

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3493 of 2012

M/s.Reliance General Insurance Co. Ltd.,
Gee Jay Arcade, 1st Floor,
No.141/71, T.V. Swamy Road West,
R.S.Puram, Coimbatore-641 002. ...Appellant/3rd respondent

...vs...

1.Uomaithurai
2.Mrs.Parvathy
3.Saravanan ...Respondents 1 to 3/Petitioners
4.B.Veeramariappan
5.S.John ...Respondents 4 & 5/
respondents 1 & 2

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 26.04.2012 made in MCOP.No.956 of 2010 on the file of the Motor Accident Claims Tribunal/III Additional District & Sessions Judge, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : Mr.C.Veeraraghavan for
R1 to R3

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree dated 26.04.2012 made in MCOP.No.956 of 2010 on the file of the Motor Accident Claims Tribunal/III Additional District & Sessions Judge, Coimbatore.

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

3. According to the petitioners, on 01.03.2010 at about 3.30 p.m., the deceased Paramasivam was proceeding in a Motor Cycle bearing Registration No. TN-38-AC-1795, in Coimbatore - Mettupalayam Road, from South to North, at that time, a lorry bearing Registration No. TN-69-M-5261, came from west to east at high speed and dashed against the motor cycle, in which Paramasivam was sustained grievous injuries all over his body. Immediately, the said Paramasivam was taken to Ganga Hospital, Coimbatore, where his left leg was amputated on 11.03.2010 and his left hand was amputated on 13.03.2010. In spite of continuous treatment, the said Paramasivam died on 14.03.2010. According to the petitioners, the negligent driving of the first respondent's Lorry driver alone is responsible for the accident. Thus, the petitioners claim that the first respondent who drove the vehicle owned by the second respondent and insured with the 3rd respondent was responsible for the accident and as such all the three respondents are liable to pay the compensation of Rs.15,00,000/- to the petitioners.

4. On the other hand, opposing the petition, the 3rd respondent/Insurance Company disputing the claim of the petitioners stated that the claim is very exorbitant and the fact that the first respondent was responsible for the accident is not proved and as such the respondents sought for dismissal of the petition.

5. The petitioners examined P.Ws.1 to 3 and produced Ex.P1 to Ex.P10 to substantiate their claim. On the side of the respondents, neither oral evidence nor documentary evidence was let in.

6. The Tribunal, after considering the pleadings as well as the oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving of the driver of the vehicle owned by the second respondent and insured with the third respondent and directed the respondents to pay a sum of Rs.10,58,000/- as compensation with interest at 6% from the date of petition till the date of deposit.

7. Aggrieved over the same, the 3rd respondent/Insurance Company has come forward with this present appeal questioning the conclusion of the Tribunal on the aspect of negligence as well as quantum of compensation.

8. The learned counsel for the 3rd respondent/Insurance Company contended that the Tribunal erred in fixing the income of the deceased at Rs.10,000/- per month. The Tribunal also failed to consider the fact of non production of attendance register, wage register and proof of actual payment by the deceased. It is further contended that the amount awarded under

the different conventional heads by the Tribunal is on the higher side. Hence, the learned counsel for the 3rd respondent/appellant sought this Court to interfere with the award passed by the Tribunal.

9. Per contra, the learned counsel for the petitioners/claimants submitted that on the basis of available evidence, the Tribunal has rightly come to the conclusion that the negligence and careless driving of the first respondent's driver only caused the accident and arrived at a just and appropriate compensation under various heads. Thus, the petitioners seek for dismissal of this appeal.

10. Considering the contention of the learned counsel appearing on either side and perused the materials available on record.

11. The contention of the learned counsel for the 3rd respondent/appellant is that the Tribunal has wrongly fixed the monthly income of the deceased at Rs.12,000/- and the same is not proper. On the other hand, it is pointed out by the learned counsel for the petitioners/claimants that the deceased was working as Supervisor in Electro Heatings Limited and earning a sum of Rs.12,000/- per month as salary. The petitioners produced Ex.P10 Salary certificate, which clearly established the fact that the deceased was receiving a sum of Rs.12,000/- per month as salary. To prove the same, the petitioners examined P.W.3, who was working in the same company, where the deceased was working. In such circumstances, this Court finds no error in fixing of the monthly income of the deceased at Rs.12,000/- by the Tribunal.

12. It is evident from Ex.P3 Postmortem certificate that the deceased was aged about 25 years at the time of accident. Thus, the age of the deceased fixed as 25. As far as the negligence on the part of the first respondent being caused of the accident, the same is not disputed by the respondents with acceptable evidence. The evidence of eye witness to the occurrence, namely, P.W.2, Balamurugan has categorically established that the first respondent being the driver, drove the lorry in a rash and negligent manner and dashed against the motor cycle, which caused the accident. Further Ex.P1, First Information Report, registered against the first respondent and on the basis of the above said oral and documentary evidence, it is clearly established that the careless and negligent driving of the driver of the lorry at high speed and dashing against the motor cycle only caused the accident. In such circumstances, this Court find no infirmity or irregularity in the conclusion arrived at by the Tribunal.

13. In view of the above said discussions, it is clear that the accident occurred only due to the rash and negligent driving of the driver of the Lorry owned by the second respondent. In such circumstances, the Tribunal has correctly fixed the liability on the first respondent's driver as well as the second respondent, the owner of the vehicle and the third respondent, the insurer of the vehicle, and awarded a just and reasonable compensation. Therefore, it is clear that there is no infirmity or irregularity in the award passed by the Tribunal. Thus, the civil miscellaneous appeal deserves to be dismissed.

14. In the result, the Civil Miscellaneous Appeal is dismissed. The Fair and Decreeal order passed in M.C.O.P.No.956 of 2010, dated 26.04.2012 on the file of the Motor Accident Claims Tribunal/III Additional District & Sessions Judge, Coimbatore is confirmed.

15. It is represented by the learned counsel for the petitioners/claimants that the quantum of compensation awarded by the Tribunal is very low and they are entitled for enhancement of the award amount. However, no Cross Appeal is filed by the petitioners/claimants. In such circumstances, the plea of the petitioners for enhancement of compensation cannot be entertained in this appeal filed by the 3rd respondent/Insurance company. However, it is open to the petitioners to file independent appeal for enhancement, if so advised.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rrg
To

1. The Motor Accident Claims Tribunal,
III Additional District & Sessions Judge, Coimbatore.
2. The Record Keeper, VR Section, High Court, Madras.
- + 1 cc to Mr.M.B. Gopalan, Advocate Sr.6463
- + 1 cc to Mr. C. Veeraraghavan, Advocate Sr.5424

C.M.A.No.3493 of 2012

VGII (CO)
EU(22/03/2018)