

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02.04.2019

Judgment Delivered on : 29.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3083 of 2010

1.A.Ramasamy

2.Poovathal

.... Appellants/Petitioners

Versus

1.A.Chandrasekaran

2.O.Arumugasamy

3.The New India Assurance Co., Ltd.,

No.435, D.B. Road,

R.S.Puram, Coimbatore - 2.

.... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.10.2008 made in M.C.O.P.No.151 of 2006 on the file of the Motor Accident Claims Tribunal/Principal Sub-Court at Gopichittipalayam.

For Appellant : Mr.Ma.P.Thangavel

For Respondents: Mr.M.Krishnamoorthy (for R3)

: No Appearance - R1 & R2

JUDGMENT

The claimants are the appellants herein and they have filed the present appeal seeking enhancement of compensation amount awarded by the Motor Accident Claims Tribunal/Principal Sub-Court at Gopichittipalayam, in M.C.O.P.No.151 of 2006.

2.The appellants herein have filed the claim petition in M.C.O.P.No.151 of 2006 alleging that on 15.02.2006 at about 10.30 hrs, when the deceased/son of the claimants, was sitting on the motorcycle bearing Registration No.TN-38-F-7761 as a pillion rider in Annur to Avinasi main road near Nariyampallipudur Bus stop, in front of Mani Maligai Shop, and while he started to move towards Avinashi, a Lorry bearing Registration No.TN-37-H-9944, driven by its driver, who is the first respondent herein, came from behind in a rash and negligent manner and at that time, rear left side back wheels of the Lorry cutoff from the main axle and rolled on the road

side and hit against the above said motorcycle of the claimant. Due to the ill-fate accident, the claimants' son sustained fatal injuries on the head, chest and all over the body and died on the spot itself. A case was registered at Avinashi Police Station in P.S.Cr.No.194 of 2006 under Sections 279, 337 and 304-A of IPC.

3.The third respondent/Insurance company, before the Tribunal, in the counter statement has stated that the accident resulting in the death of the deceased and the manner of the accident are in dispute.

4.Before the Tribunal, the claimant/father of the deceased was examined as PW.1 and one Palanisamy, occurrence witness was examined as PW.2 and Exs.P1 to P9 documents were marked. On behalf of the respondents, no oral and documentary evidence was adduced.

5.On a consideration of both the oral and documentary evidence, the Tribunal has held that the factum and the manner of the accident, and rash and negligent driving on the part of the driver of the offending vehicle, are proved and the Tribunal has further held that the respondents are jointly and severally liable to pay the compensation and directed them to pay a sum of Rs.2,51,000/- as compensation to the claimants.

6.Having not satisfied with the quantum of compensation as well as the finding regarding to the contributory negligence fixing at 50 : 50 to the parents of the deceased/bachelor boy, the claimants have preferred the present appeal.

7.With regard to the manner of the accident, PW.2 occurrence witness has categorically stated that the motorcycle was driven on the left side of the road and the deceased was seated in the place as pillion rider. At the time, the Lorry, driven by the first respondent bearing Registration No. TN-37-H-9944, came in a rash and negligent manner from behind, and at the time, the left rear-side wheel of the Lorry came out from the lorry and rolled on the road and hit against one Thangaraj (son of the claimants) who was sitting in the parked two wheeler and thereby he sustained fatal injuries and died on the spot.

8.It remains that the first respondent is the driver of the offending vehicle and the owner of the vehicle remained ex-parte before the Tribunal. In other words, neither the driver nor the owner appeared before the Tribunal to adduce evidence as to the manner of the accident and the Insurance company has not examined any one in this regard as to the manner of the accident.

9.It appears that the Tribunal, taking into consideration the fact that the wheel of the lorry on the left rear side wheel of lorry, came out from the lorry and rolled on the road and hit the deceased and taking into account the nature of the accident, fixed the contributory negligence at 50% on the part of the deceased. As per the First Information

Report/Ex.P1, registered in P.S.Cr.194 of 2006, dated 15.02.2006 on the file of the Inspector of Police, Avinashi Police Station, as against the driver of the lorry bearing Reg.No.TN-37-H-9944 under Sections 279, 337 & 304(A) of IPC, the same was taken on file in C.C.No.81 of 2007 by the Court below and the summons were issued to the accused.

10.In the First Information Report, it is very clearly stated that due to the rash and negligence driving of the driver/first respondent and without properly maintaining the vehicle, the unfortunate accident happened, due to which the claimants' only son died on the spot. Hence, the Tribunal, without considering the FIR and rough sketch, which clearly mentions the scene of occurrence and the deceased sitting as a pillion rider in the motorcycle and he was about to start the vehicle, at the time, the lorry came behind the vehicle of the deceased with high speed in a rash and negligence manner, which came from West to East, at the time, the lorry's left side rear wheel(s) got cut off from the main axle and rolled on the road side and hit against the deceased motorcycle. Hence, without considering the said facts and without adducing any reason, the Tribunal simply came to the conclusion that there is a contributory negligence on the part of the deceased, which is not at all warranted, for which the quantum of compensation was reduced at the rate of 50% and the finding of the Tribunal fixing the negligence at 50% only is not correct.

