

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3480 of 2005

- 1.Lalitha
- 2.Minor Karthik
- 3.Minor Sasi Kumar

(Minors 2 and 3 are represented by Natural Guardian Mother, 1st appellant Lalitha)

4.Saroja

5.Munusamy

..Appellants/Petitioners

..Vs..

1.Selvam

- 2.The Branch Manager
Royal Sundaram Alliance Insurance
Company Limited,
Chennai Branch, No.46 Whites Road,
Chennai - 600 014.

Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 28.04.2005, in MCOP.No.90 of 2004, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate No.1, Dharmapuri at Krishnagiri.

For Appellants : Ms.V.Srimathi

For Respondents : Mr.N.Vijayaraghavan for R2
No appearance for R1

JUDGMENT

The appellants are the claimants in M.C.O.P.No. 90 of 2004, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate No.1, Dharmapuri at Krishnagiri. They filed

the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.7,00,000/- for the death of one Lakshmi Narayanan, husband of the first claimant, father of the second and third claimants and son of the fourth and fifth claimants in a road accident that took place on 08.12.2002, at about 05.00 pm, when the deceased Lakshmi Narayanan was travelling as a pillion rider in a two wheeler bearing Registration No. TN 29 P 9650 belonging to the first respondent, ridden by one Narayanappa.

2. According to the appellants/claimants, the rider of the two wheeler rode the vehicle rashly and negligently and hit the name board of the Panchayat, as a result of which, the deceased Lakshmi Narayanan sustained multiple injuries all over his body and died on the way to the hospital. The further contention of the appellants/claimants is that the rash and negligent riding of the rider of the two wheeler bearing Registration No. TN 29 P 9650 belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent Royal Sundaram Alliance Insurance Company Limited both of them are jointly and severally liable to pay compensation to them.

3. The owner of the two wheeler bearing Registration No. TN 29 P 9650 remained absent before the tribunal and therefore, he was set ex-parte. The second respondent Royal Sundaram Alliance Insurance Company Limited contested the claim petition. The learned Chief Judicial Magistrate No.1, Dharmapuri at Krishnagiri after analysing the evidence on record, dismissed the claim petition filed by the claimants by observing that only the deceased was riding the two wheeler at the time of the accident and that the claimants with the help of Police officials had created the false records for the sake of getting compensation from the Insurance Company.

4. Aggrieved over the orders passed by the tribunal, the appellants/claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 .

5. Ms.V.Srimathi, learned counsel appearing for the appellants/claimants would contend that though the Sub-Inspector of Police, Kandhikuppam Police Station has registered FIR (Ex.P1) immediately after the accident and also after thorough investigation laid a charge sheet (Ex.P4) before the Judicial Magistrate, Krishnagiri against one Narayanappa, the rider of the two wheeler bearing Registration No. TN 29 P 9650, the tribunal wrongly dismissed the entire claim petition, contending that the deceased alone was riding the two wheeler.

6. Per contra, Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent drew the attention of this Court to the copy of the FIR (Ex.P1) and contended that the wife of the deceased Lakshmi Narayanan who lodged the complaint with the Sub-Inspector of Police, Kandhikuppam Police Station had not mentioned the name of Narayanappa as the rider of the two wheeler at the time of the accident. He would further contend that the tribunal was right in dismissing the entire claim petition, since, the deceased alone was riding the two wheeler bearing Registration No. TN 29 P 9650.

7. A perusal of the copy of the FIR (Ex.P1) shows that the wife of the deceased Lakshmi Naryanan had stated that her husband was travelling in a two wheeler bearing Registration No. TN 29 P 9650 and FIR (EX.P1) was registered against the rider of the two wheeler. Nowhere in the FIR (Ex.P1), the wife of the deceased Lakshmi Narayanan had mentioned that her husband deceased Lakshmi Narayanan was riding the two wheeler.

8. Apart from that, the Sub-Inspector of Police, Kandhikuppam Police Station had laid a charge sheet (Ex.P4) against one Narayanappa for the offences punishable under Sections 279 and 304 of IPC., before the Judicial Magistrate, Krishnagiri. Infact the said Narayanappa had pleaded guilty of the offences before the Judicial Magistrate, Krishnagiri. The learned Judicial Magistrate, Krishnagiri imposed a fine of Rs.2,750/- and imprisonment till the raising of the Court to the accused Narayanappa as evidenced by a copy of the Judgment in CC.NO.127 of 2003 (Ex.P5). Except the bald allegations that the claimants collided with the Police Officials and created records for the purpose of getting compensation from the Insurance Company, no acceptable evidence was adduced by the respondents. The observations made by the tribunal in this regard are based on surmises and conjunctures and therefore, the same cannot be sustained. The FIR (Ex.P1) and copy of the Judgment in CC.No.127 of 2003 (Ex.P5) clearly shows that the deceased was travelling in the two wheeler bearing Registration No. TN 29 P 9650 only as a pillion rider and therefore, the order of dismissal passed by the tribunal is liable to be set aside.

9.The learned counsel appearing for the appellant would contend that the deceased was aged just 35 years on the date of the accident and was doing photo framing and lamination works, earning a sum of Rs.5,000/- per month. Since, no proof of income is adduced before the tribunal, the notional income of the deceased is fixed as Rs.4,500/- per month. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% has to be added towards the future prospects of the deceased, which would come to Rs.6,300/-. Since the deceased was aged 35 years on the date

of the accident, the proper multiplier to be adopted in the instant case is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since there are 5 dependents in the instant case, 1/4th has got to be deducted towards personal expenses of the deceased. Thus, loss of dependency is calculated as follows:

$$\begin{aligned} &= \text{Rs.}6,300/- \times 12 \times 16 \times 1/4 \text{ deduction} \\ &= \text{Rs.}9,07,200/- \end{aligned}$$

10. Apart from the above said amount, the appellants/claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of love and affection and funeral expenses. The compensation awarded to the appellants/claimants under different heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.9,07,200 /-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of love and affection	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
Total		Rs. 9,77,200 /-

Thus the appellants/claimants are entitled to a sum of Rs.9,77,200 /- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The order passed by the tribunal is set aside.

(iii) The appellants/claimants are directed to pay the court fee for the compensation awarded, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv) The second respondent/ Insurance Company Limited is directed to deposit the entire compensation amount together with interest at the rate of 7.5% per annum from the date of claim petition to the credit of M.C.O.P.No. 90 of 2004, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate No.1, Dharmapuri, Krishnagiri within four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants/claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The 1st appellant is entitled to a sum of Rs.5,00,000/- together with accrued interests and costs.

(b) The 2nd and 3rd appellants are entitled to a sum of Rs.1,50,000/- each.

(c) The 4th appellant is entitled to a sum of Rs.1,00,000/-.

(d) The 5th appellant is entitled to a sum of Rs.77,200/-.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Tribunal,
The Chief Judicial Magistrate No.1,
Dharmapuri at Krishnagiri.

2. The Section Officer,
VR Section, High Court,
Madras-104

+lcc to Mr.N.Vijayaraghavan, Advocate, S.R.No.9425

C.M.A.No.3480 of 2005

CS/24/04/2019

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