

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1459 of 2017

- 1.Saranya
- 2.Sekar
- 3.Vennila
- 4.Saranya
- 5.Gopi

(Minor) rep. By his mother
and natural guardian, 3rd appellant ..Appellants

-Vs-

- 1.A.Panneerselvam
- 2.The New India Assurance Company Ltd.,
B.L.720 703 at 99 C-3, 1st floor
Opp to new bus stand
Perambalur, Rep. By its Branch Manager ..Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 05.01.2017 made in M.C.O.P.No.349 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For appellants : : Mr.S.Kamadevan

For Respondents : : Mr.N.Anand for R2.

J U D G M E N T

The Appellants are the claimants and has filed this appeal challenging the Judgment and decree dated 05.01.2017 made in M.C.O.P.No.349 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 11.07.2013 at about 7 p.m., the deceased Anandh was riding his two wheeler bearing Reg.No.TN-48-K-5669 in Perambalur to Thuraiyur road and as he was going to Nagalapuram Village, the 1st respondent lorry bearing Reg.No.TN-46-R-5659, which was

insured with the 2nd respondent was wrongly parked by its driver near the middle of the road without any parking lights or warning signal and as such, the deceased Anandh dashed on the back side of the 1st respondent vehicle causing him fatal injuries resulting in his death subsequently. The accident occurred only because the 1st respondent vehicle was parked in the middle of the road without any signal. The Petitioners who are the wife, parents, sister and brother of the deceased have lost the love and affection of the deceased and also his contribution to the family. The deceased was aged 23 years and by working as Lorry driver was earning Rs.12,000/- per month. Thus, the Petitioners seek sum of Rs.15,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners by filing counter, the 2nd respondent/Insurance company contends that only due to negligence of the deceased himself, the accident occurred and the respondents are no way liable for the same. The 1st respondent Lorry was parked on the extreme left side of the road with red light switched on and it was only due to drunken mood of the deceased, he drove the vehicle in a rash and negligent manner, dashed on the back side of the Lorry, resulting in his death. The deceased did not possess valid driving licence. The age, avocation and income stated in the petition is not correct. The amount claimed by the Petitioner is highly excessive. The Petitioners 2 to 5 were not dependants on the deceased. Thus the respondent seeks dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.9, to prove their claim. The respondents examined R.W.1 to R.W.3, produced Exhibits Ex.R.1 to Ex.R.4. The Tribunal, after analyzing the evidence on record, found both the vehicle drivers are equally responsible for the accident and passed an award for a sum of Rs.6,02,000/- payable by the 2nd respondent to the Petitioners.

5. Being not satisfied with the quantum of the award passed by the Tribunal, the claimants /appellants have come forward with the appeal.

6. The learned counsel for the Petitioners/claimants/appellants contends that the Tribunal wrongly fixed 50% negligence on the deceased without considering the evidence properly. The Tribunal ought not to have fixed 50% contributory negligence on the deceased. The Tribunal having disbelieved the claim of the Respondent that the deceased was under drunken mood wrongly fixed 50% liability on the deceased. Thus, the Petitioner/claimant seeks to set aside Contributory negligence fixed on the deceased by entertaining the appeal.

7. Per contra, the learned counsel for the respondent/Insurance company contends that the parked lorry was only on the side of the road and the same has been established which will disprove the claim of the Petitioner. The Tribunal is justified in fixing 50% negligence on both the drivers. The learned counsel submits that there is no need to interfere with the award and seeks dismissal of the appeal.

8. Before the tribunal, the eyewitness to the occurrence who deposed as P.W.2 clearly states that he was riding his motor cycle from east to west in Thuraiyur Main road, while going near Nagalapuram village, he saw the Lorry bearing Reg.No.TN-46-R-5659 parked in the middle of the road without any parking light and at that time, the deceased who was going ahead of P.W.2 in another motor cycle, dashed on the rear side of the Lorry, sustained fatal injuries and died subsequently. The Police registered Ex.P.1-FIR alleging negligence of the rider of the two wheeler/deceased alone caused the accident.

9. On the other hand, the driver of the 1st respondent lorry deposed as R.W.2 and submits that on 11.07.2013 the lorry was parked at Nagalapuram. The two wheeler which came at high speed, dashed against the lorry resulting in his death and the Police registered case against the rider of the two wheeler and produced copy of his Driving Licence as Ex.R.3.

