

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.01.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.964 of 2013

1.Saraswathy
2.Minor Malathy
3.Minor Sakthivel
4.Rose
5.Kannan ... Appellants(claimants)
(Minors R2 & R3 rep. by their
mother 1st appellant)

Vs.

1.Balaji
2.Reliance General Insurance Co. Ltd.,
Hoddows Road,
Egmore, Chennai-600 008. ... Respondents(Respondents)

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the order and decree dated 26.06.2012 in M.C.O.P.No.640 of 2008 passed by the Motor Accident Claims Tribunal (II Additional District Court), Tiruvallore.

For Appellants : Mr.A.Salomi
For Respondents: Mr.K.Moorthy (For R2)

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents claims Tribunal (II Additional District Court) at Tiruvallur at Poonamallee, in and by award dated 26.07.2012 in M.C.O.P.No.640 of 2008, the claimants have filed the present appeal before this Court seeking enhancement of compensation.

2.The appellants herein are the claimants before the Tribunal and they are wife, minor daughter, minor son and parents of the deceased Rajendran.

3.It is the case of the claimants before the Tribunal that on 05.05.2008 at about 9.15 pm when the deceased Rajendran was riding his Honda Active bearing Reg.No.TN 20 AL 1761 from Manaval Nagar to Poonamallee on the T.H.Road, a Mahendra van bearing Reg.No.TN 09 Y 0033 owned by the 1st respondent herein and insured with the 2nd respondent-Insurance Company came in rash and negligent manner and dashed against the two wheeler, thus, caused the accident. In the said accident, the said Rajendran sustained grievous injuries and died on the spot. Hence, the claimants have filed the claim petition before the Tribunal seeking compensation of Rs.30,13,000/-.

4.The claim made by the claimants was resisted by the Insurance company by taking a defence that the accident was the result of the rash and negligent act of the deceased Rajendran, who had driven the two-wheeler bearing Reg.No. TN 20 Al 1761 and as such, the Insurance Company is not liable to pay the compensation amount.

5.Before the Tribunal, in order to prove their case, on the side of the claimants, the 1st claimant/wife examined herself as P.W.1 besides examining two other witnesses as P.W.2 & P.W.3 and marked nine documents as Ex.P.1 to Ex.P.9. On the side of the Insurance company, neither oral nor documentary evidence was adduced.

6.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident was the result of head-on-collision and the accident had occurred due to the rash and negligent act of the deceased and the driver of the van and thus, the Tribunal has fixed 20% negligence on the part of the deceased and 80% negligence on the part of the driver of the van. By coming to such a conclusion, the Tribunal has calculated the compensation under different heads and arrived at a total compensation of Rs.15,10,000/- and after deducting 20% amount (viz., Rs.3,02,000/-) towards the contributory negligence on the part of the deceased, the Tribunal has awarded a sum of Rs.12,08,000/- as compensation to the claimants. Aggrieved over the same, the present appeal has been filed by the claimants.

7.Now, it is the contention of the learned counsel for the appellants/claimants that the Tribunal has erroneously fixed 20% negligence on the part of the deceased Rajendran. Even the eye witness to the occurrence, who was examined on the side of the claimants as P.W.2, has stated in his evidence that the accident

was the result of rash and negligent act of the driver of the van bearing Reg.No.TN 09 Y 0033. Under such circumstances, according to the learned counsel for the appellant/claimants, the Tribunal ought not to have fixed 20% negligence on the part of the deceased Rajendran.

8.With regard to the quantum of compensation, it is the case of the claimants before the Tribunal that the deceased Rajendran was working as Labour contractor in Ramachandra Hospital and earning more than a sum of Rs.12,000/- per month. In order to prove the income earned by the deceased Rajendran, on the side of the claimant, Form-16 issued by Ramachandra Hospital was marked as Ex.P.7 & Ex.P.8. But, the Tribunal without considering the said documents, on its own accord, fixed a notional amount of Rs.10,000/- per month as income of the deceased, which resulted in awarding inadequate compensation. That apart, the Tribunal has not awarded any amount towards future prospects. Further, the Tribunal has not awarded adequate compensation under the conventional heads also. Hence, according to the learned counsel for the appellants/claimants, the compensation amount awarded by the Tribunal needs proper enhancement.

9.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company made his submissions supporting the award passed by the Tribunal.

