IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-12-2008

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THE HONOURABLE MR.JUSTICE V. PERIYA KARUPPIAH

C.M.A.No.2781 of 2003

The United India Insurance Co., Ltd.,
Ranipet
Rep. by its Manager ... Appellant (2nd Respondent)

vs.

1. Kusalakumari @ Kusuma
2. Padmavathi
3. Vijayashanthi
3rd Respondent declared as Major
and discharge her mother 1st respondent Kusalakumari
from the guardianship vide order dated 06.02.2004
made in CMP.No.21410/2003.

4. Sri Sankara Vidyalaya,
162, Velacherry Road,
Tambaram, Chennai ... Respondent(Petitioner & 1st Respondent)

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Award of the Motor Accidents Claims Tribunal, (Sub-Judge), Ranipet in M.C.O.P.No.25 of 1999 dated 20.12.2002

For Appellant : Mr. K. Ramani

For Respondent : Mr. V. Parivallal
[for R-1 to R-3]

JUDGMENT

This appeal is directed against the award passed by the lower Court in M.C.O.P.No.25 of 1999 dated 20.12.2002, preferred by the second respondent Insurance Company. For convenient sake the ranking of the parties before the lower Court are referred in this Judgment also.

2. Brief facts relied upon by the parties before the Lower Court are as follows:

(i) On 17.11.1998 at about 10.30 a.m at Arcot to Cheyyar Road, at Mulluvadi Junction Road, while the deceased was proceeding as a Pedestrian by pulling his Motor Cycle, a bus bearing Regn.No.TN-21-Z-4349 belonging to the first respondent, coming in the opposite direction, driven by its driver in a rash and negligent manner and dashed against the deceased and thus caused instantaneous multiple grievous injuries which lead to the death of the deceased after 25 days of the alleged accident, in the Government Hospital, Vellore. The first claimant is the wife, second and third claimants are the daughters of the deceased. The deceased was aged 54 years at the time of accident and was working as Village Administrative Officer, Mulluvadi Village, Arcot Taluk and was getting a salary Rs.6,500/- per month. Hence a total sum of Rs.5,00,000/- is claimed.

(ii) In the Counter filed by the second respondent it is stated that at the time of accident the deceased was also driven his Motor Cycle (TVS 50) and due to the rash and negligent driving of the deceased the accident had taken place. The deceased was not having valid driving license and Badge at the time of accident and therefore, the second respondent is not liable to pay any compensation. The claimants are put to strict proof that the deceased died due to the injuries sustained by him and also the age of the deceased.

3. The lower Court, after the appraisal of the evidence adduced before it, had awarded a sum of Rs.5,00,000/- towards compensation as prayed for by the claimants. Aggrieved by the said order the second respondent has preferred this appeal.

4. Heard Mr. K. Ramani, learned counsel appearing for the appellant and Mr. V. Parivallal, learned counsel appearing for the respondents.

5. Learned counsel for the appellant/Insurance Company would submit in his argument that the lower Court had awarded the compensation as prayed for by the claimants without any basis. He would further submit that the lower Court had assumed the income of the deceased without any support from the records and had awarded compensation which is on the higher side. He would further submit that the contributory negligence on the part of the deceased was not considered by the lower Court. He would also submit that the alleged rash and negligence on the part of the first respondent's driver was not proved by the evidence of the petitioner. It was also not considered by the lower Court that the deceased would retire at his 58th age but the compensation was calculated till the 65th age of the

deceased which is erroneous. He would also submit that the method of calculating the compensation adopted by the lower Court was defective and therefore the award passed by the lower Court should have been either set aside or modified and the appeal may be allowed.

6. Learned counsel for the respondents 1 to 3/claimants would submit in his argument that the lower Court had correctly come to the conclusion that the claimants are entitled to more than the claim of compensation made in the petition and therefore it had rounded off the claim made in the petition. The calculation of compensation was duly done by the lower Court in accordance with law and there is no defect in the award. He would further submit that the lower Court had correctly fixed the multiplier and the income of the deceased person and had come to the conclusion of allowing the claim made by the claimants in its entirety as they were found entitled to more than the claim amount. The alleged contributory negligence was not established before the lower Court and therefore the lower Court had correctly come to the conclusion of fixing the liability on the appellant/second respondent who is the insurer of the first respondent. Therefore, he would request the Court to confirm the award passed by the lower Court and to dismiss the appeal.

7. I have given anxious thoughts to the arguments advanced on either side.

8. The main argument advanced by the Appellant/Second respondent/Insurance Company is to the effect that the lower Court had calculated the compensation using the multiplier at 11 despite the deceased was a Government Servant and had only 4 years of service on the date of his death and the compensation calculated by the lower Court giving another 7 years extra period is sheerly amounts to higher side calculation. Apart from that the appellant/Insurance Company was also contending that the deceased had contributed negligence and therefore suitable apportionment must be done in the payment of compensation. In so far as the contention regarding the contributory negligence is concerned the lower Court had come to the conclusion of fixing the responsibility on the driver of the first respondent before the lower Court and therefore the second respondent Insurance Company was made liable to pay the said amount as the insurer of the vehicle. On a careful perusal of the evidence adduced before the lower Court, we could see that the eye witness was examined as P.W.2. P.W.2 is non other than the son of the deceased person. He would speak in his evidence that the accident had happened only due to the rash and negligence driving of the bus driver. In his cross examination, he would state that he and his father the deceased person were going to Kalavai from Mulluvadi and they did not see the bus and the bus had immediately dashed against them when they were turning. The learned counsel for the appellant/second respondent would submit that the admission of

