



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1014 of 2017

Kattayan (Died)

Kalyani (Died)

Raja

... Appellants/Petitioners

Vs.

1.Ganesan

2.The Divisional Manager,
New India Assurance Co. Ltd.,
No.248, Kamarajar Salai,
Madurai.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation and modify the award dated 19.03.2014 made in M.C.O.P.No.1451 of 2009 on the file of the Principal District Judge, Madurai.

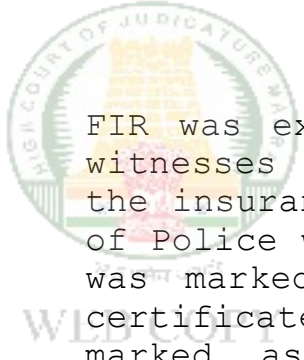
For Appellant : Mr.S.Alagarsamy

For Respondents : Mr.K.Murugesan for R2

JUDGMENT

The brother of the deceased was one of the claimants along with the parents. The parents died during the pendency of the proceedings. Therefore the brother alone has filed this instant appeal. The appellant seeks enhancement of the compensation awarded to him.

2.Sanjeevi, the brother of the appellant was riding a two wheeler. He met with an accident on 03.08.2008 at about 7.30 p.m. in Madurai Melur - Trichy main road near Melur bus stand. Crime No.394 of 2008 was registered on the file of Melur Police Station. The said Sanjeevi suffered head injuries in the accident and died on 08.08.2008. There was a collision between the Bolero van insured with the second respondent herein and the two wheeler ridden by the deceased. Before the Tribunal, one of the claimant/appellant examined himself as P.W.1. One Ranjith, who admitted the injured Sanjeevi in the hospital and who lodged the

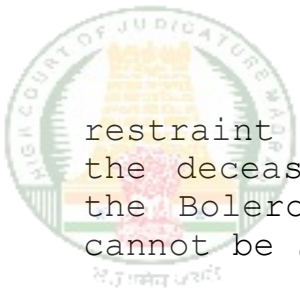


FIR was examined as P.W.2. On the side of the respondent, two witnesses were examined. One Sasikala, who was the official of the insurance company was examined as R.W.1, while Maharajan, S.I. of Police was examined as R.W.2. Through R.W.2, Ex.R2 police file was marked. On the side of the claimants, FIR, Post mortem certificate, Family ration card and legal heir certificate were marked as Exs.P1 to 4. The Tribunal awarded a sum of Rs.2,35,800/- as payable to the claimants. Contending that the same is grossly inadequate, this appeal has been filed.

3.The learned counsel appearing for the appellant strongly contended that on a mere look at the rough sketch would show that the accident occurred only on the left side of the road. That by itself would show that the deceased was not at fault. As per FIR as well as the deposition of P.W.2, because the Bolero van driver suddenly took a right turn, the accident in question had happened. To controvert and rebut the same, the respondent did not choose to examine the driver of the Bolero van.

4.His main grievance is that in spite of taking adverse inference against the respondent, the Tribunal chose to fasten contributory negligence to the extent of 40% on the deceased. He wanted this Court to fasten the entire negligence only on the driver of the Bolero van. Even though the said contention on the very face of it appears to be attractive, on a close examination of Ex.R2 police file and the deposition of R.W.2, Investigating Officer, one can come to the conclusion that the accident had happened mere due to the negligence on the part of the deceased Sanjeevi. It is evident on the face of the record that the deceased Sanjeevi was under the influence of alcohol at the time of accident and that is why even though the criminal case was registered at the instance of P.W.2, the same was closed as mistake of fact. Ex.R1 copy of Accident Report also indicates that Sanjeevi, the deceased was under the influence of alcohol. Investigating Officer in his final report has indicated that the Bolero van driver, who was travelling from Madurai to Trichy main road from West to East was taking a right turn. It is only on account of the rash and negligent riding by the deceased, the accident in question had taken place. One cannot ignore the fact that the deceased was riding only on the correct side of the road. Therefore the Tribunal rightly fastened the major portion of negligence on the driver of the Bolero van. If the deceased had not consumed alcohol, he would be probably seen the van taking a right turn and stopped the two wheeler.

5.A vehicle going on a road is entitled to take right and left turn. The only condition is that prior signal must be given. One must keep watch before taking right or left turn. In the very same manner, the rider of motorcycle must maintain and expect due courtesy to the fellow riders and in this case, such a



restraint was not observed on account of the condition in which the deceased was in. Therefore, fastening of 60% negligence on the Bolero van driver and 40% on the rider of the two wheeler cannot be said to be incorrect.

6. Coming to the quantum, it is seen that the deceased was aged 20 years. Therefore, the multiplier must be 18. Even though no income proof was adduced, since the accident took place in the year 2008, monthly income may be fixed at Rs.5,000/-. Future prospects at 40% will have to be added. Since he was a bachelor, 50% deduction must be made. Therefore, the loss of income for the family will be Rs.7,56,000/-. Further a sum of Rs.1,00,000/- has to be given towards loss of love and affection, because the parents were very much available at the time of filing of the claim petition. The deceased was admitted in hospital and died only after a few days. Therefore, a sum of Rs.15,000/- has to be awarded towards attender charges and a sum of Rs.15,000/- has to be given towards funeral expenses. In all, total quantum of compensation can be fixed at Rs.8,86,000/-. Since 40% negligence was fastened on the deceased, the amount payable to the claimant would come to Rs.5,31,600/- which shall be rounded off at Rs.5,35,000/-. The award dated 19.03.2014 made in M.C.O.P.No.1451 of 2009 on the file of the Principal District Judge, Madurai is accordingly modified.

7. The second respondent insurance company is directed to deposit the entire compensation amount of Rs.5,35,000/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is permitted to withdraw the same by filing proper application before the Tribunal, less the amount already withdrawn by him, if any. The Registry is directed to collect the additional Court fee from the appellant, within a period of two weeks from the date of receipt of a copy of this order, if any.

8. This civil miscellaneous appeal stands partly allowed. No costs.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

<https://hcservices.courts.gov.in/hcservices/>
1. The Principal District Judge, Motor Accident Claims Tribunal,
Madurai.



2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.K.Murugesan , Advocate in SR No. 93878

+ 1 cc TO Mr.S.Alager samy , Advocate in SR No. 93889

Arul

AE/JC/SAR3/17.05.2018/4P/6C

C.M.A. (MD) No.1014 of 2017
19.12.2017