

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2880 of 2014

1. V.Radhakrishnan
2. V.Babu
3.V.Gopi

.. Appellants

versus

1.M.Arun

2.The New India Assurance Co. Ltd.,
No.45, V Floor, Moore Street,
Chennai-01.

3.R.Nirmala

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.454 of 2005 dated 26.07.2013, on the file of the Motor Accidents Claim Tribunal (Sub Court) Tiruvallur.

For appellant : Mr.U.Chidambaram
for Mr.Joshua Chelliah

For Respondents : Mr.K.Krishnamoorthy (R2)

J U D G M E N T

Challenging the negligence as well as the quantum of compensation awarded by the Claims Tribunal in M.C.O.P.No.454 of 2005, the claimant has come forward with this Civil Miscellaneous Appeal.

2. The sons of the deceased Padma have filed the Claim Petition in M.C.O.P.No.454 of 2005 for compensation claiming a sum of Rs.4,00,000/- in respect of the accident, that occurred on 07.01.2005. The deceased was aged 65 years at the time of accident and she was a flower vendor, earning a sum of Rs.150/- per day.

3. The Claim Petition has been dismissed on the ground that the accident took place only on account of the negligence on the part of the victim but not on the part of the rider of the motor

cycle. There is also a finding that these claimants are not legal heirs of the deceased Padma.

4. It is seen that the sons of the deceased have filed the Claim Petition, leaving out the daughter. However, later on the claim petition was amended and the daughter of the deceased was impleaded on 05.03.2013, as the third respondent in the Claim Petition.

5. Learned counsel appearing for the claimants/appellants submit that the finding relating to negligence is not supported by the evidence available on record and, therefore, the finding rendered by the Tribunal deserves to be set aside and just and reasonable compensation has to be awarded.

6. A perusal of the records reveal that the findings relating to negligence are totally perverse and is against the documentary evidence. The FIR, which is the earliest document portraying the incident, clearly reveals that the accident had occurred due to the rash and negligent driving by its driver. There is nothing on record to support the finding of the Tribunal that the deceased crossed the road without noticing the vehicles and that resulted in the accident. There is no evidence on the side of the respondents to support the said finding. In the absence of any evidence, this Court is of the considered opinion that the finding rendered by the Tribunal is not based on record and, therefore, the same is liable to be set aside.

7. Insofar as the finding of the Tribunal relating to the claimants not being legal heirs of the deceased is concerned, it is strange to find that the Tribunal has recorded such a finding when the claimants have produced a legal heir certificate showing them to be the legal heirs of the deceased. This Court is of the view that the Tribunal got itself misdirected between legal representatives and dependents. One of the claimant, while in the witness box has deposed that they were not dependent on the earnings of the deceased. In such a situation, may be Tribunal erroneously felt that they were not legal heirs of the deceased. It is to be pointed out that legal heirship status need not necessarily be connected with dependency. Further, actual and real-time dependency need not be the criterion for awarding compensation. The loss that would have been suffered on account of the death of the deceased needs to be compensated irrespective of the dependency of the legal heirs. Accordingly, this Court holds that the claimants are entitled for just and reasonable compensation.

8. The materials available on record reveals that the deceased was aged 65 years and she was a flower vendor earning a

daily income of Rs.150/=. Though the daily amount is said to be in the range of Rs.150/-, however it is to be pointed out that the daily income would not have been as consistent one as there will always be fluctuation in flower business. In such circumstances, this Court is of the considered opinion that it would be just and reasonable to fix the daily income at Rs.100/- per day, which works out to Rs.3,000/- per month and deducting 1/3rd towards the monthly expenses of the deceased, the contribution to the family is fixed at Rs.2,000/=. Based on the ratio laid down in Sarla Verma's case, this Court fixes the multiplier at 7 and, accordingly quantifies the compensation payable at Rs.1,68,000/- (Rs.2000 X 12 X 7).

9. Considering the fact that the deceased was hospitalised for sometime, before she succumbed to her injuries, this Court fixes the compensation towards medical expenses at Rs. 12,500/-. Further, this Court awards a sum of Rs.2,000/= towards damage to articles and Rs.10,000 towards Transport Expenses and a further sum of Rs.10,000/- towards funeral expenses. In all, this Court awards a compensation of Rs.2,02,500/= as compensation with interest at 7.5% p.a. from the date of petition till the date of deposit.

10. In the result, this appeal is allowed and the order of the Tribunal in M.C.O.P.No.454 of 2005 is set aside. A sum of Rs.2,02,500/- is awarded as compensation, with interest @ 7.5% per annum from the date of petition till the date of deposit.

11. The 2nd respondent Insurance Company is directed to deposit the award amount along with interest as quantified by this Court above, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants as also the 3rd respondent, who is said to be the daughter of the deceased, are entitled to equal share in the compensation. On the deposit being made, the Tribunal is directed to transfer the amount as per the ratio of apportionment ordered above, directly to the bank account of the claimants through RTGS within a period of two weeks thereafter.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

arr/GLN

To

1. The Presiding officer
Motor Accidents Claim Tribunal
Subordinate Court, Tiruvallur.

+1 CC to Mr.K. Varadha Kamaraj, Advocate sr 7305.

+1 CC to Mr.M. Krishnamoorthy, Advocate sr 7214.

C.M.A. No.2880 of 2014

KS (CO)
SP (07/06/2018)



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