

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.62 of 2005

1.Palaniammal
2.Minor Saravanan
Rep.by her next friend
natural guardian - Mother
Tmt.Palaniammal ... Appellants/Petitioners

Vs.

1.Thiru.M.Kanagasubramaniam
2.M/s.Pioneer Breeding Forms
No.325, Trichy Road,
Pongalur, Tirupur Taluk.
3.The New India Assurance Company Ltd.,
No.389, Cross cut Road,
Coimbatore-12. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.02.2004 made in M.C.O.P.No.341 of 2002 (Sub-Court M.C.O.P.No.76 of 2000) on the file of the Court of Motor Accident Claims Tribunal (Additional District and Sessions Judge/Fast Track Court No.3, Dharapuram, Erode District in so far as awarding lesser compensation is concerned.

For Appellant : Mr.N.S.Sivakumar

For R2 : No appearance

For R3 : Mr.G.Udhayashankar

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the judgment and award passed in M.C.O.P.No.341 of 2002 (Sub-Court M.C.O.P.No.76 of 2000) on the file of the Court of Motor Accident Claims Tribunal (Additional District and Sessions Judge/Fast Track Court No.III, Dharapuram, Erode District.

2.The brief facts leading to the Claim Application are as follows:-

The deceased Duraisamy was working as coolie at Saravana Crusher, Karanampettai. On 24.05.1999 when he was proceeding in the Trichy-Kovai Road in his TVS 50, a van bearing Registration No.TN 39 F 8844 which came in the opposite direction driven by its driver in a rash and negligent manner dashed against Duraisamy, he sustained severe injuries and immediately he was taken to Government Hospital, Palladam. Subsequently, he was given treatment in Coimbatore hospital and to Erode Government Hospital inspite of treatment given he died on 05.06.1999. The claimants, who are the wife and minor son claimed a sum of Rs.5,00,000/- as compensation.

3. The third respondent-Insurance Company in the counter statement has stated that the death did not occur due to the injury sustained by the deceased and further, the documents relating to Death Certificate, Post-Mortem Report were not filed and it is also stated in the counter statement that in the claim petition, the claimants have not mentioned the fact that till the death of the deceased, he was given treatment. The other grounds regarding the claimant is also disputed by the respondent.

4. The Tribunal after analyzing the evidence and documents placed on both sides has given a finding that at the time of accident, the deceased did not possess valid driving license and hence, 25% of the contributory negligence was fixed on the deceased and against the respondent-Insurance Company, 75% of liability was fixed by the Tribunal and a sum of Rs.2,62,000/- was awarded by the Tribunal and out of the said sum, the 75% of the amount i.e., Rs.1,96,500/- was awarded as compensation to the claimant. The Tribunal has awarded a sum of Rs.2,62,000/- under the following heads:-

Sl. No.	Description	Awarded by the Tribunal
1.	Loss of income	Rs. 2,40,000/-
2.	Funeral Expenses	Rs. 5,000/-
3.	For Consortium	Rs. 10,000/-
4.	Loss of love and affection	Rs. 5,000/-
Total		Rs. 2,62,000/-

5. Aggrieved against the same, the claimants have preferred this appeal.

6. In the grounds of appeal, it has been stated that the finding of the tribunal by fixing the liability at contributory negligence at 25% on the deceased is unsustainable and it is also not clearly proved by the respondent-Insurance Company that the deceased was not having valid driving license or disqualified from possessing the same. Hence, the finding of the Tribunal is not proper. The other grounds regarding the age of the deceased and the multiplier applied by the Tribunal for assessing the loss of income, the age taken by the tribunal is also not proper. On the whole, the loss of earning of the deceased is also determined by the tribunal to a very lower extent. Hence, in view of the above said aspects, the appellant has preferred this appeal.

7. Heard both sides and perused the materials available on record.

8. On the side of appellant, it is argued that the sum awarded by the Tribunal is not justified. Further, not possessing of driving license by the deceased was not proved by the respondent-Insurance Company. The further argument advanced by the appellant is that merely because of non-possession of the driving license at the time of accident, the tribunal could not have fixed the liability at 25% because the driving license would make no change of efficiency in driving the vehicle by the deceased. Further, it is argued that the deceased was 35 years at the time of accident, hence, his annual income should have been properly considered by the tribunal. The further argument advanced on the side of the claimant is that at the time of death, the deceased was working as coolee and he was earning Rs.3,000/- per month. But, the tribunal has taken Rs.1875/- as his monthly income which is very much on the lower side. The further arguments by the appellant is that by taking the monthly income at Rs.1875/-, the loss determined is not justified. Further, the sum awarded under the heads 'funeral expenses', 'Transport expenses', 'loss of consortium' and 'love and affection' is also very meagre.

9. On the other hand it is argued by the respondent-Insurance Company that first of all the claimants had not proved the fact that the death of the deceased was caused due to the injury sustained at the time of the accident and no relevant documents have been filed before the tribunal to prove the same. However, the tribunal has given a finding that only due to the injuries sustained in the accident, the death occurred to the deceased. Further, it is also argued that the deceased was not possessing the valid license at the time of accident and that

the finding in that aspect was proper. While determining the income of the deceased, at the time of the accident, the Tribunal has fixed monthly income at Rs.1875/- is quite reasonable and proper and the application of multiplier is also quite correct. Hence, the sum arrived as 'loss of income' is reasonable and proper and regarding the other heads also the sum awarded by the tribunal is quite reasonable.

