



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.3206 of 2017

- 1.Poongodi
- 2.Minor Kasthuri
- 3.Minor Srinithi
- 4.Minor Saran
- 5.Rajambal

(minors 2 to 4 represented by
mother, 1st Appellant)

... Appellants/Petitioners

versus

1.Natarajan

2.The Oriental Insurance company Ltd.,
HUB, Parimalam Complex,
EVN Road, Erode

... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 2.2.2017 in M.C.O.P.No No.936 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Court) Namakkal.

For appellants : Mr.M.Sivakumar
For respondents : Mr.S.Manokaran, for R-2

No appearance for R-1
J U D G M E N T
(delivered by R.SUBRAMANIAN, J.)

Challenge in this appeal is to the award of the Motor Accident Claims Tribunal, Namakkal, dated 2.2.2017, in MCOP No.936 of 2014. The claimants, who are the appellants, seek enhancement of the compensation.

2. According to the claimants, the deceased was travelling in a motor cycle from Rasipuram to Karur. At that time, the Tanker lorry bearing Registration no.TN 28 AH 6811, which was



WEB COPY

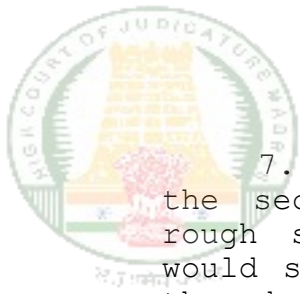
travelling ahead of the two wheeler on the extreme right side of the road, which is a four lane road, suddenly swerved left, resulting in the accident. The claimants contended that the deceased was working as Junior Assistant in the Revenue Department, earning a monthly salary of Rs.28,295/-. Thus the claimants sought for a compensation of Rs.80 lakhs. The claim petition was resisted by the Insurance Company contending that the accident occurred only due to the rash and negligent driving of the two wheeler by the deceased. According to the Insurance Company, the tanker lorry was proceeding slowly on the extreme right side of the road and the two wheeler came from behind and dashed against the same. The Insurance Company also denied the age, educational qualification and income of the deceased.

3. The Tribunal on an appreciation of the evidence on record, particularly first information report, as well as evidence of P.W.1, concluded that the drivers of both the vehicles have contributed equally to the accident and apportioned negligence at 50% each.

4. On the quantum, the Tribunal found that the deceased was earning a monthly salary of Rs.28,295/-. After deducting a sum of Rs.9,223 towards income tax, the Tribunal assessed the annual income of the deceased at Rs.3,30,317/-. Adding 30% towards future prospects and deducting 1/4th towards personal expenses and applying multiplier of 14, the Tribunal arrived at the total loss of earning at Rs.34,68,332/-. The Tribunal awarded a sum of Rs.3,000/- towards loss of estate, Rs.5,000/- towards funeral expenses, and Rs.5,000/- towards loss of love and affection and Rs.2,000 for transportation. Thus the total award was arrived at Rs.45,23,832/-. Having found that the deceased has contributed equally to the accident, an extent of 50% of the said sum was deducted and the balance amount of Rs.22,61,916/- was awarded as compensation. Aggrieved, the claimants are on appeal.

5. We have heard Mr.M.Sivakumar, learned counsel for the appellant and Mr.S.Manoharan, learned counsel for the second respondent Insurance Company. The first respondent owner of the vehicle though served, does not appear either in person or through counsel.

6. Mr.Sivakumar, learned counsel for the appellant / claimant would contend that the Tribunal erred in fixing the contribution at 50%. He would draw our attention to the FIR as well as evidence of P.W.1 which would go to show that it was the driver of the lorry who was negligent. He would also point out that the Insurance Company has not examined the driver of the lorry to show absence of negligence on his part.



7. Per contra, Mr.S.Manohar, learned counsel appearing for the second respondent Insurance Company would contend that rough sketch (Ex.P-3) and first information report (Ex.P-1), would show that the accident occurred due to the negligence of the deceased and the Tribunal was justified in fixing the negligence at 50%.

8. We have considered the submissions made on both sides.

9. The road in question is a four lane road. It is the case of the claimants that the lorry which was going ahead, suddenly applied brakes and swerved left without any indication, resulting in driver of the two wheeler dashing against the lorry at its rear side. The evidence on record points out that the impact was on the centre part of the lorry which would show some negligence on the part of the driver of the lorry also. The Insurance Company has not examined the driver to prove the absence of negligence on his part. We are therefore of the considered opinion that negligence should be apportioned at 60% on the lorry driver and 40% on the two wheeler driver, instead of 50% each, as decided by the Tribunal.

10. On the quantum of compensation, we find that the Tribunal has adopted the correct multiplier as well as correct percentage of the future prospects while arriving at the loss of dependency. On the conventional heads, the award of the Tribunal is on the lower side. We therefore modify the award as follows:-

Head	Amount in Rs.
Loss of Dependency	45,08,832
Loss of estate	15,000
Funeral expense	25,000
Loss of Love and affection (3 x Rs.40,000/-)	1,20,000
Loss of Love and affection (for 5 th claimant)	15,000
Transportation	10,000
Loss of consortium	40,000
Damage to clothing	5,000
Total compensation	47,38,832

11. Since we have fixed the contribution of negligence on



the part of the deceased at 40%, the claimants would be entitled to Rs.28,43,299/- which is rounded off to Rs.28,44,000/-. The award will carry interest @ 7.5% p.a. from the date of petition till the date of payment.

WEB COPY

12. The first claimant would be entitled to Rs.8,00,000/- with proportionate interest and entire costs, Claimants 2,3, and 4 minor children would be entitled to Rs.6,00,000/- each, with proportionate interest. The fifth claimant, mother, would be entitled to Rs.2,44,000/- with proportionate interest.

13. It is stated that the Insurance Company has satisfied the award passed by the Tribunal. The Insurance Company is directed to deposit the remaining amount as per the modified award, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, major claimants are allowed to withdraw their share of compensation. The Tribunal is directed to deposit the share of the minor claimants in any one of the nationalized banks in an interest bearing fixed deposit till they attain majority. The first claimant would be entitled to withdraw quarterly interest from the Bank, for the maintenance of the children.

14. The Civil Miscellaneous Appeal is allowed to the extent indicated above. There shall be no order as to costs in this appeal.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tar

To

The Motor Accident Claims Tribunal,
(Principal District Judge) Namakkal.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.65285

+1cc to Mr.S.Manohar, Advocate, S.R.No.65178

C.M.A.No.3206 of 2017

GJII(CO)

GSP(04/12/2018)