

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2256 of 2012

and

M.P.No.1 of 2012

1.Sowmiyanayaki

2.Minor Rajkamal

(Minor rep. By his next friend guardian and
mother Sowmiyanayaki) ... Appellants/Petitioners

Vs.

1.Sivam

2.The United India Insurance Company Limited,
Gobichettipalayam, Erode District.... Respondents/Respondents.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicle Act, 1988, against the Award made in M.C.O.P.
No.28 of 2005, dated 19.06.2008, on the file of the Motor
Accident Claims Tribunal, Principal Subordinate Court,
Gobichettipalayam, Erode District.

For Appellant : M/s.Ma.Pa.Thangavel

For Respondents : Mr.M.B.Gopalan

for R2

R1-served

J U D G M E N T

The short facts of the case are as follows:-

On 13.07.2004 at about 10.00p.m., when the deceased
Parthasarathy was riding his motorcycle bearing registration
No.TN-39F-3684, on the Erode Main Road, the Tractor bearing
registration No.T.D.O.8316, coming in the opposite direction and
driven in a negligent manner dashed against him. As a result,
he sustained injuries and succumbed to his injuries. Hence, the
legal heir of the deceased has filed the claim petition against
the owner and insurer of the offending vehicle.

2. The Insurance Company has filed a counter statement and resisted the claim petition. The respondent denied the contentions regarding date, time and place of accident. Further, the deceased had ridden his motorcycle in a negligent manner and dashed against the tractor. As such the deceased himself had invited the said accident. The respondent further denied the contention regarding age, income and occupation of deceased.

3. After recording the averments of both sides, the Tribunal had framed two issues. On the side of the claimant, three witnesses were examined and twenty one documents were marked. On the side of the respondent, no one was examined and no document was marked. After recording evidence of the witnesses and on perusing the exhibits marked by the claimants, the Tribunal had awarded a sum of Rs.2,94,600/- with interest. Not being satisfied with the quantum of compensation, the claimants had filed the above appeal and have sought additional compensation.

4. The highly competent counsel Mr.Ma.Pa.Thangavel, appearing for the claimants submits that the Tribunal had not granted an adequate compensation to the claimants. The F.I.R had been registered against the driver of the Tractor. As such, the entire negligence rests on the side of the driver of the Tractor. Therefore, the insurer of the offending vehicle is liable to pay the entire compensation amount, but the Tribunal had erroneously fastened the contributory negligence on both sides. Further, the deceased was aged about 40 years and he was earning Rs.4,500/- as a Security Officer at a reputed company. Besides, he was a share Broker and earning additional income of a sum of Rs.20,000/- per month, but the Tribunal had fixed the income of the deceased as Rs.4,248/- per month which is on the lower side. Hence, the very competent counsel entreats the Court to grant additional compensation to the claimants, who are a young widow and minor son of the deceased.

5. The very competent counsel Mr.M.B.Gopalan, appearing for the Insurance Company submits that the deceased had ridden his motorcycle on the Erode Main Road in a rash and negligent manner and dashed against the Tractor. As a result, he had succumbed to his injuries. Therefore, contributory negligence had been fastened on both sides. Further, the Tribunal had fixed the income on the basis of salary certificate, which had been marked by the claimant as P18. Further, the Tribunal had granted compensation under the relevant heads. Therefore, an adequate compensation had already been granted and hence the above appeal is not maintainable.

6. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on

either side and on perusing the typed-set of papers, this Court is of the view that the F.I.R had been registered against the driver of the Tractor and subsequently charge sheet also had been filed against him. Therefore, the contributory negligence fixed on the deceased by the Tribunal is not appropriate. Hence, this Court directs the Insurance Company to pay the other 50% compensation amount i.e., a sum of Rs.2,54,100/- as loss of income. Besides, Rs.25,000/- is awarded towards loss of consortium as additional compensation; Rs.25,000/- is awarded towards loss of love and affection to the minor claimant; Rs.7,900/- towards funeral expenses as additional compensation. In total, this Court awards Rs.3,12,000/- as additional compensation. The said amount claimed by the claimants, is the appeal value and hence the appeal is allowed. The said amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation. This Court directs the Insurance Company to deposit the said compensation amount of a sum of Rs.3,12,000/- with accrued interest thereon, as per this Court findings, within a period of six weeks from the date of receipt of this order. After such deposit being made, it is open to the claimants to withdraw the said compensation amount equally, after filing a memo before the Trial Court, along with a copy of this order. Accordingly, the above appeal is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
Principal Subordinate Court,
Gobichettipalayam, Erode District.

+ 1 cc to Mr.M.B.Gopalan, Advocate SR 48497

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