

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.253 of 2010
and
M.P.No.1 of 2010

The Superintendent of Police,
Villupuram District,
Villupuram. Appellant

Vs

1.Vaitheki
2.Minor Gnanasoundari
3.Minor Akshaya
4.Shyamala
5.S.Krishnamoorthy Respondents

(Minor petitioners 2, 3 represented by their
mother/guardian next friend K.Vaitheki,
1st petitioner)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.07.2009 made in M.A.C.T.O.P.No.1979 of 2007 on the file of the Motor Accidents Claims Tribunal, Cuddalore, (Chief Judicial Magistrate's, Court, Cuddalore.)

For Appellants : Mr.S.Jaganathan
Additional Govt. Pleader (CS)

For Respondents : Mr.R.Sreedhar (for R1 to R4)
R2 & R3 - Minors

JUDGMENT

This appeal is filed under Section 173 of the Motor Vehicles Act assailing the judgment and decree dated 24.7.2009 passed by the Motor Accident Claims Tribunal, Cuddalore (Chief Judicial Magistrate Court, Cuddalore) made in M.C.O.P.No.1979 of 2007.

2. It is the case of the respondents/claimants that on 10.5.2007, at about 1100 hours, when the deceased Kannan was riding a TVS XL Moped bearing registration No.TN 31 E 5680, from

west to east, at moderate speed, keeping extreme left on Palur Main Road, opposite to Ottai Pillaiyarkoil, the appellant's police van bearing registration No.TN 32 G 0166 came in the opposite direction at a great speed in a rash and negligent manner and dashed against the deceased's vehicle. It is stated that as a result of the accident, the deceased sustained fatal injuries and first aid was given to him in Government Hospital, Panruti and then higher treatment was given at Government HQ Hospital and then at Government General Hospital, Puducherry, where he died. It is stated in the claim petition that, in order to avoid the liability to pay compensation to the respondents/claimants, the police used influence and registered an FIR against the deceased. In such circumstances, the respondents/claimants filed a claim petition seeking compensation to the tune of Rs.15 lakhs.

3. The appellant herein filed a counter affidavit to the claim petition denying the mode and manner of the accident. It was their specific plea that it was due to the rash and negligent driving of the deceased that the accident occurred.

4. The learned Tribunal, by judgment and decree dated 24.7.2009, categorically held that the accident occurred due to the rash and negligent act of the driver of the appellant's van and the accident was not due to the negligence of the deceased. In such view of the matter, the Tribunal after considering the evidence on record, granted compensation of Rs.8,14,000/- to the respondents/claimants.

5. Calling in question the said judgment and decree, the present appeal is filed.

6. It is the contention of the learned counsel appearing on behalf of the appellant that the deceased had also contributed to the cause of the accident by negligently driving his two wheeler and, therefore, the Tribunal erred in holding that the appellant's driver was solely responsible for the accident. He further submitted that fixing the age of the deceased at 33 years solely based on the post mortem report is erroneous. It is his further say that the Tribunal had erroneously fixed the earning of the deceased at Rs.4,500/- without any evidence in support of the same.

7. Per contra, the learned counsel appearing for the respondents reiterated the reasons that weighed with the Tribunal in awarding just compensation and prayed for dismissal of this appeal.

8. Heard the learned counsel on either side and perused the documents available on record.

9. It is seen from the records that barring Ex.P1, which is an FIR registered against the deceased by the police, and the evidence of R.W.1., who is the driver of the appellant's van, there is no evidence to substantiate the case of the appellant that the deceased drove the vehicle in a rash and negligent manner. The Tribunal, on examination of MVI Report of the police van found that the front portion of the van alone was damaged and the front left head light also was damaged. The MVI Report, Ex.P2, shows that the deceased was riding his moped on the left side of the road. That apart, the report further clarifies that there was no mechanical defect in the appellant's van. That apart, the evidence of P.W.2, one Prabhu (who is the complainant as well as the eye-witness to the occurrence) corroborates with the evidence of P.W.1. Considering all these facts, which are evident from a perusal of the MVI Reports and evidence of the witnesses, the Tribunal held that the driver of the appellant's van drove the vehicle in a rash and negligent manner and caused the accident.

10. The appellant's to get over the above factual finding of the Tribunal had not placed any iota of material before this Court. In my considered opinion, the finding of the Tribunal with regard to the manner of the accident does not warrant any interference.

11. The Courts have time and again held that in the absence of any other evidence to determine the age of the deceased, the Court has to take the age of the deceased as stated in the post mortem report. Therefore, this Court does not find any error on the part of the Tribunal in taking the age of the deceased as 33 years.

12. Though the claimants claimed Rs.10,000/- as the monthly income of the deceased, who was a two-wheeler mechanic by avocation, in the absence of any proof to establish such monthly income, the Tribunal held that the deceased would earn not less than Rs.4,500/- per month and, thus, fixed the notional income at Rs.4,500/- per month and after deducting one-third towards personal expenses, the annual income was arrived at Rs.3,000/- per month. In today's world, with the increase in the number of two-wheelers being used by the public and the proportionate increase in the number of complaints regarding the vehicle, a two wheeler mechanic would certainly earn a sum of Rs.4,500/- per month. The amount taken by the Tribunal, in my considered opinion, is a reasonable sum. To this the Tribunal applied 17 as multiplier and arrived at a sum of Rs.6,12,000/- (Rs.3,000 x 12 x 17). To this, the Tribunal added Rs.1,00,000/- towards love and affection, loss of estate, loss of expectation of life to the five claimants at Rs.20,000/- each. The first claimant, being the wife of deceased, was granted Rs.1,00,000/- towards

loss of consortium. Towards funeral expenses, a sum of Rs.2,000/- was awarded. In all, the Tribunal awarded a sum of Rs.8,14,000/-. The same, in my considered view, is a just and fair compensation awarded by the Tribunal which does not warrant any interference by this Court.

For the foregoing reasons, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate's, Court, Cuddalore.

+1 cc to Mr.R.Sreedhar, Advocate, S.R.No.13804

+1 cc to the Special Government Pleader, S.R.No.13813

C.M.A.No.253 of 2010 and
M.P.No.1 of 2010

MG(CO)
SSM(18/07/2019).



WEB COPY