

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2895 of 2011
and M.P.No.1 of 2011

The Commandant

Tamil Nadu Special Police Division

Trichy

..Appellant/Respondent

Vs

1.Rani

2.Venkatesan

3.Seethapathy

4.Karpagavalli

5.Kamalam

..Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.10.2009 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Cuddalore District, Cuddalore made in MCOP.No.1257 of 2007.

For Appellant :: Mr.M.Venkatesh Kumar, Government Advocate

For respondents :: Mr.R.Sreedhar for R1 to R5.

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant/Respondent, challenging the judgment and decree dated 27.10.2009 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Cuddalore District, Cuddalore made in MCOP.No.1257 of 2007.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 02.03.2007 at about 10.00 p.m., while the deceased Ranganathan was riding his tyre cart from Thambipettai to Kurinjipadi, while going near Neyveli Perumal Naidu's land, the respondent vehicle bearing

Reg.No.TN-45-G-0731 came from behind at high speed, dashed against the tyre cart causing fatal injuries to the said Ranganathan, resulting in his death on the next day. The accident occurred due to negligence of the respondent vehicle driver. The deceased was aged 45 years and by working as a tyre car driver, was earning Rs.9000/- per month. The Petitioners who are the wife and mother of the deceased were depending on his income only. Thus the Petitioners sought for a sum of Rs.16,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the respondent averred that the accident does not occur in the manner alleged by the Petitioners. The accident occurred only due to negligence of the deceased who drove the tyre cart without following the traffic rules. There was no hurricane light or fluorescent attached on the back side of the bullock cart. As the accident occurred due to negligence of the deceased only, the respondent is not liable to pay any compensation. Thus, the respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.9 to prove their claim. On the side of the respondent, R.W.1 was examined and Ex.R.1 was marked. The Tribunal, considering the evidence on record, found negligence of the respondent vehicle driver alone caused the accident, passed award for a sum of Rs.8,17,000/- payable by the respondent. Aggrieved over the said finding of the Tribunal, the respondent has come forward with the present appeal.

5. Heard both sides.

6. The learned counsel for the respondent/Government contends that the Tribunal failed to analyse the evidence properly and wrongly fixed negligence on the respondent vehicle driver. The multiplier applied by the Tribunal is not correct. The amount awarded under different heads is highly excessive. Thus, the respondent/Government sought for setting aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the Petitioners contended that the Tribunal after considering the evidence on record properly fixed the negligence on the part of the respondent vehicle driver who only caused the accident. The quantum of the award passed by the Tribunal is based on evidence placed before the Tribunal and the same needs no interference. Thus, the Petitioners/claimants sought for dismissal of the appeal.

8. According to the Petitioners, on 02.03.2007, while the deceased Ranganathan who was the owner and driver of the tyre cart who was proceeding in Cuddalore to Vridhachalam Main Road at about 10.00 p.m., while going near Neyveli Perumal Naidu's land, the respondent vehicle bearing Reg.No.TN-45-G-0731 driven by its driver who deposed as R.W.1 came from behind at high speed, dashed against the tyre cart causing fatal injuries to the said Ranganathan. The person who witnessed the occurrence deposed as P.W.2 and he stated about the manner in which the accident occurred. He stated that due to high speed in which the respondent vehicle was driven, the incident occurred. The Police also registered Ex.P.1-FIR against the driver of the respondent vehicle only. After completion of investigation, the Police also laid final report against the respondent vehicle driver as evidenced by Ex.P.7. It is clear from Ex.P.2-MVI Report that there was no mechanical defect involved in the respondent vehicle at the time of accident. Thus, the Petitioners claim that due to negligence of the respondent Police Vehicle driver only the accident occurred.

9. On the other hand, disputing the same, the learned counsel appearing for the appellant/respondent states that the vehicle bearing Reg.No.TN-45-G-0731 was driven by its driver R.W.1 Ramesh at normal speed. The accident occurred only due to careless driving of the tyre cart by the deceased. It is also pointed out that criminal case filed against R.W.1 Ramesh ended in acquittal as evidenced by Ex.R.1-copy of order passed in C.C.No.157 of 2007 on the file of J.M.III, Cuddalore. Thus the respondent contends that there was no negligence on the part of the respondent vehicle driver and as such, no negligence can be placed on the respondent vehicle driver for the accident.

