



C.M.A.No.2157 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

C O R A M

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2157 of 2018

1. R. Radhamani
2. R. Ramkumar
3. R. Rani

..Appellants

Versus

1. V.Kanagaraj
- 2.The Branch Manager,
The National Insurance Company Limited
1st Floor, R.V.R.Building,
15, Karamadai Road,
Mettupalayam,
Coimbatore District

..Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 06.07.2017 made in M.C.O.P.No.29 of 2014 on the file of the Motor Accident Claims Tribunal, (Sub-Court) Sathyamangalam.

For Appellants : Mr.A.Sundaravadhanan
for Mr.S.Prasad

For Respondents : Mrs. M.B. Surekha for R2
R1 – Not known

J U D G M E N T

The petitioners/claimants have filed this appeal against the Judgment and decree in M.C.O.P.No.29 of 2014 dated 06.07.2017 on the file of the



C.M.A.No.2157 of 2018

Motor Accident Claims Tribunal, (Sub-Court) Sathyamangalam,

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questioning the quantum of compensation awarded to them.

2. The appellants herein was the petitioners/claimants before the Tribunal and the 1st respondent herein is the owner-cum-driver of the offending vehicle and the 2nd respondent is the Insurance company in which the offending vehicle was insured at the time of the accident. For the convenience, the parties are referred to in the same ranking as before the Tribunal.

3. The facts of the case briefly are as under:

On 05.10.2013 at about 7.30 p.m., while the deceased Ramachandran was proceeding in a two wheeler bearing Regn.No.TN-38-AX-6207 near Kondamuthu main road, Kulathupalayam Saravana petrol Bunk proceeding from west to east, on the left side, a two wheeler bearing Regn No.TN-37-CT-2112, came in a rash and negligent manner, dashed against the two wheeler of the deceased and thereby, he fell down and sustained grievous injuries. He was admitted immediately in the Government Hospital, Coimbatore. In view of the said accident, the



C.M.A.No.2157 of 2018

deceased had taken treatment in the Government Hospital as well as in the private Hospital, but he died on 27.11.2013. The petitioners/appellants herein has approached the Tribunal by filing a claim petition in M.C.O.P. No.29 of 2014 seeking for compensation a sum of Rs.20,00,000/-. After trial, the claimants were awarded a sum of Rs.6,95,997/- as compensation directing the respondents to pay the same jointly or severally.

4. Being aggrieved by the award, the petitioners have filed the present appeal seeking for enhancement of the award passed by the Tribunal.

5. The learned counsel for the appellant would submit that the Tribunal erred in fixing liability of the award against the appellant on the ground of contributory negligence of 40% without considering the case in proper and perspective manner. He further submitted that failed in holding that the accident has taken place in the middle of the road. Hence considering the charge sheet and FIR is against the settled principle of law that an independent evidence is required to prove the contributory negligence from the side of the respondents. It erred in holding that the



C.M.A.No.2157 of 2018

evidence of PW2 who have been the eye witness to the accident when there is no cross examination to shatter his evidence to prove the contrary, the contributory negligence against the deceased is against the principles of law. When the Tribunal had accepted the evidence of PW2 that the deceased was not driving the vehicle negligently, the finding based on the Ex.P3 is against the principle of law when the law requires the initial burden is casted upon the appellants/claimants to prove the factum of the accident and the negligence on the part of the offending vehicle, since the first respondent has not chosen to appear in the Tribunal.

6. The learned counsel for the Insurance Company/2nd respondent herein would submit that the Tribunal has rightly awarded compensation after taking into consideration the entire oral and documentary evidences placed before it. There is no infirmity in the award amount. Hence, the appeal filed by the appellants is not sustainable and liable to be set aside.

7. Heard, the learned counsel for the appellants and the learned counsel for the second respondent and perused the material available on record.



C.M.A.No.2157 of 2018

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8. Before the Tribunal, on the side of the appellants, two witnesses were examined as P.W.1 and PW2. Seventeen Documents were marked as Ex.P1 to Ex.P17. No oral and documentary evidence were let in on the side of the respondents.

