

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2019

Coram:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Civil Miscellaneous Appeal No.2453 of 2009 and
M.P.No.1 of 2009

United India Insurance Company Limited
Branch Office
8/1-31-A, Salem Main Road
Puduchampallai
Mettur Dam
Salem

Appellant/2nd respondent

Vs

1. Thamarai Selvi
2. Minor Ranjithkumar
3. Minor Haripretha
(Minors 2 & 3 are represented by their mother & next friend 1st
respondent)
4. Kanagambal
5. Krishnan .. Respondent 1 to 5/ Petitioners
6. Rathinasamy
(R6 set Exparte in the Lower Court

6th Respondent/1st respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 17.12.2008 passed by the Motor Accidents Claims Tribunal, I Additional District Judge, Salem in MCOP No.605 of 2003.

For Appellant : Mr.R.Sreevidhya

For R1 to R5 : Mr.K.Kuppusamy

J U D G M E N T

On 07.01.2003 at about 11.30 am, when one Vairavel was riding his Suzuki Motor Cycle bearing Reg.No.TN 27 S 9038 near Kolathur, a car bearing Reg.No.TN 27 W 3456 belonging to the appellant herein came in the opposite direction in a rash and negligent manner, dashed against the two wheeler, due to which, he was thrown out of the vehicle and sustained severe fracture injuries all over the body. Irrespective of the treatment given to him, he died subsequently. Stating that the accident had happened only due to the rash and negligent driving of the driver of the above said car, the legal heirs

of the deceased Vairavel filed a claim petition, claiming a compensation of Rs. 15,00,000/-. The Tribunal based on the materials available on record, has awarded a sum of Rs.6,68,430/- as compensation.

2. Challenging the same, the appellant Insurance Company has preferred this Civil Miscellaneous Appeal.

3. Heard both sides.

4. The learned counsel for the appellant Insurance Company submitted that the accident had happened only due to the rash and negligent driving of the driver of the car, without appreciating the evidence and exhibits properly. The learned counsel further submitted that the Tribunal has failed to note that if the Car had dashed against the two wheeler, the entire front portion of the two wheeler would have been damaged and admittedly Motor Vehicle Inspector's Report reveals that the side silencer of the two wheeler alone was damaged. It is further submitted that the Tribunal has erred in awarding dis-proportionate award by holding that the deceased would have earned Rs.4,500/- per month instead of Rs.3,000/-. Hence, the award passed by the Tribunal needs significant interference by this Court.

5. Per Contra, the learned counsel for the respondents/claimants submitted that the tribunal has rightly fixed the negligence on the part of the driver of the car and fastened the liability on the insurer of the said car. Further, the compensation awarded by the Tribunal is based on the evidence and materials placed before it. Hence, there is no need to interfere with the order of the Tribunal.

6. A perusal of the award would go to show that before the Tribunal, PW 1, the wife of the deceased, PW 2, an eye witness to the accident and RW1, the driver of the Car have been examined. Further, Exs.P.1 to 9 and Ex.R.1 to 5 were marked. The Tribunal has taken into consideration Ex.P.1 First Information Report, Ex.R.2 Charge Sheet, Exs.R.3 and 4, Motor Vehicle Inspector's Reports and Ex.R.5 Copy of Judgment in CC No.50 of 2003, for fixing the liability on the insurer of the car involved in the accident. Moreover, PW 2 Murugan, who was said to be an eye witness, had deposed before the Tribunal that while he was standing nearby Petrol bunk at Kolathur, a Car bearing Reg.No. TN 27 W 3456 came in a rash and negligent manner, dashed against the deceased Vairavel, who was riding his Motorcycle keeping extreme left of the road. Whereas, the driver of the said car/RW.1 has deposed that the deceased Vairavel only ridden his two wheeler in a rash and negligent manner and dashed against the car and he has been acquitted from the criminal case initiated against him. The Tribunal has also perused the Judgment in CC No.50 of 2003 and

observed that the acquittal made by the criminal Court will not at all control the Court, in deciding the case on hand and concluded that due to the rash and negligent driving of the driver of the Car, the accident had happened. Finally, based on the above evidence and documents, the Tribunal has fastened the liability on the Insurance Company/appellant herein.

7. As far as the quantum of compensation awarded by the Tribunal is concerned, though the wife of the deceased has deposed before the Tribunal that the deceased was earning a monthly salary of Rs.20,000/- by doing various businesses viz., vessel business, finance and bricks chamber, no sufficient documentary proof has been adduced on the side of the claimants except Ex.P.7. Hence, the Tribunal has taken the notional monthly income of the deceased as Rs.4,500/- and deducted 1/3rd of his income towards his personal expenses and arrived at Rs.5,76,000/- as compensation under the head of loss of dependency. Further, the Tribunal has awarded a sum of Rs.2,500/- towards transport and funeral expenses, Rs.17,000/- towards loss of consortium, Rs.35,000/- towards loss of love and affection, Rs.31,930/- towards medical expenses, Rs.6,000/-towards mental agony and thus arrived at Rs.6,68,430/-, which are just and reasonable, having regard to the facts and circumstances of the case.

8. It is borne out from the record that the accident had taken place in the year 2003, the claim petition was filed during 2003, Judgment was passed in the year 2008, appeal was filed during 2009 itself and the Judgment in the appeal is being pronounced only now, i.e 2019. Hence, after such a long period, it may not be proper for this Court to interfere with the quantum of compensation awarded by the Tribunal, especially for the reason that when the prices are escalated manifold and there is a reduction in the value of money. Therefore, compensation so quantified by the Tribunal has to be confirmed and is accordingly confirmed.

9. In the result, affirming the award of the Tribunal, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant forthwith, through RTGS, as per the ratio of apportionment made by the Claims Tribunal. The minor claimants/Respondents 2 & 3 would have attained majority by now and hence, on such application being taken out by them, the guardianship may be discharged and their share shall be transferred to their Savings Bank

Account, and if not their share shall be deposited in any one of nationalised banks, till such application is taken out. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vrn
To

1. The Motor Accident Claims Tribunal/I Additional District Judge,

Additional District Judge,
Salem

2. The Section Officer

V.R.Section
Madras High Court
Chennai 104

+lcc to Ms.R.Sreevidhya, Advocate SR.No. 72818

CMA No.2453 of 2009 and
M.P.No.1 of 2009

RJI
A.SK(02/03/2020)