribunal that the deceased was doing business as Travel Agent. Apart from that, the contention that the latest Income Tax return filed by the first respondent after the death of the deceased should be taken into account can be construed as a meek attempt made on the part of the respondents to sustain the award on the question of quantum. A comparison of the income tax returns for the previous years with the return for the year 2004-2005, which alone was filed by the first respondent after the death of the deceased, will make it clear that they claim that there had been 250% increase in the income in the year of the death of the deceased as against the increase of a meagre sum of Rs.500/- in the year 2003-2004 from the year 2002-2003. In the year 2002-2003, income returned was Rs.52,500/- and the tax paid was only Rs.250/-. For the next year, namely 2003-2004, the income returned by the deceased was at Rs.53,000/- and the tax paid thereon was Rs.300/-. Nothing more is required to be added to show that the income tax return filed for the year 2004-2005 is dubious as it came to be filed by the wife of the deceased after the death of the deceased, keeping in mind the compensation to be claimed from the owner and the insurer of the offending vehicle. The fact that the income for that particular year is nearly four times more than the income for the previous years, will give rise to such an inference. Further more, the documents like ledger and account books have not been produced to substantiate the case of the claimant that the deceased in fact had an income of Rs.1,36,733/- for the year 2004-2005. The return came to be submitted within one and half months after the death of the deceased. If all these aspects are taken into account, this Court has to come to a necessary conclusion that the Tribunal committed an error in fixing the income of the deceased based on the income tax return for the year 2004-2005 produced as Ex.P.8. On the other hand, the Tribunal ought to have taken the income reflected in the income tax return of the year 2003-2004 as the basis for fixing the income.

12. But, a business man who died at the age of 38 years can be expected to come up and flourish in his business and in such circumstances, applying the ratio found in *Rajesh And Others v. Rajbir Singh And Others* (2013 (3) CTC 883), the income thus assessed must be increased by 50% towards Future prospects. If it is done, then the income of the deceased can be fixed at 53,000/- + $53,000/2 = \text{Rs.}79,500/-$. Thus the average annual income of the deceased for the purpose of computing compensation is fixed at Rs.79,500/-. It is admitted on behalf of both parties that the said amount is well within the exempted limit for the assessment year 2005-2006. Therefore, no deduction towards income tax should be made from the above said amount. Accordingly, the annual income of

the deceased for the purpose of computing the compensation is fixed at Rs.79,500/-.

13. The learned counsel for the appellant would submit that though there are four claimants, the father should not be construed to be a dependant, especially when it is contended that father himself incurred all the expenses towards the treatment of the deceased and that taking into account the other three alone to be the dependants, the deduction of 1/3 towards personal and living expenses should be justified. This Court is satisfied that the above said submission of the learned counsel for the appellant deserves to be countenanced. Accordingly, this Court is of the view that deducting ? from the annual income of the deceased towards personal and living expenses of the deceased shall be justified. Accordingly, deducting Rs.26,500/- representing ?rd portion of the average annual income of Rs.79,500/- the pecuniary annual loss caused to the legal representatives of the deceased is fixed at Rs.53,000/-. This shall be the multiplicand, which has got to be multiplied by a suitable multiplier to arrive at a figure representing compensation for the loss of dependency.

14. Now, it has been a settled proposition of law that the age of the claimants shall be irrelevant and the selection of multiplier in case of death should be made on the basis of the age of the deceased. This has been held so in *Reshma Kumari And Others v. Madan Mohan And Another* (2013 ACJ 1253). The deceased Prabhakaran had completed 38 years of age and hence he comes in the category of persons in the age group of 36 years to 40 years. As per the guide lines of the Supreme Court found in *Sarla Verma's Case* and reiterated in *Reshmakumari's Case*, the proper multiplier shall be 15. In selecting the multiplier also, the Tribunal has committed an error in selecting "13" to be the multiplier for the person aged 38 years. The same needs correction and the multiplier 15 is to be applied. Hence, the compensation for pecuniary loss shall be $\text{Rs.53,000} \times 15 = \text{Rs.7,95,000/-}$.

