

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

(Judgment Reserved on : 08.03.2017)

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.2625 of 2011
and M.P.No.1 of 2011

Sampath ... Appellant/Ist Respondent

... Vs ...

1. Baby Ammal
2. Dhakshnamoorthy ...1 & 2 Respondents/Petitioners
3. United India Insurance Co. Ltd.,
Rep. by its Divisional Manager,
Katpadi Road, Vellore. ... 3rd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2004 made in M.C.O.P.No.386 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Vellore.

For Appellant : Mr.V.Pari Vallal
For RR-1 and 2 : Mr.E.Kannadasan
For R-3 : Mr.D.Bhaskaran

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree dated 30.04.2004 made in M.C.O.P.No.386 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Vellore.

2. The facts of the case are as follows:-

On 25.04.2003 at about 4.15 p.m., the deceased viz., Punitha was proceeding towards Muppathuvetti to Arcot and at the time when she was nearing Block Development Office, Arcot, a lorry bearing Registration No.M.D.O.3109, which was driven by its driver in a rash and negligent manner, dashed against the said Punitha and as a result of which, she sustained grievous injuries all over her body. Immediately after the accident, she was admitted in the Government Hospital at Arcot where she died. The vehicle in question belonging to the first respondent in the

M.C.O.P. and it was insured with the second respondent in the M.C.O.P. Claiming a sum of Rs.10,00,000/-, the claimants, who are the parents of the deceased Punitha, have filed a petition for compensation. The Tribunal, after considering the evidence adduced by both parties, finally awarded a sum of Rs.1,84,500/- to the claimants to be paid by the first respondent in the M.C.O.P./appellant herein towards compensation along with interest at 9% per annum from the date of petition till payment. The claim petition as against the second respondent in the M.C.O.P. was dismissed by the Tribunal. Aggrieved against the said award passed by the Tribunal, the present appeal is preferred by the appellant, who is the first respondent in the M.C.O.P.No.386 of 2003.

3. The learned counsel appearing for the appellant would contend that the Tribunal, without considering the age of the deceased, erroneously fixed the income of the deceased and awarded excessive compensation to the claimants. It is further contended that the deceased Punitha alone is responsible for the accident, but the Tribunal erred in concluding that the accident had occurred due to the rash and negligent driving of the rider of the appellant's vehicle. In the said circumstances, the learned counsel for the appellant prayed that the award passed by the Tribunal has to be set aside and the civil miscellaneous appeal has to be allowed. In support of his contentions, the learned counsel appearing for the appellant relied upon a decision of this Court reported in 2007 ACJ 657 (Asirvatham and others V. G.Chandrasekaran and another).

4. The learned counsel appearing for the respondents 1 and 2/claimants would contend that the appellant herein, who is the first respondent in the MCOP, remained ex-parte before the Tribunal. It is further contended that the Tribunal, after considering the oral and documentary evidence adduced on the side of both parties, awarded just and reasonable compensation to the claimants and therefore, there is no illegality or infirmity in the award passed by the Tribunal and hence, the learned counsel prayed that the award passed by the Tribunal has to be confirmed and the civil miscellaneous appeal has to be dismissed.

5. This Court has considered the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the entire records.

6. Admittedly, the appellant was set ex-parte and he has not filed any counter. The second respondent in the MCOP/third respondent herein alone contested the case. Therefore, in the appeal, the contention of the appellant/first respondent in the

MCOP about his liability to pay the compensation amount cannot be accepted.

7. In this case, on the side of the claimants, the second claimant examined himself as P.W.1 and one Sigamani, who is an eye-witness to the occurrence, was examined as P.W.2. On perusal of the records, it is seen that the driver of the vehicle himself pleaded guilty and paid the fine amount. In the above circumstances, the argument of the learned counsel for the appellant that the deceased Punitha alone is responsible for the accident is not at all acceptable and hence, the above said argument is rejected. Further, admittedly, at the time of accident, the age of the deceased was 19 years old. The Tribunal, after considering the evidence of the claimants, came to a conclusion and fixed the income of the deceased as Rs.1,500/- per month as per the Amended Act and calculated the annual income as Rs.18,000/- and considering the age of the claimants, applied proper multiplier of 15 and calculated the income as Rs.2,70,000/- ($\text{Rs.1,500/-} \times 12 \times 15 = 2,70,000/-$). After deducting 1/3 lumpsum for personal expenses, the Tribunal arrived at Rs.1,80,000/- towards loss of income to the family. This Court is of the considered view that since the deceased is unmarried, 50% of the amount has to be deducted for personal expenses. Hence, from the amount of Rs.2,70,000/-, if 50% of the amount is deducted, it comes to Rs.1,35,000/- ($\text{Rs.2,70,000} - \text{Rs.1,35,000} = \text{Rs.1,35,000/-}$). Therefore, it is just and proper to award a sum of Rs.1,35,000/- towards loss of income to the family. Further, the Tribunal has awarded a sum of Rs.2,500/- under the head of loss of love and affection and estate which is very low and therefore, it is just and proper to award a sum of Rs.10,000/- under the said head. The Tribunal has only awarded a sum of Rs.2,000/- towards funeral expenses and the said amount is enhanced to Rs.5,000/-.

8. Thus, the compensation awarded by the Tribunal is modified as follows:-

Sl. Nos.	Heads	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of income to the family	Rs. 1,80,000/-	Rs. 1,35,000/-
2.	Loss of love and affection and estate	Rs. 2,500/-	Rs. 10,000/-
3.	Funeral expenses	Rs. 2,000/-	Rs. 5,000/-
	Total	Rs. 1,84,500/-	Rs. 1,50,000/-

9. Hence, this Court is of the considered view that the respondents 1 and 2/claimants are entitled to a sum of Rs.1,50,000/- as compensation for the death of their daughter. The respondents 1 and 2/claimants are entitled to share the amount equally.

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is reduced to Rs.1,50,000/- from Rs.1,84,500/-. The interest awarded by the Tribunal at 9% per annum stands confirmed. There shall be no order as to costs. Connected M.P. is closed.

-s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Vellore.
2. The Record Keeper,
V.R. Section, High Court,
Madras.

+1 CC to Mr. V. Parivallal, Advocate sr 19127
+1 CC to Mr. E. Kannadasan, Advocate sr 18935

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CA(CO)
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