

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.2893 of 2012
& M.P.No.1 of 2012

The New India Assurance Co. Ltd.,
No.42, Big Street, V Building,
II Floor, Thiruvannamalai. ... Appellant/2nd Respondent

-vs-

1.B.Rani
2.B.Vijay (Minor)
3.B.Surya (Minor)
(2nd and 3rd minor respondents are rep.by
Mother and Next Friend 1st respondent
B.Rani)
4.Neela
5.Kirubakaran ... Respondents/Petitioners/1st
Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2012 made in M.C.O.P.No.3281 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Fast Track Court No.II, Chennai.

For Appellant : Mr.K.Vinod

For Respondent Nos.1 to 4 : Mr.P.Shanmugasundaram

For Respondent No.5 : Exparte

WEB COPY
J U D G M E N T

The Insurance Company / second respondent in M.C.O.P.No.3281 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Fast Track Court No.II, Chennai, is the appellant. The claimants have filed the petition claiming compensation for the death of Balu, who died in a motor accident. The first claimant is the wife; claimants 2

and 3 are minor children; and 4th claimant is the mother of the deceased Balu.

2. According to the claimants, on 28.03.2006 at about 17.30 hours, when the deceased was riding pillion on a motor cycle bearing Registration No.TN-20-E-4275, the driver of the Lorry bearing Registration No.MSL 7229 insured with the appellant, drove the lorry in a rash and negligent manner and dashed against the motor cycle, as a result of which, he died on the spot. The Tribunal on the basis of materials placed before it, has come to the conclusion that the accident occurred due to rash and negligent driving of the driver of the offending vehicle.

3. It is not in dispute that the vehicle involved in the accident, namely, the lorry was insured with the appellant. As against the claim of compensation of Rs.14,00,000/-, the Tribunal awarded Rs.9,00,000/- under several heads.

4. The deceased was an autorickshaw driver. A copy of the driving licence of the deceased has been marked as [Ex.P.6]. He was 32 years old at the time of accident. Though the claimants claimed that the deceased was earning Rs.300/- per day, the Tribunal fixed the monthly income of the deceased only at Rs.5,000/-. Having regard to the fact that the deceased was an autorickshaw driver at Chennai, it cannot be said that the monthly income fixed by the Tribunal is on the higher side.

5. As per the dictum in SARLA VERMA vs. DELHI TRANSPORT CORPORATION [(2009) 6 SCC 121], the Tribunal has also applied multiplier 16. There are 4 dependants. Therefore, 1/3rd has to be deducted towards personal expenses of the deceased. However, as per the dictum laid down in RAJESH vs. RAJBIR SINGH [2013 (2) TNMAC 55 (SC)] 50% must be added to the actual income of the deceased while computing future prospects. The loss of dependency is works out to:

Sl.No.	Heads	Calculation
1.	Salary	Rs.5,000.00 per month
2.	50% of (i) above to be added as future prospects	[Rs.5,000.00 + Rs.2500.00] = Rs.7,500.00 per month
3.	1/3 rd deducted as personal expenses of the deceased	[Rs.7,500.00 - Rs.2,500.00] = Rs.5,000.00 per month
4.	Compensation after multiplier of 16 is applied	[Rs.5,000.00 x 12 x 16] = Rs.9,60,000.00

However, there is no appeal for enhancement of the compensation. The Tribunal awarded only Rs.6,40,000.00 towards loss of dependency + Rs.1,50,000/- towards future prospects.

6. The deceased left two minor children aged 10 and 8 years respectively and they have lost care and guidance of their father. The Tribunal awarded only a minimum amount of Rs.50,000/- under the head loss of love and affection. The first claimant, who is the wife was 26 years old and she lost her husband, the Tribunal awarded only a minimum sum of Rs.50,000/- and it is to be confirmed. By altering the heads as above, it can be demonstrated that the award can be justified. If so, the award does not deserves to be interfered with as argued by the Insurance Company.

7. In the result, the Civil Miscellaneous Appeal is dismissed. The compensation awarded by the Tribunal is confirmed. Since the appellant/Insurance Company had deposited the entire award amount, the claimants are permitted to withdraw the compensation amount with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sri
To

The Motor Accidents Claims Tribunal
(Additional District Judge),
Fast Track Court No.II, Chennai.

+1cc to Mr.P.Shanmugasundaram, Advocate sr.11286

C.M.A.No.2893 of 2012

nm(co)
ss(21/03/2017)