10.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

11.With regard to the negligence aspect, it is seen that the Tribunal has fixed 20% negligence on the part of the deceased Rajendran as the accident was a head-on-collision. But, it is seen from the materials available on record that P.W.2, who is an eye witness to the accident, has stated in his evidence that the deceased Rajendran was riding his two-wheeler and at that time, the van bearing Reg.No. TN 09 Y 0033 came from opposite direction and dashed against the two-wheeler and caused the accident. Though it is contended on the side of the Insurance Company that the accident is result of head-on-collision, from the material available on record it could be seen that the respondents have not taken any effort to prove their case by examining independent witnesses or marking crucial documents like accident sketch. But, the Tribunal without considering this aspect fixed 20% negligence on the part of the deceased. Therefore, We are of the opinion that 20% negligence fixed by the Tribunal on the part of the deceased is not correct, hence, the same is liable to be set aside. Thus, We hold that the accident was the result of the rash and negligent driving of the driver of the van bearing Reg. Reg.No.TN 09 Y 0033 alone and consequently, the 20% negligence fixed on the part of the

deceased Rajendran is hereby set aside.

12. With regard to the quantum of compensation awarded by the Tribunal, from a perusal of Ex.P.7 & Ex.P.8-Tax Deduction Certificates, it is seen that the annual income of the deceased Rajendran in the year 2006-2007 was Rs.1,40,920/-. Hence, the monthly income of the deceased would be more than Rs.12,000/-. But, the Tribunal has fixed only a notional amount of Rs.10,000/- as monthly income of the deceased, which is not proper. Hence, We are of the opinion that by fixing a sum of Rs.12,000/- per month as income of the deceased, the compensation could be calculated to arrive at just and proper compensation. At the time of accident, the deceased was aged 42 years. Hence, 30% amount has to be added towards future prospects and if so added, the total amount works out to Rs.15,600/- (12,000 + 3600). Then, the annual income of the deceased would come to Rs.1,87,200/-. Since the claimants are five in number, 1/5th amount has to be deducted towards personal expenses and if so deducted, the balance amount comes to Rs.1,49,760/- (1,87,200 - 37,440). The deceased was aged 42 years at the time of accident, hence, the correct multiplier that has to be applied in this case is 15 and if so applied, the total comes to Rs.22,46,400/-, which could be just and proper compensation for pecuniary loss to the family. Accordingly, a sum of Rs.14,40,000/- awarded by the Tribunal under the head of loss of pecuniary loss to the family is hereby modified and enhanced to Rs.22,46,400/-. Except this modification, the compensation amounts awarded by the Tribunal under other heads remain unaltered, as the same appear to be just and reasonable. Consequently, the compensation of Rs.12,08,000/- awarded by the Tribunal to the claimants is hereby modified and enhanced to Rs.23,16,400/-. The break up details of the modified/enhanced compensation are as follows—

Pecuniary Loss	=Rs.22,46,400/-
Transport expenses	=Rs. 10,000/-
Funeral Expenses	=Rs. 10,000/-
Loss of Love and affection	=Rs. 25,000/-
Loss of consortium	=Rs. 25,000/-
Total	=Rs.23,16,400/-

In the result, the appeal is partly allowed and the 20% negligence fixed on the deceased by the Tribunal is set aside and the total compensation amount of Rs.12,08,000/- awarded by the Tribunal to the claimants is hereby modified and enhanced to Rs.23,16,400/-, out of which the claimants 1 to 3 are entitled to Rs.6 lakhs each and the 4th claimant is entitled to Rs.4 lakhs and the 5th claimant is entitled to the balance amount of Rs.1,16,400/-. The Insurance Company is directed to deposit the

entire enhanced compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants 1, 4 & 5 are entitled to withdraw their share amounts by making necessary application before the Tribunal. So far as the share amounts of the minor claimants 2 & 3, the same shall be deposited in any one of the nationalised bank till they attain majority and the 1st claimant/mother is entitled to withdraw the interest accrued thereon once in every three months. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To,
The II Additional District Judge
The Motor Accident Claims Tribunal ,
Tiruvallore at Poonamallee

copy to
The section Officer
VR Section
High Court Madras

+1 cc to Mr.K.Moorthy Advocate sr 5999
+2 ccs to Mr.A.Salomi Advocate sr 5861

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