

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.685 of 2018

1.A.P.Bhoorasamy

2.P.Shanthi

... Appellants/Petitioner

..vs..

1.P.Shankar

2.Cholamandalam MS General Insurance Company,

Dare House, 2nd Floor,

No.2, NSC Bose Road,

Chennai.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 27.03.2014 made in MCOP.No.2015 of 2011 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore.

For Appellants : Mr.A.N.Viswanatha Rao

For Respondents : Mr.J.Michael Visuwasam for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 27.03.2014 made in MCOP.No.2015 of 2011 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore, the petitioners/claimants have come forward with this present appeal seeking to enhancement of the award amount.

2. By consent, this civil miscellaneous appeal is disposed at the stage of admission itself.

3. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

4. The case of the petitioners is that on 29.08.2011 at about 7.50 hours, while the deceased Elavazhagan was proceeding

as a pillion rider in the two wheeler bearing Registration No.TN-31-D-0941 driven by his father, the first petitioner herein, in Nellikuppam - Cuddalore Main Road, near Semmandalam Bus Stop, the first respondent's Tipper Lorry bearing Registration No.TN-31-AD-4376, came at high speed, driven in a rash and negligent manner dashed against the two wheeler in which the deceased was travelling as a pillion rider causing fatal injuries, which resulted in his death on the way to hospital. The accident occurred only due to the negligence of the first respondent's Tipper Lorry driver. At the time of accident, the deceased was aged about 17 years and he was studying in +1 class. The petitioners are parents of the deceased and due to sudden demise of their only son, they have suffered mental agony, loss of love and affection of their son. Hence, the petitioners seek a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

5. On the other hand, opposing the claim petition, the second respondent-Insurance company filed counter contending that the accident occurred not due to the negligence of the Tipper lorry driver, but only due to the negligence of the rider of the two wheeler who is the first petitioner herein and father of the deceased. The accident occurred only because the rider of the two wheeler without noticing the on coming vehicle crossed the road resulting in the accident. Further, the lorry was driven by a person who did not possess valid driving licence and as such, it amounts to violation of the policy conditions. Hence, the second respondent is not liable to pay any compensation to the petitioners. Thus, the second respondent sought for dismissal of the petition.

6. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P12 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

7. The Tribunal, on the basis of available materials on record, found the first respondent Tipper Lorry driver negligence alone caused the accident and as the owner and insurer of the offending vehicle viz., the respondents are liable to pay compensation and awarded a sum of Rs.3,00,000/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal.

8. I have heard the learned counsel appearing for the appellants/petitioners and the learned counsel appearing for the second respondent Insurance Company and perused the materials available on record.

9. The learned counsel appearing for the appellants/petitioners contended that the Tribunal failed to consider the evidence on record properly. The appellants further contends that the Tribunal failed to award any amount towards funeral expenses, loss of love and affection and loss of expectation of life. The notional income fixed by the Tribunal is very low and the amount awarded under the different heads are very low. Thus, the appellants/petitioners seeks to enhance the quantum awarded by entertaining the appeal.

10. Per contra, the learned counsel appearing for the second respondent/Insurance Company contends that the deceased being a student claim for enhancement is not warranted. The accident occurred only due to the negligence of the first petitioner himself who was riding the two wheeler and as such the claim of the petitioners against the respondents is unsustainable. Thus, the second respondent sought for dismissal of this appeal.

11. The petitioners who are the parents of the deceased contended that the accident occurred only due to the negligence of the first respondent's Tipper Lorry driver. The eye witness to the occurrence, who deposed as P.W.2 stated that the first respondent lorry driver came at high speed and dashed against the two wheeler in which the deceased was proceeding as pillion rider resulting in his death. The petitioners also produced Ex.P1 First Information Report which was laid against the driver of the first respondent lorry only. It is evident from Ex.P2 Motor Vehicle Inspector's report that there was no mechanical defect. Further, the police after investigation laid the charge sheet against the driver of the first respondent lorry driver only as evidenced by Ex.P12. It is therefore clear that from the oral evidence of P.W.2 eye witness as well as the contents of Ex.P1 First Information Report and Ex.P12 Charge Sheet that the negligence on the part of the first respondent lorry driver alone caused the accident.

12. The first respondent lorry was insured with the second respondent as evidenced by Ex.P10 Insurance Policy. It is clear from Ex.P11 driving licence that the driver of the first respondent lorry possessed valid driving licence on the date of occurrence. As such, the second respondent who is the insurer of the first respondent lorry is liable to pay compensation.

