

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3250 of 2007

1.Jothi @ Jothimani

2.B.Vijayakumar

... Appellants/Petitioners

Vs

1.A.Prabhu

2.P.Kokila

3.The National Insurance Co.Ltd.,
F.215, Maruthi Complex
Swarnapuri, Salem

4.M.Dhandapani

5.The Managing Partner
Aghin Roadways
37/5, Koolakadavu, Pamadakkal
Mahe District, Pondicherry

6.The United India Insurance Company Ltd.,
Coimbatore-45

7.Minor Karthik

S/o.Balu @ Balasubramani

Rep. by next friend Mohana ... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.07.2007 made in MCOP No.386 of 2003 on the file of the Motor Accidents Claims Tribunal / Sub Court, Bhavani.

For Appellants : Mr.N.Manokaran

For Respondents : M/s.N.B.Surekha for R3
M/s.R.Sreevidhya for R6
R1 & R7 - No appearance

JUDGMENT

This appeal is preferred by the claimants against the award of a sum of Rs.26,000/- towards compensation due to the death of the deceased viz., Balu @ Balasubramani, in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 31.07.2003, at about 02.30 p.m. the deceased was driving the Maruthi Omni van bearing registration No.TN-01-E-0574 near Perundhurai on the National Highways 47. When he was nearing Kongu Vellala Ambulance Office, Perundhurai, the second respondent's lorry bearing Reg.No.TCE-1789 driven by the first respondent/A.Prabu and insured with the third respondent Insurance Company, came in a rash and negligent manner and dashed against the omni van. Due to the said impact, the deceased sustained fatal injuries and died on the spot. The deceased's vehicle was also thrown out and it hit against another lorry bearing Reg.No. PY-03-3733 driven by the fourth respondent. The fifth respondent is the owner of the lorry bearing Reg.No.PY-03-3733, which has been insured with the sixth respondent Insurance Company. The appellants/claimants, who are the wife and son of the deceased, filed a claim petition before the Tribunal claiming compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.26,000/- with interest at the rate of 6% per annum from the date of petition and the said sum has been directed to be paid by both the insurance companies, ie., the third and sixth respondents, jointly and severally.

3.Challenging the same, the appellants -claimants have filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellants/claimants has submitted that the award passed by the Tribunal is very meagre and quantum of compensation has not been fixed as per the law laid down by this Court. He further submitted that the Tribunal has failed to note the evidence of P.W.2/eye-witness to the occurrence and further no contra evidence has been let in on the side of the respondents herein and as such, the award passed under no fault liability is not correct. Stating so, the learned counsel prayed for enhancement of compensation.

5.The learned counsel for the third and sixth respondents / Insurance Companies have submitted that the Tribunal has awarded the compensation which is just and reasonable and hence the same does not require any interference in the hands of this Court.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent Insurance Companies and perused the materials available on record carefully and meticulously.

7. The Tribunal has awarded a sum of Rs.13,000/- each to the wife and son of the deceased, in total, Rs.26,000/- under no fault liability. Considering the materials and evidence available on record, it is seen that no Motor Vehicle Inspector's report is filed and further no documentary proof has been adduced to show that the deceased Balu @ Balasubramani had valid driving licence to drive the vehicle. Further, it is clear from Ex.P.1-FIR, which has been filed by the Manager of Kongu Vellalar Service Ambulance Office, an eye-witness to the accident, that the deceased Balu @ Balasubramani drove the Maruthi Omni Van bearing Reg.No.TN-01-E-0574 in a rash and negligent manner and caused the accident. It is also clear from the evidence adduced on record that the Maruthi Omni Van driver overtook the lorry proceeding in front of it and because of the same, the accident had occurred. It is also seen that the back side of the said lorry bearing Reg.No.PY-03-3733 got hit by the above said Maruthi Omni van and further the driver of the said lorry lost his control and hit on the opposite side tamarind tree. That apart, the Tribunal has pointed out that the claimants have not filed the Insurance, R.C.Book and the M.V.I Report with regard to the Maruthi omni van driven by the deceased; thereby, it transpires that the deceased was not possessing the necessary experience and licence to drive the vehicle on the Highways. As such, without driving licence and flouting the Motor Vehicle Rules, the deceased had driven the vehicle, which ended in the accident. This Court is not inclined to interfere with the factual finding of the Tribunal in respect of the negligence, which has been arrived at on a threadbare analysis of the materials and evidence.

8. Thus, rendering a finding that the accident had occurred only due to the rash and negligent driving of the deceased himself, the Tribunal came to the conclusion that under no fault liability, the claimants can be awarded only a sum of Rs.26,000/- as total compensation. Even though this Court is of the view that the reasons adduced by the Tribunal for awarding the said compensation under no fault liability is justifiable, taking note of the age of the deceased at the time of accident i.e., 46 years and the dependants herein, who are the wife and son, it would be appropriate to enhance the quantum to Rs.50,000/-.

9. Accordingly, the award of the Tribunal is enhanced from Rs.26,000/- to Rs.50,000/- (Rupees Fifty Thousand Only). It is made clear that only for the compensation of Rs.26,000/- awarded by the Tribunal, the interest rate of 6% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.24,000/-, the interest rate of 6% shall be calculated from the date of filing of this appeal.

10. The third and sixth respondents viz., United India Insurance Company and National Insurance Company Limited, are directed to deposit the modified compensation as ordered above, jointly and severally, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants / claimants are permitted to withdraw their respective shares as per ratio of apportionment made by the Tribunal, on making proper application.

11. The Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal
Bhavani.

2. The Section Officer,
VR Section, Madras High Court.

+1cc to M/s.N.B.Surekha, Advocate Sr.71254
+1cc to M/s.R.Sreevidhya, Advocate Sr.71549
+1cc to Mr.N.Manokaran, Advocate Sr.71022

C.M.A.No.3250 of 2007

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