15. To the above said amount, the Medical expenses, if any and other conventional damages should be added. In this case, the claimants 1 and 2 have produced Medical bills covering a sum of Rs.2,18,100/-. The deceased did not suffer instant death on the spot. After sustaining injuries, he was taken to Appollo Multi Speciality Hospitals and was given treatment for six days till his death. Meanwhile, in the hope of saving him from death, the claimants seem to have incurred the above said amount as expenditure towards medical treatment. Though the claimants have produced Medical bills to the tune of Rs.2,18,100/- marked as Ex.P.10, the Tribunal without assigning any reason scaled down the said amount to Rs.1,54,361/-. As rightly contended by the learned counsel for the respondents 1, 2, 4 and 5 the said amount needs upward revision. While doing so, the fraction namely, Rs.100/- shall be disregarded and omitted and a sum of Rs.2,18,000/- can be awarded as compensation towards Medical expenses. The Tribunal was stringent in awarding a meagre sum of Rs.5,000/- towards Funeral Expenses. Once again relying on the judgment of the Apex Court

in *Rajesh And Others v. Rajbir Singh And Others* (2013 (3) CTC 883), the said amount is enhanced to Rs.25,000/-. So far as the first respondent is concerned, she has lost her husband at her prime youth and as per the guide lines of the Apex Court, for the Loss of consortium, a sum of Rs.1,00,000/- shall be awarded. But, the Tribunal has awarded only a sum of Rs.24,500/- and the same has to be enhanced to Rs.1,00,000/-. For the second respondent/2nd claimant, the Tribunal has awarded a sum of Rs.35,000/- towards Loss of love and affection. Again based on *Rajesh And Others v. Rajbir Singh And Others* (2013 (3) CTC 883), the sum has to be stepped up to Rs.1,00,000/-. No amount has been awarded towards Transport Expenses. Considering the fact that the deceased had to be taken from the place of accident to the hospital and then, the dead body had to be taken from the hospital to the residence of the claimants and the fact that while he was taking treatment, the claimants would have incurred some expenditure towards transportation, a sum of Rs.10,000/- can be awarded. For the expenses on Medical attendants and also for Mental agony to the claimants during the period while the deceased was given treatment, a certain amount can be awarded. This court fixes it at Rs.10,000/-. If such computation is made, the total amount of compensation, to which the respondents 1 and 2 and 4 and 5 shall be entitled, can be reasonably fixed at Rs.12,58,100/-. Accordingly, this court holds the amount of compensation awarded by the Tribunal is excessive and the same deserves to be reduced to Rs.12,58,100/-.

16. Because of the reduction of amount of compensation awarded by the Tribunal, it has also become necessary to alter the apportionment. Taking into account the nature of dependency of each person and the duration for which each of the claimants would have been dependant on the deceased if he had been alive, this Court is of the view that the respondents 1 and 2 being the wife and minor child of the deceased are entitled to more amount and the respondents 4 and 5 shall be entitled to lesser amount than the amount to be allotted to the respondents 1 and 2. The amount shall be apportioned in the following ratio:

Respondent No.1 (wife)

:

Rs.5,00,000/-

Respondent No.2 (minor son)

:

Rs.4,08,100/-

Respondent No.4 (mother)

:

Rs.2,00,000/-

Respondent No.5 (father)

:

Rs.1,50,000/-

In the result, the civil miscellaneous appeal is allowed in part. The award of the Tribunal is modified by reducing the amount of compensation to Rs.12,58,100/- from Rs.19,86,825/-. The appellant and the 3rd respondent are jointly and severally liable to pay the said amount together with an interest on the said amount at the rate of 7.5% per annum from the date of filing of the MCOP till deposit and proportionate costs in the MCOP. In the said amount, the first respondent (wife) is entitled to Rs.5,00,000/-, the 2nd respondent (minor son) is entitled to Rs.4,08,000/-, the 3rd respondent (mother) is entitled to Rs.2,00,000/- and the 4th respondent (father) is entitled to Rs.1,50,000/- with accrued interest corresponding to their shares. The costs shall go to the first respondent. Subject to reduction of quantum and modified apportionment as indicated above, the award of the Tribunal shall stand confirmed in all other respects.