

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A No.434 of 2010

1.Renuka
2.Minor Velusamy
3.Minor Mahalakshmi
4.Sundaramurthy @ Viswanathan
(Minors rep. By their mother/next
friend first appellant herein) ... Appellants/Petitioners

Vs.

1.G.Saravanan
2.The Divisional Manager,
The New India Assurance Co. Ltd.,
Jawaharlal Nehru Street,
Pondicherry-1. ... Respondents/Respondents
(R-1 set ex parte in the Lower Court)

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 11.09.2009 made in M.AC.T.O.P.No.1021 of 2006, on the file of Motor Accidents Claims Tribunal (Presiding Officer) (Principal District Judge), Puducherry.

For Appellant : Mr.U.M.Ravichandran

For Respondents : Mr.K.Mohan for R2
R1-Ex parte

JUDGMENT

The appellants are the claimants in MACTOP of 2006 and they have filed a claim petition claiming a compensation of Rs.15,00,000/- for the death of one Kathirvel, husband of the first appellant, father of the second and third minor appellants and brother of the fourth appellant.

2.According to the appellants, the deceased was working as Route Man at Wimer Diary Private Limited cum Agriculturist. On 22.02.2006 at about 04.40 hours, when the said Karthirvel was travelling in the Canter Van bearing Registration No.PY-01-K-5200, the driver of the van drove the same, in a rash and negligent manner and dashed on the back side of the bus, which was going in front of the van. In the accident, the said

Kathirvel died on the spot. At the time of the accident, he was earning a sum of Rs.10,000/- p.m. and Rs.100/- as batta. The appellants are dependents of the deceased and submitted that the accident occurred only due to the rash and negligent driving of the driver of the Van, insured with the second respondent/Insurance Company. The driver of the Van is responsible for the accident and the alleged vehicle was insured with the second respondent. Therefore, both respondents 1 and 2 are liable to pay the compensation.

3.The first respondent remained ex parte before the Tribunal. The second respondent filed a counter statement and denied all the averments made in the claim petition and submitted that the appellants must prove the age, relationship and income of the deceased and the appellants have to prove the manner in which the accident had occurred and the driver of the van had valid license which is insured with the second respondent. In any event, the claim of compensation of Rs.15,00,000/- is excessive.

4.Before the Tribunal, the first appellant examined herself as P.W.1 and an eye witness was examined as P.W.2 and 7 documents were marked as Ex.A1 to A.7. On the side of the respondents, no one was examined and no documents were marked.

5.The Tribunal, considering the pleadings and considering the evidences of PW1 and PW2, Ex.A1-FIR held that the appellants failed to prove that the accident occurred only due to the rash and negligent driving of the driver of the van. Considering Ex.A7, the Tribunal held that the policy issued by the second respondent is only an Act policy and it does not cover the cleaner or owner of the Van.

6.In respect of quantum of compensation, the appellants are not entitled to claim on the ground that they have failed to prove the fact that the accident had occurred only due to the rash and negligent driving of the driver of the Van and the Policy issued by the second respondent is only an Act Policy and therefore, the Tribunal dismissed the claim petition.

7.Against the dismissal of the claim petition, the appellants filed the present Civil Miscellaneous Appeal.

8.The learned counsel for the appellants submitted that the appellants have proved by oral and documentary evidence that the accident occurred only due to the rash and negligent driving of the driver of the Van. The Tribunal has rejected the evidence of PW2, who has given a contrary version to Ex.A1. PW2 has stated that he saw the van driver drove the vehicle, in a rash and negligent manner and caused the accident. The second respondent/Insurance Company failed to produce the Insurance

Policy and the reasoning of the Tribunal that the policy issued by the second respondent is only an Act Policy is without any basis. The deceased was aged about 34 years at the time of accident and hence, the Tribunal ought to have adopted multiplier '17'. Therefore, they prayed for allowing the appeal.

9. Per contra, learned counsel for the second respondent submitted that as per Ex.A1-FIR, Van driver dashed against the back side of the bus. PW2, who claimed to be an eye witness, has stated that the Van driver dashed against the front side of the bus and this creates a doubt as to whether PW2, in fact, an eye witness to the accident, the Tribunal has taken a valid reason and has rightly dismissed the claim petition. Therefore, he prayed to dismiss the Civil Miscellaneous Appeal.

10. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused all the materials available on record.

11. It is an admitted fact that the accident had occurred on 22.02.2006 at 04.40 hours and it is also admitted that the deceased died in the accident. According to the appellants, the accident occurred only due to the rash driving of the driver of the Van and when he has applied sudden brake and the second respondent in his counter has stated that the van dashed against the back side of the bus and the second respondent has not taken any steps to examine the driver of the bus to prove that the accident had not occurred due to rash and negligent driving of the Van, but the accident had occurred only due the driving of the driver of the bus. PW2 has stated that the Van was driven with high speed in a rash and negligent manner and dashed against the bus. The Tribunal, rejected the evidence only on the ground that PW2 has stated that the Van dashed against the front side of the bus while in the FIR, it has been stated that the Van dashed on the back side of the bus. The reasoning of the Tribunal for rejecting the evidence of PW2 is not acceptable. Taking into consideration the evidence of PW2 as a whole, it is clear that the accident occurred only due to the rash and negligent driving of driver of the Van.

12. The next issue to be decided is with regard to the quantum of compensation. The second respondent has not produced the policy. The appellants have produced Ex.A7, photo copy of the Certificate of the vehicle issued by the second respondent marked by PW1 in respect of Van. The Tribunal, based on Ex.A7, has held that the premium particulars could not be ascertained but held that the Policy is an Act Policy. Without ascertaining the quantum of premium paid, it cannot be decided whether the policy issued by the second respondent is an Act Policy or comprehensive policy. In any event, the deceased was travelling in the Van as an agent of the goods. This fact was not disputed

by the 2nd respondent. It is well settled that a person who travelled as a owner or agent of the goods, is entitled to claim the compensation from the owner of the goods vehicle as well as from the Insurance Company. In view of the above facts, the finding of the Tribunal that the appellants failed to prove that the accident occurred only due to the rash and negligent driving of the van as well as the policy issued by the second respondent is only an act policy and is hereby are set aside.

13. In so far as the question of quantum of compensation is concerned, the Tribunal has rightly taken the notional income of the deceased at Rs.2,500/- p.m. The deceased was aged about 34 years at the time of accident. As per the decision of the Hon'ble Apex Court in Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), as per the schedule, the correct multiplier is '17'. But the Tribunal erred in applying the wrong multiplier '13'. Therefore, the appellants are entitled to loss of income after deducting 1/4th towards his personal expenses (taking into consideration four claimants), works out to Rs.1850 x 12 x 17 = 3,77,400/- and the compensation awarded under other heads are hereby confirmed. The modified compensation reads as under:

Sl. No.	Description	Amount awarded
1.	Loss of income (Rs.1850 x 12 x17)	Rs.3,77,400/-
2.	Loss of consortium	Rs. 30,000/-
3.	Loss of love and affection for minors (Rs.15,000/- each)	Rs. 30,000/-
4.	Funeral expenses	Rs. 7,500/-
5.	Transport expenses	Rs. 1,500/-
	Total	Rs.4,46 ,400/-

14. In the result, सतयामेव जयते

(i) This Civil Miscellaneous Appeal is allowed, enhancing the the award of the Tribunal from Rs.3,58,000/- (Rupees Three lakhs Fifty Eight Thousand only) to a sum of Rs.4,46,400/- (Rupees Four Lakhs Forty Six Thousand and Four Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of deposit and proportionate costs and the compensation shall be apportioned as per the ratio fixed by the Tribunal;

(ii) The appellants/claimants are directed to submit their Savings Bank Account Detail along with the copy of their passbooks to the Tribunal forthwith;

(iii) The second respondent/Insurance Company is directed to deposit the entire enhanced award amount along with accrued

interest and costs, less the amount deposited, if any, to the credit of M.A.C.T.O.P.No.1021 of 2006, on the file of the Motor Accident Claims Tribunal (Principal District and Sessions Judge) Puducherry, within a period of twelve weeks from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the first appellant/claimant, through RTGS/NEFT system, after getting her Account Details, within a period of two weeks thereafter; and

(vi) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Motor Accidents Claims Tribunal,
(Principal District Judge), Puducherry.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.T. Chandrasekaran, Advocate Sr. 20377

C.M.A No.434 of 2010

SJ(CO)
VR(11/5/2017)

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