

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.938 of 2015

1.Saroja
2.Chinnusamy

Appellants/Claimant

vs

1.P.Arumugam

2.HDFC General Insurance Company Limited,
Divisional Office,
No.301, Embassy Classic,
No.11, Vittal Mallaiya Road,
Bangalore - 560 001.
(1st Respondent exparte before the Tribunal)

Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.06.2011 made in M.C.O.P.No.399 of 2009 on the file of Motor Accident Claims Tribunal / Fast Track Court at Namakkal.

For Appellants : Mr.Ma.P.Thangavel

For Respondents: Mr.M.B.Gopalan (for R2)
R1 - Exparte

JUDGMENT

On 15.03.2009, at about 7.30 p.m., when the deceased Manivannan was riding his motorcycle bearing Registration No.TN-28-AD-5605, on the Trichy Main road, the lorry bearing Registration No.TN-52-Z-2983, was stationed on the middle of the road. At the same time, another vehicle had been driven by its driver in a negligent manner from the opposite direction. In order to avoid collision with that vehicle, the petitioner hit his vehicle against the back of the lorry. As a result, he had sustained grievous injuries and underwent treatment at two different hospitals, but in spite of medical treatment, he had

expired. Hence, the parents of the deceased had claimed compensation of a sum of Rs.35 lakhs.

2.The Insurance Company had filed a counter statement and resisted the claim petition. The respondent denied the occurrence of accident, age, occupation, medical treatment, etc. Further, the lorry driver did not possess valid driving licence and the lorry was not covered under valid documents. The lorry had been stationed with care and caution but the accident had been committed by the deceased. The deceased also did not possess valid driving licence at the time of accident. Hence, the respondent entreats the Court to dismiss the claim.

3.The Tribunal had framed two issues and examined three witnesses on the side of the claimants and one witness on the side of the respondents. The claimants had marked 16 documents and the respondents had marked two documents. After recording the evidence of the witnesses and on perusing the exhibits marked by both sides, the Tribunal had awarded a sum of Rs.17,30,500/- as compensation with interest at the rate of 7.5% per annum.

4.Not being satisfied with the quantum of compensation, the claimants had filed the above appeal for additional compensation of a sum of Rs.7,00,000/-. The highly competent counsel Mr.Ma.P.Thangavel appearing for the claimants submits that the deceased is a highly educated person and he was working with Amirtha College and was earning Rs.15,000/- per month. The Tribunal had adopted multiplier of 13, on the basis of age of the mother of the deceased and granted minimum compensation under the head of loss of income. The Tribunal had granted Rs.5,000/- under the head of funeral expenses and a sum of Rs.25,000/- each to the claimants under the head of loss of love and affection which is also on the lower side. The claimants are entitled to receive compensation under the head of loss of future prospects. Further, the deceased was aged about 28 years and after accident, the claimants had spent Rs.1,10,000/- towards medical expenses. Hence, the learned counsel entreats the Court to allow the above appeal.

5.The very competent counsel Mr.M.B.Gopalan appearing for the Insurance Company submits that the deceased was a bachelor and he had committed the accident by dashing his vehicle against the back side of the lorry. As such contributory negligence has to be fastened but the same was not observed by the Tribunal. It is an admitted fact that the deceased had hit against the stationed lorry. Further, the Tribunal had awarded an adequate compensation on the basis of salary certificate, medical bills and age of the mother of the deceased. The same was confirmed by the Division Bench of this Court. As an after thought, the claimants have filed the above appeal which is not maintainable.

6. Per contra, the very competent counsel appearing for the appellants submits that the original claim was Rs.35,00,000/-, but the Tribunal had awarded Rs.17,30,500/-. Therefore, the claimants can file an appeal to receive an adequate compensation at any time. At this stage, the issue of after thought does not arise. The learned counsel has cited the judgment reported in 2013 (2) TN MAC 55 (SC) (Rajesh & others Vs. Rajbir Singh & others) wherein it has been held as follows:

"Motor Accident Claim - Compensation - Quantum - Enhancement - Deceased aged 33 yrs., working as a clerk in Government School, earning Rs.6,926 as per Salary Certificate - Claimants : Wife, 3 minor children and mother of deceased - Tribunal taking income at Rs.6,926 as per Salary Certificate, deducted 1/3rd towards Personal Expenses and applying multiplier of 16, awarded Rs.8,96,500/- as total compensation - High Court in Appeal modified award by deducting 1/4th as Personal Expenses as against 1/3rd, by awarding Rs.70,000/- as Loss of Consortium and by awarding Rs.10,17,000/- as total compensation - Appeal before Apex Court - Apex Court in Appeal taking into account revision of salary by Sixth Pay Commission fixed income at Rs.9,520 p.m. - Adding 50% towards Future Prospects, deducting 1/4th as Personal expenses and applying multiplier of 16 awarded Rs.20,56,320 as Loss of Dependency [Rs.9,520 + 4,760 - 3,570 x 12 x 16] - Further, awarding Rs.1,00,000 each under Loss of Consortium and Loss of Love & Affection/care and guidance for minor children, and Rs.25,000/- as Funeral Expenses, Apex Court enhanced total compensation from Rs.10,17,000 to Rs.22,81,320."

7. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side, this Court is of the view that the deceased's age was 28 years and he was the only son to the claimants / parents. The qualification of the deceased was B.A., M.Ed., and he was teaching English subject at Amirtha and Sri Amirtha College of Education, Namakkal. At the time of accident, his last pay drawn salary was a sum of Rs.15,000/-. The parents of the deceased have lost their only highly educationally qualified son, who was a lecturer, which is a noble profession. Besides, there is no possibility to the claimants to beget another child, considering the age of the parents, this loss can never be compensated in any way and under any circumstances. Hence, this Court is inclined to grant additional compensation of a sum of Rs.7,00,000/- as claimed by the permanently grieving claimants, on the following heads:

This Court awards Rs.5,00,000/- for loss of future prospects; Rs.20,000/- additional compensation for funeral expenses; Rs.1,00,000/- towards loss of love and affection to the mother of the deceased; Rs.80,000/- towards loss of love and affection to the father of the deceased. Accordingly, the additional compensation of

Rs.7,00,000/- has been granted. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition i.e. from 31.07.2009 to 29.06.2011 and from 11.02.2015 till date of deposit of additional compensation amount.

8.This Court directs the Insurance Company / second respondent herein to deposit the said compensation amount as per this Court's order, within a period of six weeks from the date of receipt of this order. After such a deposit being made, it is open to the claimants to withdraw the said compensation amount together with interest, after filing a memo along with a copy of this order. It is left to the discretion of the Trial Court to apportion the compensation amount to the claimants.

9.In the result, the above appeal is allowed. Consequently, the Judgment and Decree passed in M.C.O.P.No.399 of 2009, on the file of the Motor Accident Claims Tribunal/ Fast Track Court, Namakkal, dated 29.06.2011, is modified. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vs

To

1.The Motor Accident Claims Tribunal
Fast Track Court,
Namakkal.

2.The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.Ma.P.Thangavel, Advocate, sr.46726

+1 cc to Mr.N.Vijayaraghavan, Advocate, sr.47211

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