

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.3746 of 2012

1.P.Subramanian
2.S.Uthirambal
3.S.Suresh
4.Minor S.Subash then
aged 15 years,
5.Minor S.Sudha, aged now 17 years.
(Minor appellants 4 and 5 are
represented by their Next Friend
and Guardian Father first appellant) ..Appellants/Claimants

Vs.

1.R.Ganesan
2.The New India Assurance
Company Limited,
Salem.
3.P.Gopal
4.United India Insurance
Company Limited,
Salem.Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set-aside the fair and decretal order dated 31.7.2000 made in MCOP NO.173 of 96 on the file of Motor Accident Claims Tribunal, Salem (III Additional District Judge), Salem as against the disallowed portion of Rs.7,88,500/- and pass an award for Rs.10,00,000/- in favour of the appellants requesting with interest at the rate 12% per annum from the date of the petition (11.01.1996) and costs.

For Appellants : Mr.P.R.Selvaraj
For Respondents: Mr.J.Chandran for R2
Mr.T.T.Ravichandran for R4
R1 and R3 served - No Appearance

J U D G M E N T

The short facts of the case are as follows:-

On 19.09.1995, at about 01.45 when the deceased was travelling as a passenger in the bus belonging to the third respondent which was plying to Kallakurichi to Attur and when the bus was near Nattakarai in the Attur to Kallakurichi Main road, the driver of the bus drove it in a rash and negligent

manner and dashed it against a lorry, belonging to the first respondent, coming in the opposite direction which was also driven in a rash and negligent manner. Immediately, after the accident, the deceased Ramesh was taken to the Gokulam Hospital and admitted as an inpatient, but in spite of medical treatment for four days, the deceased succumbed to his injuries on 23.09.1995. Hence, the claimants have filed the claim against the first to fourth respondents, who are the owners and insurers of the vehicles involved in the accident.

2. The second respondent in his counter had denied the averments in the claim regarding age and income of the deceased. It was further submitted that the accident was caused due to contributory negligence of the driver of the vehicles. It was submitted that the claim was excessive.

3. The third respondent has filed a counter which has been adopted by the fourth respondent. It was stated that the accident was caused due to the negligence of the driver of the lorry and the driver of the bus drove it in a cautious and careful manner. It was submitted that if the Tribunal attributes contributory negligence on the drivers of both the vehicles involved in the accident, half the compensation awarded should be fashioned on the owner and insurer of the bus and lorry. It was submitted that only the second claimant is the legal-heir of the deceased and the first claimant who is the father of the deceased is responsible to protect the claimants 2 to 5. Hence, the first, third, fourth and fifth claimants are not entitled to receive any compensation. The averments in the claim regarding income of the deceased was also not admitted. It was submitted that the claim was excessive.

4. The Tribunal, after considering the averments of both parties, framed two issues for consideration. On the side of the claimants, one witness was examined and 4 documents were marked. On the side of the respondents, no witness was examined and no document was marked.

5. The Tribunal, after scrutiny of oral and documentary evidence of both sides fixed the contributory negligence equally on the drivers of the first and third respondents and hence, held the second and fourth respondents liable to pay half the compensation assessed. The Tribunal awarded a sum of Rs.2,11,500/- as compensation to the claimants along with the interest at the rate of 12% per annum from the date of numbering the claim till date of payment of compensation with costs.

6. Not being satisfied with the award passed by the Tribunal, the claimants have filed the above appeal.

7. The learned counsel Mr.P.R.Selvaraj appearing for the appellants submits that the Tribunal failed to appreciate Ex.P14 which would establish that the deceased was the skilled goldsmith and doing jewellery business for more than 4 months prior to the date of accident and his income was Rs.25,000/- per month. It was submitted that the payment of income tax or other tax would come into picture only after the assessment year 31st March 1996 in respect of the jewellery shop business commenced by the deceased and his father in July 1995. As such, the observation of the Tribunal that the evidence for payment of income tax was not produced for the income of the deceased is unreasonable. Hence, it was prayed to grant additional compensation of Rs.7,88,500/- with interest.

8. The learned counsel Mr.J.Chandran appearing for the second respondent submits that the Tribunal had fixed the income of the deceased at Rs.15,000/- a year which is appropriate as no documentary evidence had been filed on the part of the claimants to prove the income of the deceased. Further, the Tribunal had also offered adequate compensation on the relevant head of funeral expenses and loss of estate and medical expenses. Hence, it was prayed to dismiss the appeal.

9. The learned counsel Mr.T.T.Ravichandran appearing for the fourth respondent submits that the claimants have not produced any relevant documents to establish that the deceased was working as a goldsmith and earning Rs.25,000/- per month. Hence, the income of the deceased as fixed by the Tribunal is appropriate. It was submitted that the excess compensation demanded by the claimants is exorbitant and hence, it was prayed to dismiss the appeal.

10. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on perusing the typed-set of papers, this Court is of the view that the monthly income of Rs.1,250/- fixed by the Tribunal as the salary for the deceased is on the lower side. Further, the award granted under the head of funeral expenses, loss of estate and loss of love and affection is also on the lower side. However, the contributory negligence fixed by the Tribunal amongst the drivers of the both the first and third respondents is appropriate. Further, during the pendency of the appeal, the learned counsel for the appellants has filed memo dated 19.08.2015 and stated that the first appellant had died. The said memo is recorded. Hence, this Court reassesses the compensation as follows:-

This Court on taking the income of the deceased as Rs.3,000/- per month and on deducting 1/3rd of his personal expenses and on adopting a multiplier of '17' awards a compensation of Rs.4,08,000/- (Rs.3000 x 2/3 x 12 x 17) under the head of 'loss of income'; Rs.8,000/- is granted towards funeral expenses; Rs.4,000/- is granted under the head of

'loss of estate'; Rs.11,500/- is awarded under the head of 'medical expenses'; Rs.50,000/- is awarded to 2nd claimant under the head of 'loss of love and affection' and Rs.10,000/- is awarded to each of the claimants 3 to 5 under the head of 'loss of love and affection'. In total, this Court assesses Rs.5,11,500/- as compensation to the claimants. After deducting the initial compensation of Rs.2,11,500/- awarded by the Tribunal, this Court grants Rs.3,00,000/- as additional compensation. This 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. Out of this additional compensation amount, this Court apportions a sum of Rs.2,25,000/- with proportionate interest to the second claimant and Rs.25,000/- with proportionate interest is apportioned to each of the claimants 3, 4 and 5. This Court directs each of the second and fourth respondents to deposit Rs.1,50,000/-, with proportionate interest within a period of eight weeks from the date of receipt of a copy of this order. After such deposit being made, it is open to all the claimants to withdraw their apportioned sum with proportionate interest, as fixed by this Court, after filing a Memo, along with a copy of this order.

11. In the result, the above appeal is partly allowed. There is no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribun,
(III Additional District Judge), Salem.

+ 1 cc to Mr.P.R. Selvaraj, Advocate Sr.52651

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