11.Moreover, no contra evidence or documents were filed by the respondents therein. Therefore, there was no negligence on the part of the deceased person. The Tribunal has clearly given the finding that as per the evidence of PW.2, the deceased person sitting as a pillion rider was about to start the vehicle. Therefore, it seems that there is no negligence on the part of the deceased person. Though the counter statement is filed by the third respondent/Insurance company, they have not at all let in any evidence to corroborate the averments made in the counter statement. Furthermore, the respondents 1 & 2 have not filed any contra document nor any evidence was adduced before the Tribunal. Therefore, without any pleading by the first respondent/driver, the Tribunal cannot fix the contributory negligence at 50%.

12.Hence, this Court is of the considered view that there were no pleadings either by the driver of the offending vehicle as to the manner of the accident or the driver was examined on behalf of the respondents and there was no pleadings or evidence with regard to the alleged contributory negligence on the part of the deceased. Hence, this Court is of the considered view, by taking into consideration the entirety of the circumstances, the contributory negligence as fixed by the Tribunal at 50% on the part of the deceased, is unsustainable in law and the said finding hereby stands vacated.

13.In view of the decision in the preceding paragraphs, this Court holds that the accident had taken place only due to the rash and negligent driving of the offending vehicle driven by its driver/first respondent, which is owned by the second

respondent and insured with the third respondent/Insurance company. Accordingly, all the respondents are jointly and severally liable to pay compensation to the claimants and the finding of the Tribunal regarding contributory negligence is hereby set aside.

14. On the point of quantum of compensation, both the parties were heard.

15. It is seen from the evidence of Exs. P2 to P8, the age of the deceased was 26 years at the time of accident and as per the oft-quoted Judgment of Supreme Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, this Court adopts multiplier '17' and the claimants' son worked in the Power loom shop and he was also doing Milk vending business as shift work in the mornings and evenings. However, taking note of the entire facts and in the absence of any positive evidence regarding his extra income from the Milk vending business, the Tribunal arrived his annual income at Rs.36,000/-. If he had been alive, he could have earned a sum of Rs.4,000/- per month at the relevant point of time and hence, he is also entitled to 50% of future prospects, which is arrived at Rs.2000/- (Rs.4,000/- x 50%) and by adding 50% of future prospects, the income of the deceased is taken as Rs.6,000/- per month, and out of the said amount, the total annual income of the deceased is arrived at Rs.72,000/- (6,000 x 12). Since the deceased was a bachelor, 1/2 deduction has to be made for his personal expenses, which is arrived at Rs.36,000/- (Rs.72,000/- ÷ 2), to which, by adopting multiplier '17', the total loss of income of the deceased is arrived at Rs.6,12,000/- (Rs.36,000/- x 17). In respect of loss of Estate awarded by the Tribunal at Rs.5,000/-, the same is hereby enhanced to Rs.15,000/-. In respect of funeral expenses of Rs.5,000/- awarded by the Tribunal, the same is hereby enhanced to Rs.15,000/-. In respect of the head of "love and affection for parents/claimants", the Tribunal has awarded Rs.15,000/-, which, on the facts of the case, is enhanced to Rs.50,000/- each (Rs.1,00,000). Thus, the break-up details of the award amount modified and enhanced are as follows:-

Head	Amount awarded by the Tribunal	Amount granted by this Court
Loss of Income	Rs.2,16,000/-	Rs.6,12,000/-
Funeral expenses	Rs.5,000/-	Rs.15,000/-
Loss of estate	Rs.5,000/-	Rs.15,000/-
Loss of Love and affection	Rs.15,000/-	Rs.1,00,000/-
Total	Rs.2,51,000/- (actually it is only Rs.2,41,000/-)	Rs.7,42,000/-

16.It is seen that typographical error had crept in, while arriving at the total compensation awarded by the Tribunal, i.e. Rs.2,51,000/-, which actually should be Rs.2,41,000/-.

17.In the result,

(i) the Civil Miscellaneous Appeal filed by the parents of the deceased/claimants is partly allowed to the extent indicated above and the compensation awarded by the Tribunal at Rs.2,41,000/- in M.C.O.P.No.151 of 2006 on the file of the Motor Accident Claims Tribunal/Principal Sub-Court at Gopichthipalayam is hereby enhanced to Rs.7,42,000/- and the interest at rate of 7.5% p.a., as awarded by the Tribunal remains unaltered.

(ii)The respondents are jointly and severally directed to deposit the modified and enhanced award amount of Rs.7,42,000/- along with interest and costs, less the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgement.

(iii)On such deposit being made, the claimants are permitted to withdraw the modified and enhanced compensation as determined by this Court, after adjusting the amounts if any, already withdrawn by them.

(iv)The claimant shall pay necessary court fee, if any, on the enhanced compensation. No costs.

Sd/-

Assistant Registrar (Admn-II)

//True copy//

Sub Assistant Registrar

klr

To

1.The Motor Accident Claims Tribunal/
Principal Sub-Court at Gopichthipalayam. .

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.64800

+2cc to Mr.M.Krishnamoorthy, Advocate SR.No.64600, 64306

CMA.No.3083 of 2010