

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 11.04.2019

Judgment Delivered on : 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.829 of 2010

- 1.Saraswathy
- 2.Gomathy
- 3.Radhamani

(Minors 2 & 3 rep. by mother & N.F
Saraswathy cause title amended vide
order of the Court dt.09.03.10 made in
M.P.No.1 of 2010) ... Appellants/Petitioners

Vs.

- 1.Sankar
- 2.D.Sivakumar
- 3.Bajaj Allianz General Insurance Company Limited,
11, People's park 3rd Floor,
Government Arts College Road,
Coimbatore - 641 018.
- 2.National Insurance Company Limited,
94/34, Dr.Nanjappa Road,
Coimbatore - 641 018. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 18.11.2009 made in M.C.O.P.No. 661 of 2007, on the file of the Motor Accidents Claims Tribunal, (Fast Track Court No.II), Coimbatore.

For Appellant : Mr.R.Singaravelan, Senior Advocate
For Ms.M.Srividhya

For R1&R2 :Not ready in notice
For R3 :Mr.N.Vijayaragavan
For R4 :Mr.J.Chandran

JUDGMENT

The appellants are the claimants in M.C.O.P.No.661 of 2007, on the file of the Motor Accidents Claims Tribunal, Fast

Tract Court No.1, Coimbatore. They have filed the above claim petition seeking compensation of Rs.15,00,000/-, for the death of one Aruchamy, in a road accident that took place on 08.03.2007.

2. The case of the appellants/claimants is as follows:

(i) The first claimant is the wife; second and third claimants are the daughters of the deceased.

(ii) The deceased was aged about 48 years at the time of the accident. He was a Agriculturist earning a sum of Rs.10,000/- per month.

(iii) On 08.03.2007 at 12.00 p.m., the deceased Aruchamy was riding Hero Honda motorcycle bearing Registration No.TN 37 AR 1465 from East to West on Coimbatore Naraseepuram Road, near Velayapalayam pirivu. The TVS motorcycle bearing Registration No.TN 38 S 2266 proceeding before it, suddenly skid down turned towards right, Hero Honda motorcycle hit on the TVS motorcycle and the accident emerged.

3. The driver of the offending vehicle is arrayed as a first respondent. While, the owner of the vehicle is the second respondent and the Insurance Company is the third respondent. While, the fourth respondent is the Insurance Company of the vehicle driven by the said Aruchamy.

4. The third respondent/Insurance Company of the offending vehicle filed a counter statement before the Tribunal alleging that due to the rash and negligence driving of the deceased, he had invited the accident and therefore, the claimants are being legal representatives of the deceased Aruchamy on whose negligence the accident had taken place, are not entitled for any compensation.

5. In order to substantiate the manner of the accident, the first claimant was examined as P.W.1 and P.W.2-occurrence witness was examined and Exhibits P1 to P21 were marked. On behalf of respondent-Insurance Company R.W.1 and R.W.2 are examined and Exhibits R1 to R4 were marked.

6. The Tribunal, taking into consideration of the evidence of P.W.2 had come to the conclusion that the accident has taken place due to the rash and negligence on the part of the driver of the both two wheelers and accordingly, apportionment the contributory negligence among the drivers at 50:50 and has awarded the compensation of Rs.2,47,075/-

7. Aggrieved against the said finding rendered by the Tribunal, the appellants/claimants are preferred this appeal, both on the point of contributory negligence and quantum of

compensation is well found by the Tribunal is hereby confirmed.

8. Mr.R.Singaravelan, learned Senior Counsel appearing for the claimants/appellants would contend that the Tribunal has not properly appreciated the oral evidence of P.W.2 before coming into the conclusion on the point of contributory negligence.

9. Per contra, the learned counsel for the respondent/Insurance Company would contend that as per Ex.P5-charge sheet has been filed against the deceased Aruchamy and hence, the finding by the Tribunal that he had also contributed to the accident does not warrant any interference.