P.W.2 would go to show that they were riding on the two wheeler at the time of accident and therefore it should have been considered that the deceased had also contributed negligence. However, when we go through the evidence of P.W.2 he had denied that his father/deceased was not riding the two wheeler at the time of accident. It is pertinent to note that the F.I.R. was given only against the driver of the bus. The driver of the bus had also admitted his guilty before the Criminal Court. Therefore the finding of the lower Court that the accident had happened only due to the rash and negligent driving of the first respondent's driver cannot be varied.

9. As far as the quantum of compensation is concerned the deceased was found to be a Village Administrative Officer and was earning a sum of Rs.6,088/- per mensem. The said fact has been proved by Ex.A.7. However, the lower Court had considered the age of the deceased at 54 years and had fixed the multiplier at 11 on the basis of second schedule of Motor Vehicle Act. The deceased was working as a Government Servant and his retirement age is 58 years. Therefore, the lower Court ought to have adopted the calculation of compensation for about 4 years with the help of the monthly salary proved by the claimants and the remaining period with the help of pension amount which is 50% of the salary with the multiplier to be calculated at the age of 58 years. The Multiplier used at 11 would exceed the retirement age for nearly 7 years which could not meet the ends of justice. When it is calculated for the loss of income of four (4) years as Government Servant, we have to deduct 1/3rd of the salary amount towards the maintenance of the deceased person and the remaining 2/3rd amount of Rs.4,059/- would be the monthly dependency of the claimants. For the annual dependency it would be Rs.48,708/-. When we multiplied it with four (4) years of his service it comes to Rs.1,94,832/-. Now we have to fix the multiplier for the age of 59 years, from which date we have to calculate the compensation on the basis of the pension amount to be received by the deceased, if he is alive. The proper multiplier as per Second Schedule of the Motor Vehicle Act is 8. The pension amount for the salary of Rs.6,088/- would be Rs.3,044/-. After deducting a sum of Rs.985/- towards the maintenance of the deceased from the said amount, a sum of Rs.2059/- would be the monthly dependency from the pension amount and the annual dependency would be Rs.24,708/-. When we multiply with 8 it would be Rs.1,97,664/-. On computing the total compensation it comes to Rs.3,92,496/- (Rs.1,94,832/- + Rs.1,97,664/-).

10. The lower Court also awarded the compensation on the following heads:

Towards Transport Charges	: Rs. 1,000.00
For Extra Nourishment	: Rs. 1,000.00
For Funeral Expenses	: Rs. 5,000.00
Towards Pain and Sufferings	: Rs. 15,000.00
Toward loss of Love and affection	: Rs. 20,000.00
For loss of consortium to the first claimant	: Rs. 10,000.00
For Loss of Income	: Rs. 5,39,880.00
Total Compensation	: Rs. 5,91,880.00

11. For pain and sufferings is concerned it is a personal remedy available only to the injured person. When the compensation awarded to the claimants for the death of the deceased person, this compensation is not permissible under law. The compensation regarding the loss of consortium is concerned the lower Court ought to have awarded Rs.20,000/- as prayed for by the first claimant and the compensation awarded by the lower Court at Rs.10,000/- is inadequate. The award of compensation at Rs.20,000/- to the second claimant towards marriage expenses cannot be awarded. At the same time the claimants are entitled for loss of estate for the death of the deceased at Rs.10,000/- and the Medical Expenses for the treatment period commencing from 17.11.98 to 12.12.98 a sum of Rs.10,000/- could also be awarded. The compensation awarded in respect of the remaining heads were justly passed by the lower Court. Therefore the claimants are entitled for a total sum of compensation as per the following heads:

Loss of income	: Rs.3,92,496.00
Towards Transport Charges	: Rs. 1,000.00
For Extra Nourishment	: Rs. 1,000.00
For Funeral Expenses	: Rs. 5,000.00
Toward loss of Love and affection	: Rs. 20,000.00
For loss of consortium to the first claimant	: Rs. 20,000.00
Medical Expenses for the period from 17.11.98 to 12.12.98	: Rs. 10,000.00
Loss of Estate	: Rs. 10,000.00
	Rs.4,59,496.00

12. On a calculation of total compensation we could see a sum of Rs.4,59,496/- could be awarded to the claimants towards the compensation for the loss of life of the deceased/husband of the first claimant. But the lower Court had computed Rs.5,91,880/- and had passed an award for Rs.5,00,000/- as prayed for in the claim cannot be sustained. The claimants are entitled to a sum of Rs.4,59,496/- with interest at 9% per annum from the date of petition till the date of realisation.

13. Therefore, the appeal preferred by the second respondent/Insurance Company is partly allowed and the award of lower Court is modified to that of Rs.4,59,496/- with interest @ 9% with proportionate cost. There will however, be no order as to costs in this appeal.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Motor Accidents Claims Tribunal,
(Sub-Judge), Ranipet.

C.M.A.No.2781 of 2003

MBS(CO)
RVL 19.02.2009