

(2009) 04 MAD CK 0510

Madras High Court

Case No: C.M.A. No. 1142 of 2008 and M.P. No. 2 of 2008

National Insurance Company
Ltd.

APPELLANT

Vs

S. Chitra and Others

RESPONDENT

Date of Decision: April 3, 2009

Citation: (2011) 2 TAC 273

Hon'ble Judges: T.S. Sivagnanam, J; Prabha Sridevan, J

Bench: Division Bench

Advocate: K.S. Narasimhan, for the Appellant; V.M. Ravichandran, for the Respondent

Judgement

Prabha Sridevan, J.

The Insurance Company has challenged the award of Rs. 22,44,777/-, granted as compensation to the claimants on account of the accident that took place on 29th June, 2003 due to negligence of the driver of the insured vehicle.

2. When the application for permission to withdraw came up for hearing, both the learned Counsel submitted that they would try to work out some mode of calculating compensation, which would be acceptable to both parties. Accordingly the matter is listed today and we have taken the appeal for final disposal.

3. On 29th June, 2003, the deceased was proceeding in his motor cycle in the Anna Main Road alongwith his wife seated on the pillion and his son seated in front of him. He took a diversion and there was a collision with the insured vehicle, the two wheeler. He sustained internal head injuries and died. The wife and minor survived in the accident. They claimed a compensation of Rs. 50,00,000/-. The Tribunal awarded Rs. 22,44,777/-.

4. An appeal is filed by the Insurance Company contending that the Tribunal failed to note that the deceased had at least in part contributed to his own death and, therefore there was a contributory negligence in this case and also questioning the quantum.

5. The facts leading to the accident need to be noted. The scene of occurrence was Anna Main Road. The deceased took a diversion through a gap in the median into the right side of the road. He did so because his own side of the road to the left of the Median was under repair and the road had been closed. The Insured vehicle was coming from the opposite direction on its own side of the road, but it appears to have taken a sharp swerve to the right and there was a head-on collision. The deceased lost his balance, fell down and died. The Tribunal, while deciding the issue of negligence held that Ext.P.2, the rough sketch would show that the offending motor cycle had drifted from its path and had come to its extreme right side and it is thus the accident occurred. The Tribunal rejected the submissions made on behalf of the Insurance Company regarding the contributory negligence on the ground that there was no contra evidence to show that the vehicle was ridden by the deceased at high speed and therefore, the Tribunal rejected the submissions made regarding the contributory negligence and held that the insured vehicle was alone and solely responsible for the accident.

6. Then the Tribunal decided the quantum. The deceased was running two businesses by Truesel Associates and Truesel Engineers. He has allegedly drawing a monthly income of Rs. 25,000/- to Rs. 30,000/-. The wife filed Exts.P8 to P21 to show the professional fees earned by the deceased. On the basis of this, the Tribunal fixed the monthly income at Rs. 21,000/- and after deducting 1/3rd arrived at an annual contribution of Rs. 1,68,000/-. To prove his age, the driving license (Ext.P.6) and Passport (Ext.P.22) were filed, 40 was accepted as his age and a multiplier of 13 was adopted. The pecuniary loss was therefore, calculated at Rs. 21,84,000/-. Towards conventional damages, Rs. 20,000/- towards consortium, Rs. 25,000/- towards love and affection and Rs. 5,000/-towards funeral expenses were added. The claimants had also incurred medical expenses and this was also added to the compensation amount, arriving at Rs. 22,44,777/-.

7. The learned Counsel for the Appellant Insurance Company submitted that there were materials to show that the deceased had lost balance while entering the other side of the road and therefore, at least to some extent had contributed to the accident. The learned Counsel submitted that considering the circumstances and the fact that a very young wife had been left in the lurch because of the accident, the Court may fix not more than 20% as a percentage of contribution of the deceased to the negligence. The learned Counsel also submitted Second Schedule may require 15 multiplier to be adopted.

8. The learned Counsel appearing for the claimants submitted that the factual finding of the Tribunal was that the deceased was not at all responsible for the accident. But when we asked him whether it was prudent on the part of the deceased to take two persons besides himself to travel on a two wheeler which was meant only for two passengers and would that not have contributed to the loss of balance, when swerving to the right, the learned Counsel for the claimants had no

answer.

9. We have considered the materials available on record. We have seen the copy of the rough sketch, which has been produced before us by the learned Counsel.

10. It is clear that the offending vehicle had swerved sharply across the road. But the deceased who was entering the other side of the road turning north because of the roadblock ought to have been very cautious, since he was entering the wrong side of the road. It is at this point the accident appears to have occurred due to loss of balance. The fact that he was carrying two passengers besides himself has definitely resulted in the head-on collision and from the rough sketch we are also able to see that the deceased should have seen the vehicle coming from the opposite direction. Therefore, definitely there is an element of contributory negligence especially in cases of head-on collision.

11. In this regard, we would like to strongly deprecate the practice of drivers of two wheelers carrying more than one person besides themselves in their vehicles. A two-wheeler is meant for a driver and one pillion rider alone and no more passengers. We hope that the authorities who regulate the traffic will take strict action in this regard.