10. Likewise, the official of the 2nd respondent/Insurance company who deposed as R.W.3 clearly stated that on investigation, he came to know that the deceased was driving in intoxicated mood at high speed and unable to control his vehicle, dashed on the back side of the Lorry which is parked on the mud side of the road. The Investigation report is filed as Ex.P.3. However R.W.3 is not the eyewitness to the occurrence. In such circumstances, the report cannot be accepted in full. Hence, the fact that the Sub Inspector of Police who deposed R.W.1 clearly stated that Ex.P.1 FIR was subsequently closed due to death of the victim Anandh and Rough Sketch of the occurrence is produced as Ex.R.2, it is clear that the case against him was dropped due to death only.

11. Admittedly the 1st respondent lorry was a parked vehicle. If the deceased had driven his two wheeler at normal speed then he could not have dashed on the lorry which is stated to be parked on the mud side of the road. However, there is no evidence to prove that the deceased was in drunken mood. Considering the circumstances that the two wheeler driven by the deceased dashed on the lorry parked on the road, it will be appropriate to fix contributory negligence on the drivers of the lorry and the deceased who was riding the two wheeler. However, considering the evidence available on record, instead of apportioning the negligence at 50% each on the deceased and on

the 1st respondent, it is appropriate to fix 70% on the 1st respondent driver and 30% on the deceased.

12. The tribunal fixed the age of the deceased at 23 years on the basis of Ex.P.3- Legal Heir Certificate, Ex.P.6-Copy of the driving licence of the deceased and Ex.P.2-Post Mortem certificate. The same is just and proper.

13. The Petitioners/claimants have not seriously contested the conclusion of the Tribunal regarding the quantum arrived at by the Tribunal. The Tribunal fixed the monthly salary of the deceased at Rs.6000/-. Considering the fact that the deceased was aged 23 years, the proper multiplier to be adopted is 18. The tribunal on the ground that four dependants existed, deducted 1/4th towards personal expenses of the deceased.

14. In the case on hand, the 4th and 5th petitioners are brother and sister of the deceased and they cannot be considered as legal heirs or dependants of the deceased. Since wife and parents of the deceased Anandh are only to be considered as dependants, and they being 3 persons, 1/3rd of the income alone to be deducted towards personal expenses of the deceased. Thus, the monthly contribution of the deceased to his family would be as follows:-

6000 + 40% addition towards future prospects

6000 + 2400 = 8400

8400 - 1/3rd = 4000 x 12 x 18 = 12,09,600/-.

Following the Ruling of the Apex court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], 1st petitioner/wife is entitled to Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The petitioners/claimants 2 and 3 having suffered loss of love and affection of their lovable son, they are entitled to get compensation of Rs.25,000/- each. (totally Rs.50,000/-) Thus, the modified compensation award amount provided by this court is as follows:-

Sl.No	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of dependency	9,72,000/-	12,09,600/-
2.	Loss of consortium	1,00,000/-	40,000/-
3.	Loss of love and affection	1,00,000/-	50,000/-
4.	Funeral expenses	20,000/-	15,000/-
5.	Transport charges	10,000/-	10,000/-

Sl.No	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
6.	Damage to clothes	2,000/-	2,000/-
7.	Loss of estate	---	15,000/-
	Total	12,04,000/- 50% of the award amount Rs.6,02,000/-	13,41,600/- 70% of the award amount Rs.9,39,120/-

15. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is enhanced to Rs.13,41,600/- from Rs.12,04,000/- ;

As per the 50% negligence ratio fixed by the Tribunal, Rs.6,02,000/- is awarded to the claimants.

As discussed in preceding paragraphs, the negligence ratio is refixed as 70% on the 1st respondent driver and 30% on the deceased. As such, the claimants are entitled to 70% of the award amount i.e., Rs.9,39,120/-.

(iii) The award amount will carry interest at the rate of 7.5% p.a. from the date of petition till the date of realisation;

(iv) The 2nd respondent-Insurance company is directed to deposit the entire award amount, along with interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(v) The Appellants/claimants 1, 2 and 3 alone are entitled to the award amount on the following apportionment:-

1st appellant/wife -60%

appellants 2 and 3/parents - 20% each

This court further held that claimants 4 and 5 are not legal heirs and dependants on the deceased since 2nd and 3rd claimants are alive. Accordingly, there is no share for them in the award amount.

The Appellants 1, 2 and 3 are entitled to withdraw their respective shares of the award amount along with accrued interest. The Tribunal shall pass necessary orders for disbursement of the award amount. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

nvsri

To

1. The Principal District Judge, Motor Accident Claims Tribunal,

Perambalur.

2.The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.S.Kamadevan, Advocate SR.No.51790

+1cc to Mr.N.Anand, Advocate SR.No.52136

C.M.A.No.1459 of 2017

GMV (28/09/2018)



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