9. On perusal of records, it is seen that the Tribunal has taken only Rs.6000/- as monthly income of the deceased and it has not taken into consideration the future prospectus of the deceased while awarding compensation. It has not awarded any amount towards loss of estate for which he is entitled to. It is seen that the deceased was the bread winner of the family. Taking note of the above submissions of the learned counsel for the appellant, age of the deceased and considering his avocation, also the facts and circumstances of the case, this Court is of the considered view that the future prospectus of the deceased has to be fixed at 10%. Hence, this court fix Rs.7000 as his monthly income and 10% of future prospectus is taken into consideration for awarding compensation towards loss of earning of the deceased. There is no need to change the multiplier adopted by the Tribunal. Further, the 1/3rd deduction for personal expenses made by the



C.M.A.No.2157 of 2018

Tribunal also does not require any interference. This Court after taking Rs.7,000/- as the monthly income of the deceased, adding 10% towards future prospectus of the deceased and deducting 1/3rd of the amount, adopting the multiplier of 9, the loss of earning works out to Rs.5,54,400/- ($\text{Rs.}7000 \times 10\% = 700$, $7000 + 700 = 7700$ $\times \frac{1}{3} = 2567$, $7700 - 2567 = 5133$ ($5133 \times 12 \times 9 = 5,54,364/-$) and the same is rounded off to Rs.5,54,400/-. Accordingly, the amount awarded by the Tribunal towards stands modified to Rs.5,54,400/- under the head of loss of earning.

10. This court is also inclined to award a sum of Rs.15,000/- towards loss of estate. The award of Rs. 25,000/- under the head of funeral expenses and Rs.1,00,000/- under the head of consortium to wife seems to be higher side and hence this court fix Rs.15000/- towards funeral expenses and Rs.40,000/- under the head of consortium to wife respectively.

11. The re-structured compensation is detailed as under:

Loss of earning	Rs.5,54,400/-
Consortium to wife	Rs. 40,000/-
Love and Affection to appellants 2 and 3	Rs. 20,000/-
Medical bills	Rs. 5,82,995/-



C.M.A.No.2157 of 2018

Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000
Total	Rs.12,27,395/-

12. Having considered the aforesaid facts and circumstances and submission made by the learned counsel for the appellants, this Court is of the considered view that the award amount fixed by the Tribunal shall be modified from Rs.6,95,997/- to Rs.12,27,395/- after taking into consideration that on the basis of negligence aspect and earning capacity of the deceased.

13. It would be necessary to extract the relevant following lines in the judgment of the Tribunal to fix the ratio of negligence :

“ எனவே ரோட்டின் மையப் பகுதியில் இரண்டு இரு சக்கர வாகனங்கள் நேருக்கு நேராக மோதிக் கொண்டிருப்பது இரண்டு வாகனங்களில் சென்ற நபர்களின் கவனக்குறைவால் தான் ஏற்பட்டிருக்கிறது என்று நீதிமன்றம் கருதுகிறது. அதனால் மேற்படி விபத்திற்கு கவனமின்மை என்ற கோட்பாட்டின் அடிப்படையில் இறந்து போன நபருக்கு 60:40 என்ற விகிதத்தில் இழப்பீடு கொடுக்கலாம் என்று முடிவு செய்யப்படுகிறது.”



C.M.A.No.2157 of 2018

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14. However, on perusal of Exs.P3 to P5 and judgment of the Tribunal, this court deems it fit that this judgment requires modification and hence it is inclined to fix 75% negligence on the part of the rider of the two wheeler and another 25% contributory negligence on the part of the deceased which would meet the ends of justice.

15. Therefore, the Insurance Company is liable to pay 75% of the compensation amount. Hence, the Insurance Company is directed to deposit the modified award amount of Rs.9,20,546.25/- along with interest @7.56% p.a from the date of petition till the date of realization, to the credit of M.C.O.P.No.29 of 2014 on the file of the Motor Accident Claims Tribunal, (Sub-Court) Sathyamanagalam, within a period of four weeks from the date of receipt of copy of this Judgment.

16. In the result, this appeal is partly allowed and the 2nd respondent/Insurance Company is directed to deposit the award amount of Rs.9,20,546.25/- in MCOP.No.29 of 2014, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from



C.M.A.No.2157 of 2018

the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the amount to the account of the claimants, within two weeks thereafter. No costs.

22.06.2023

Index:Yes/No
Internet: Yes/no
gv

To

- 1.The Motor Accident Claims Tribunal
(Sub-Court) Sathyamangalam.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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C.M.A.No.2157 of 2018

A.ANAKKIRAN.,J.

Gv

C.M.A.No.2157 of 2018

22.06.2023