

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.160 of 2015

and M.P.No.1 of 2015

M/s.National Insurance Co.Ltd.,
Regional Office
Stock Exchange Building
Trichy Road
Coimbatore-45

...Appellant/Respondent III

Vs

1.Sujatha
2.Minor Pranesh
Rep. By mother and guardian Sujatha
3.Kalimuthu
4.Gomathi
5.Thangadurai
6.P.Velayee

... Respondents/Petitioners II,III
& VI Respondents 1 & II

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989, against the judgment and decree passed in M.C.O.P.No.2407 of 2012 on 23.04.2014 on the file of Motor Accidents Claims Tribunal (Special Subordinate Judge) at Coimbatore.

For appellant : Mr.J.Chandran

For respondents : Ms.Sandhya for Sarvabhauman Associates
for R1 to R4
for R5 and R6-not ready in notice.

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The National Insurance Company is on appeal challenging the award dated 23.04.2014 passed in M.C.O.P.No.2407 of 2012 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge) Coimbatore.

2. It is a case of fatal accident. As per the claim petition filed before the Tribunal in M.C.O.P.No.763 of 2008 by respondents 1 to 4 herein/claimants viz., the wife, minor son, father and mother of the deceased, it is stated that on 09.02.2007 at about 2.15 a.m., 1st respondent's husband viz., Sadhasivam was driving a Scorpio Van bearing Regn.No.TN-07-AC-9039 at Raja Street from west to east and nearing Oppanakara Street, at that time, a bus bearing Reg.No.TN-33-AE-5335, driven by the 5th respondent herein came from south to north at Oppanakara Street at a high speed and without blowing horn, hit against the Scorpio Van. In the said accident, Sadhasivam suffered serious head injuries and was admitted in CMC Hospital, Coimbatore and thereafter shifted to K.G.Hospital, Coimbatore and he died on 10.02.2007 due to head injuries sustained in the accident. According to the claimants, the deceased was 27 years old, a Goldsmith and also running a Mobile Shop and was earning Rs.15,000/- per month. The compensation claimed was Rs.20,00,000/-.

3. The Tribunal based on the available evidence before it, held that the accident occurred solely due to rash and negligent driving of the 5th respondent. The Tribunal further held that 6th respondent herein is the owner of the bus and the appellant herein is the insurer of the bus and therefore, the 6th respondent and the appellant herein are jointly and severally liable to pay the compensation. On such finding, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Compensation for loss of dependency	Rs.10,71,000/-
2	Loss of consortium	Rs. 1,00,000/-
3	Loss of love and affection	Rs. 1,00,000/-
4	Funeral expenses	Rs. 25,000/-
5	Loss of estate	Rs. 5,000/-
	Grand Total	Rs. 13,01,000/-

4. The learned counsel for the appellant-Transport Corporation submitted that the Tribunal failed to appreciate the

evidence of R.W.1, R.Rajendran, Special Sub Inspector, Traffic Investigation Wing to the effect that the accident occurred due to the fault of the deceased Sadhasivam. The learned counsel for the appellant also made a plea that the multiplier adopted is on the higher side and sought for reducing the quantum of compensation.

5. Ms.Sandhya, learned counsel appearing for respondents 1 to 4 would fairly concede that Ex.P.1-First Information Report was registered against the deceased on the basis of the complaint given by 5th respondent in Cr.No.53/2007. She further contended that deceased drove the scorpio car and hit the back side of the bus and then turned around and hit again on the front side of the bus and the accident occurred due to some uncontrollable situation.

6. This court, carefully perused the award of the Tribunal and the submissions made on both sides before this court.

7. Considering the nature of accident that took place on 09.02.2007 and the plea of the counsel for the appellant/Insurance company in respect of contributory negligence on the part of the deceased, we find that the arguments advanced on the side of the appellant is tenable. However, on the other hand, we are of the view that the compensation granted under various heads are just and reasonable. In such circumstances, we deem it fit to reduce a sum of Rs.1,00,000/- from the total compensation on the sole ground that there was contributory negligence on the part of the deceased in the said accident.

8. Accordingly, this Civil Miscellaneous Appeal is Partly Allowed.

- (i) The award fixed by the Tribunal at Rs.13,01,000/- is reduced to Rs.12,01,000/-.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) This court by order dated 30.01.2015 directed the appellant/Insurance Company to deposit entire award amount. In view of the reduction of quantum of compensation by this court, the appellant/Insurance Company is at liberty to withdraw the excess amount, deposited before the Tribunal.
- (iv) The claimants 1 and 2 are permitted to withdraw the modified award amount with accrued interest as apportioned by the Tribunal. The share of minor claimant is directed

to be deposited in any one of the nationalised banks till the minor attains majority. Claimants 3 and 4 are entitled to get Rs.1,00,000/- each.

(v) There will be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal
Special Subordinate Judge,
Coimbatore.

+1cc to Mr.J.Chandran, Advocate Sr.17514

+1cc to M/S.Sarvabhauman, Advocate Sr.17483

C.M.A.No.160 of 2015

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