10. The Tribunal considered the rival contentions and rightly rejected the claim of the respondents. It is true that the criminal case in C.C.No.157/2007 registered against R.W.1 ended in acquittal as evidenced by Ex.R.1. However, the Tribunal is right in considering the evidence available on record independently to arrive at the conclusion that the negligence on the part of the respondent driver alone caused the accident. It is clear from the evidence of P.W.2 that the accident occurred due to negligence of the respondent vehicle driver. Admittedly, the respondent vehicle which came from behind dashed against the tyre cart. If the driver of the respondent vehicle has come at normal speed and in a careful manner, he could have avoided hitting the tyre cart, which was going ahead of it. Further, the Police have filed FIR and charge sheet against the respondent Police vehicle driver only. Further as rightly pointed out by the Tribunal, in criminal case, the guilt of the accused has to be proved beyond reasonable doubt; while in civil case, the right of the parties has to be decided on preponderance of probabilities. In such

circumstances, it is clear from P.W.2 eyewitness account as well as the other documents, produced by the Petitioners that the accident occurred only due to negligence of the respondent vehicle driver. Assuming that the accident occurred due to negligence of the tyre cart driver, the respondent-Tamil Nadu Police would have naturally laid a complaint before the concerned Police Station against the said tyre cart driver, but he has not done so. In such circumstances, the conclusion of the Tribunal that the negligence of the respondent vehicle driver alone caused the accident is based on proper appreciation of evidence on record and the same needs no interference.

11. The Petitioners claim that the deceased was aged 45 years and by working as tyre cart driver was earning Rs.9000/- per month. It is clear from Ex.P.3-Post Mortem certificate that the deceased was aged 45 years. In the absence of any proof for the earning of the deceased and the accident having occurred in 2007, tribunal fixed the notional income of the deceased at Rs.4500/- per month. Taking into account the avocation of the deceased, this court is inclined to reduce the same and fix it at Rs.4000/- per month.

12. Since the deceased was aged 45 years, the multiplier to be applied is 14. The Tribunal has wrongly applied multiplier 15 and the same is to be modified. Considering the fact that the deceased was employed as a cart driver and aged 45 years, 25% of the income has to be added towards Future Prospects. As the number of dependants are five in number, $\frac{1}{4}^{\text{th}}$ of income has to be deducted towards personal expenses. Thus the loss of dependency to the family of the deceased is as under:-

Monthly income - Rs.4000

Add: 25% future prospects (Rs.1000)

4000 + 1000 = 5000

Deduction $\frac{1}{4}^{\text{th}}$ towards personal expenses of the deceased

5000 - $\frac{1}{4}^{\text{th}}$ (1250) = 3750

3750 x 12 x 14 = 6,30,000

13. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Loss of consortium -40,000/-

Funeral expenses -15,000/-

Loss of estate -15,000/-

14. The learned counsel for the Respondents 1 to 5/Petitioners contended that the amounts granted under the head "loss of love and affection" would be confirmed. This court, by following the Ruling of the Kerala High Court in [1.Valsamma and others Vs. V.A.Baiju, 2.Rev.F.R.Joseph Vattakalam, and 3. The National Insurance Co.Ltd.,] and the Ruling reported in 2018 (1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others], is of the view that it would be appropriate to award Rs.20,000/- each for the claimants 2 to 5 and accordingly, a total sum of Rs.80,000/- is awarded under the head "loss of love and affection". The modified award amount is as shown below:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of dependency	5,54,000	6,30,000
2.	Loss of love and affection	1,00,000	80,000
3.	Loss of consortium	1,00,000	40,000
4.	Funeral expenses	2,000	15,000
5.	Loss of estate	75,000	15,000
	Total	8,17,000	7,80,000

15. In the result,

- (i) This Civil Miscellaneous Appeal is Partly Allowed;
 - (ii) The award amount is reduced to Rs.7,80,000/- from 8,17,000/-.
 - (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) This court by order dated 14.09.2011 directed the appellant to deposit the entire award together with interest and cost. Hence, the appellant is entitled for refund of excess amount, after satisfying the award of this court.
 - (v) The Claimants 1 to 5 are entitled to the award amount on the following apportionment:-
 - 1st respondent/claimant -40%
 - 2nd and 3rd respondents -20% each
 - 4th and 5th respondents/claimants - 10 % each.
- The Claimants 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. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal
(Chief Judicial Magistrate),
Cuddalore District, Cuddalore.

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

+1cc to Mr.R.Sreedhar, Advocate, S.R.No. 37436

+1cc to the Additional Government Pleader, S.R.No. 37702

C.M.A.No.2895 of 2011

KJI (CO)
GN(01/10/2018)



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