12. We are not able to understand whether the drivers value their lives so cheaply; that they are willing to take the risk of death or grievous injury. If they die they leave a family which suffers or if they are hopelessly injured, they may become like vegetables and be a burden on the surviving family. Either way this risk is not worth taking. What is the duty of cyclists who turn casually, pedestrians who ignore pedestrian crossing and do gymnastics on the median ? If such persons lose their lives or are injured, are the four wheeler drivers always to be blamed ? With the increase of motor vehicles, accidents have also increased. In consonance with the social philosophy behind the provisions, we have legal pronouncements which say that the liability of the insurer is not purely and simply a tortious liability. This is the spirit with which Section 163A has been acted. But every user of the road from a pedestrian to a heavy vehicle driver owes a duty of care and caution. Recently the police of Union Territory of Puducherry rewarded persons followed traffic rules. Such efforts deserve to be congratulated.

13. We quote the following paragraphs in the case of [Managing Director, Tamil Nadu State Transport Corporation, \(Coimbatore Division-I\) Ltd. Vs. Abdul Salam, Jameela, Laila, Sainabha, Kabeer, Meharaj and P. Selvaraj](#), :

(10) We are concerned as to whether such action of the individuals is permissible under law. The motor cycle and any other two wheelers are meant only for two persons, the rider and a pillion rider. If more than two persons are travelling on a motor cycle or any other two wheeler, undoubtedly such action of the individual would become illegal and unauthorised. It is an awful sight when we come across three persons travelling on a motor cycle. They are sitting in such a cramped

manner that the rider of the motor cycle almost sitting on the petrol tank or at the front edge of the seat. When he was sitting in such a position, naturally because of the restricted movement of his legs, he cannot have the complete control over the brake. The movements of his hands also restricted. When that be so, this Court is of the opinion that definitely the rider of the two wheeler cannot have full control over the vehicle.

(11) Apart from that, when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to loose his control over the vehicle. Even though such travelling of three persons on a motor cycle is contrary to the statute, still the enforcement wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing, such travelling of three persons on the two wheelers have become a regular sight. Even though the highway patrolling is available but it is a rare sight to see a highway patrolling vehicle. Travelling of three persons has become rampant in the mofussils and in the city; especially among the youngsters like the college students. When that be the case, the enforcing authority is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the Rules and Regulations of the statute in the minds of those who are using the vehicles.

(12) When three persons travel in a motor cycle which is meant for two persons, this Court is of the view the conduct of the persons who travel in such a manner are liable for contributory negligence; especially when their action is contrary to the statute.

We fully share the views expressed above. The accident in that case took place in 1995.14 years have passed. There is no improvement. In fact, we can see 4 or 5 persons travelling on a two wheeler with the child in front totally blocking the vision of his father who is driving. We can only shake our heads in despair. In that case, the Division Bench held that the responsibility of the deceased was 50%.

14. However we feel the degree of contributory negligence can be fixed at 20% on the part of the deceased. We appreciate the fairness with which the learned Counsel for the Insurance Company accepted that the percentage of negligence could be pegged down at 20% considering that the family is a young family which has lost its breadwinner. Therefore the contributory negligence is fixed at 20%.

15. As regards the quantum, we are unable to fault the Tribunal for fixing the monthly income as it has done. However, we will adopt 15 as the multiplier. Therefore, the pecuniary loss shall works out to Rs. 168,000 x 15 = 25,20,000. The amounts awarded under the other heads are confirmed.

16. In the result, the Civil Miscellaneous Appeal is allowed and we award as follows:

Pecuniary Loss	Rs. 25,20,000/-
Consortium	Rs. 10,000/-
Love and Affection	Rs. 15,000/-
Medical Expenses	Rs. 10,777/-
Funeral Expenses	Rs. 5,000/-
Total compensation	Rs. 25,60,777/-
Less: Contributory negligence at 20%	Rs. 5,12,150/-
	Rs. 20,48,627/-
Rounded off:	Rs. 20,50,000/-
The aggregate figure would be	Rs. 20,50,000/-

As regard the interest, we do not want to interfere.

17. The aforesaid amount shall be apportioned in the following manner:

1st Claimant	Rs. 12,50,000/-
2nd Claimant	Rs. 5,00,000/-
3rd Claimant	Rs. 1,50,000/-
4th Claimant	Rs. 1,50,000/-

18. The Civil Miscellaneous Appeal is thus partly allowed and the award of the Claims Tribunal is set aside and modifies to Rs. 20,50,000/- as above.

19. For complying with the condition for grant of stay, the Appellant had deposited the entire amount. In view of our reducing the award as above, the Appellant is entitled to withdraw the excess amount deposited. As regards the 1st, 3rd and 4th Respondents, they are entitled to withdraw their share as indicated above. As regards the share of the minor, it shall be invested in any one of the nationalized bank initially for a period of three years in fixed deposit till the minor attains majority subject to a minimum lock in period of three years and the first claimant/mother is also entitled to receive the interest accrued thereon periodically directly from the bank. No costs.