10. It is seen from the Exhibit-P1, the FIR which was registered based on the statement given by the deceased Duraisamy that the 1st respondent, who is driver of the van bearing registration No.TN 39 F 8844, which came in the opposite direction in a rash and negligent manner, hit against the vehicle of the deceased. The tribunal has also observed the same and held that the death caused only due to the injuries at the time of the accident.

11. While, discussing the liability, it cannot be stated that merely the non possession of the license at the time of accident cannot be a good ground. Though, it is a violation of policy terms, it cannot be stated that the non-possession of the driving license resulted in the accident and the efficiency of the deceased cannot be questioned in that aspect. Hence, it is the Insurance Company which is liable to pay the compensation and there cannot be any contributory negligence on the part of the deceased merely because of non-possession of driving license.

12. On perusal of the sum awarded under various heads, it is seen that the multiplier applied by the Tribunal for calculating the loss of income and arrived a sum of Rs.2,40,000/- is quite proper. This Court by considering the age of the 1st claimant decided to increase the amount under the head 'loss of income' as Rs.20,000/-. It is very much observed that the deceased from the date of accident and till the date of death, he was taking treatment under various hospitals. Hence, in the absence of any medical records, a reasonable sum would have been incurred by the deceased family. Hence, that has to be properly compensated accordingly, a sum of Rs.10,000/- is awarded for the 'medical expenses'. Accordingly, this Court modifies the award passed by the tribunal as follows:-

Sl. No.	Description	Modified amount
1.	Loss of income	Rs. 2,40,000/-
2.	Loss of Consortium	Rs. 20,000/-
3.	Funeral Expenses	Rs. 5,000/-

Sl. No.	Description	Modified amount
4.	Medical Expenses	Rs. 10,000/-
5.	Loss of love and affection	Rs. 5,000/-
Total		Rs. 2,80,000/-

13. In view of the above finding, the contributory negligence fixed at 25% by the Tribunal is set aside and accordingly, this Civil Miscellaneous Appeal is allowed and the sum awarded by the Tribunal is enhanced from Rs.2,62,000/- to Rs.2,80,000/-. No costs.

14. Accordingly, the 3rd respondent/Insurance Company is directed to deposit the entire award amount, with interest and costs directly through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed by this Court, in the ratio fixed by the Tribunal, within a period of two weeks thereafter. The share in respect of the 2nd appellant who is a minor, shall be deposited in anyone of the Nationalized Banks, in interest bearing Fixed Deposit, till he attains majority. The 1st appellant, being the mother of the 2nd appellant is permitted to withdraw the quarterly interest from the said deposit. The rate of interest shall convey the same (9%) as awarded by the Tribunal.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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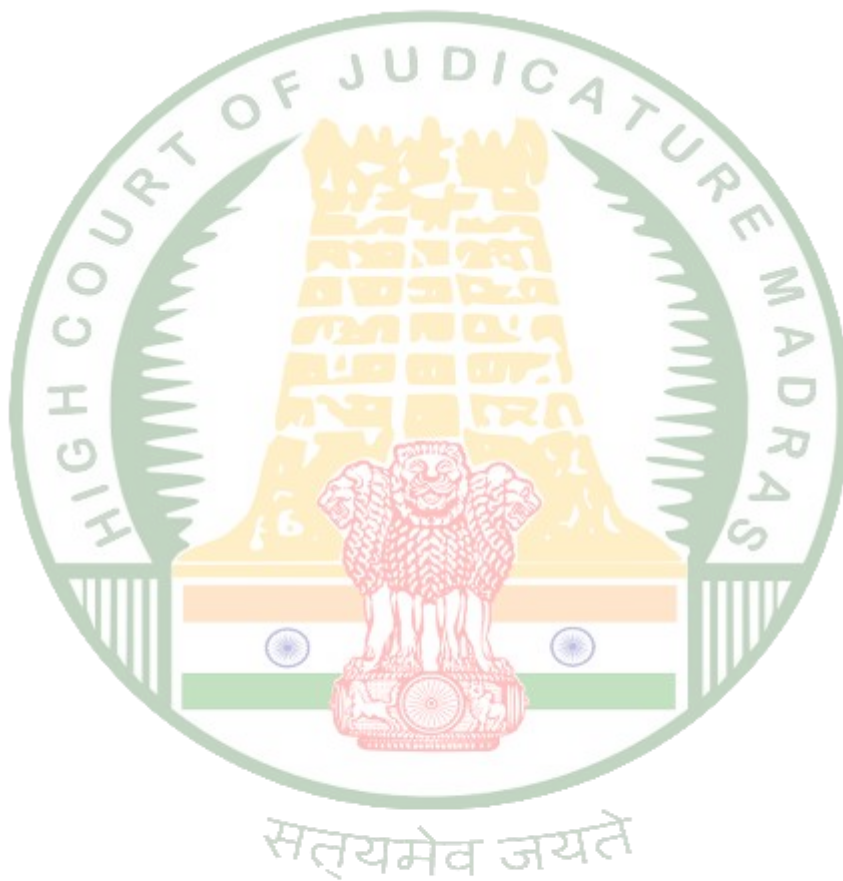
1.The Additional District and Sessions Judge/Fast Track Court
No.3, Dharapuram, Erode District,
(Motor Accident Claims Tribunal).

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.N.S.Sivakumar, Advocate sr.no.70060
+1cc to Mr.G.Udhayashankar, Advocate sr.no.69926

C.M.A.No.62 of 2005

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