13. Admittedly, the deceased was a student and as per Ex.P8 Transfer Certificate, the date of birth of the deceased is 16.10.1996. Hence, on the date of accident i.e., 29.08.2011, the age of the deceased was 16. The Tribunal awarded a lump sum amount of Rs.3,00,000/- as compensation to the petitioners,

since the deceased was a student. This according to the petitioner is not proper. The petitioners contends that the notional income of the deceased has to be fixed and multiplier 18 to be applied. The said contention of the petitioners is just and proper. Hence, the notional income of the deceased is fixed at Rs.6,500/-. Considering the age of the deceased was 16, the multiplier to be applied is 18. As the deceased was a bachelor, 50% of the income is to be deducted towards personal expenses. Accordingly, the loss of dependency is calculated as follows:-

Rs.6,500/- - deduction 50% of the amount of Rs.3,250/-.
Rs.3250/- x 12 = Rs.39,000/- x 18 = Rs.7,02,000/-.

14. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Estate	=	Rs. 15,000.00
Loss of love and affection	=	Rs. 40,000.00
Funeral Expenses	=	Rs. 15,000.00

15. Accordingly, the amount of Rs.3,00,000/- awarded by the Tribunal is hereby enhanced to Rs.7,72,000/-. The Tribunal, on the basis of Ex.P5 Judgment passed in O.S.No.719 of 2013 dated 26.07.2013, on the file of II Additional District Munsif, Puducherry, held that the second petitioner/second appellant mother alone is the legal heir of the deceased and as such, the father of the deceased who is the first petitioner herein is not entitled for compensation. The learned counsel appearing for the appellants contended that even assuming the first petitioner is not a legal heir, the second petitioner has no objection to award share to her husband, the first petitioner. Considering the claim of the petitioners, this Court inclined to accept the same and the petitioners are entitled to 50% each of the award amount.

16. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.3,00,000/- awarded by the Tribunal dated 27.03.2014 made in MCOP.No.2015 of 2011 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore is enhanced to Rs.7,72,000/-. The second respondent/Insurance Company is directed to deposit the entire award amount of Rs.7,72,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit the award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The petitioners/claimants are not entitled interest for the default of period of 1085 days in filing the appeal. On such deposit,

the petitioners/claimants are entitled to 50% each of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

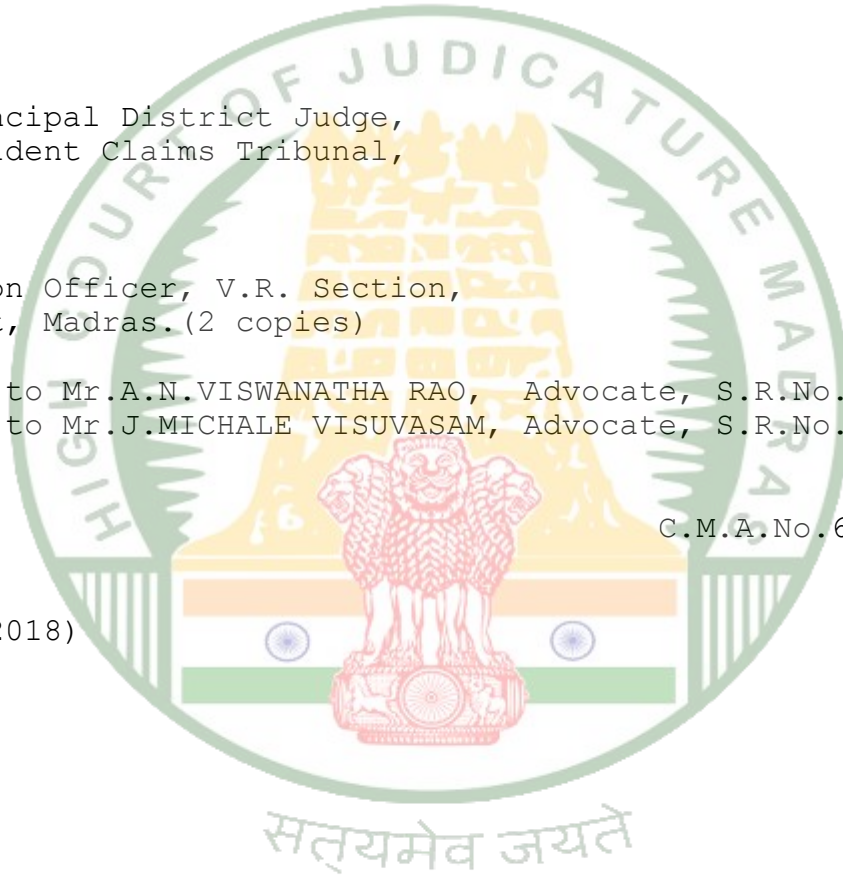
1 The Principal District Judge,
Motor Accident Claims Tribunal,
Cuddalore.

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The Section Officer, V.R. Section,
High Court, Madras. (2 copies)

+1cc to Mr.A.N.VISWANATHA RAO, Advocate, S.R.No.22771
+1cc to Mr.J.MICHALE VISUVASAM, Advocate, S.R.No. 22722

C.M.A.No.685 of 2018

MG (CO)
TR(18/04/2018)



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