10. On consideration of the oral evidence of P.W.2, this Court finds that the motorcycle going on the front and ahead of the motorcycle driven by the deceased Aruchamy appears to have applied its break suddenly and as the result of which, the bike driven by the first respondent skid in the road and suddenly came in front of the vehicle driven by the deceased Aruchamy. Since, the first respondent's vehicle after skidding the road skid on its right hand side of the road and travelled to the line of driving of two wheeler driven by the deceased Aruchamy and the said Aruchamy who drove its vehicle dashed against the skid vehicle and met with accident.

11. Taking into consideration of the evidence of P.W.2, this Court finds that the ratio of contributory negligence and the finding by the Tribunal at the ratio of 50:50 is improper and in view of the specific evidence of P.W.2 describing the manner of the accident.

12. It appears that the negligence on the part of the driver of the first respondent's vehicle in applying the sudden break without noticing on going traffic and due to skidding had moved from its line of driving and its skid from his line of driving in the process of skidding, he came on the right hand side of the road to the line of the driving of the two wheeler driven by the deceased Aruchamy and hence, he has contributed to the 80% to the accident.

13. While, deceased Aruchamy ought to have driven the vehicle keep in mind on going vehicle and also observing the safe distance between the on going vehicle and his vehicle. Had he exercised due diligence so as to keep necessary space between the two vehicles movement on the road by observing the road discipline and maintaining distance between the on going movement vehicle and hence, this Court is of the considered view that the deceased Aruchamy has contributed to the negligence only to the accident of 20% and accordingly, the finding arrived at by the Tribunal regarding the contributory negligence is re-

fixed and modified as 80% on the part of the first respondent and 20% on the part of the deceased Aruchamy.

14. On the point of quantum, both the parties are heard.

15. It is seen from the records that based upon the evidence adduced before the Court, the Tribunal has fixed the notional income of the deceased at Rs.4,000/- and age of the deceased was fixed as '46' years.

16. As per the Constitutional Division Bench judgment of the Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, 40% has to be included for future prospectus and further, as per the said decision, the age of the claimants should not be the criteria and only the age of the victim should be taken into account while calculating the compensation. Accordingly, considering the age of the deceased, the multiplier is fixed as '13' years.

17. Hence, the annual income of the deceased is arrived at $\text{Rs.4000/-} + \text{Rs.1,600/-} = \text{Rs.5600/-}$ $\times 12 = \text{Rs.67,200/-}$ $\times 13 = \text{Rs.8,73,600/-}$ $\times 1/3 = \text{Rs.2,91,200/-}$ and the total annual income is arrived at Rs.5,82,400/- ($\text{Rs.8,73,600/-} - \text{Rs.2,91,200/-}$)

18. Further, based on the decision of the Supreme Court reported in 2009 (2) TN MAC 1 SC [Sarala Verma and Others Vs. Delhi Transport Corporation and another], the multiplier of '13' is adopted. Resultantly, the annual income contributed by the deceased to the family is arrived at Rs.2,91,200/- Accordingly, the following calculation is made towards 'loss of earning':

$\text{Rs.4000/-} + \text{Rs.1,600/-} = \text{Rs.5600/-}$ $\times 12 = \text{Rs.67,200/-}$ $\times 13 = \text{Rs.8,73,600/-}$ $\times 1/3 = \text{Rs.2,91,200/-}$

19. Furthermore, the claimants are the parents, wife and children of the deceased. Accordingly for loss of love and affection to both the children, Rs.75,000/- each is granted, totalling Rs.1,50,000/-.

20. With regard to funeral expenses, this Court awards to Rs.15,000/-.

21. With regard to loss of estate, this Court awards to Rs.15,000/-

22. For loss of consortium to the wife of the deceased, Rs.40,000/- is hereby awarded. The amount awarded under medical expenses under Exs.P10,11 and 12, a sum of Rs.1,05,000/- is hereby confirmed.

23. Thus, in toto, the compensation awarded is hereby tabulated:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of earning	Rs. 3,64,000/-	Rs. 5,82,400/-
2.	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
3.	For loss of Love and affection to children	Rs. 10,000/- (Rs.5,000/- each)	Rs. 1,50,000/- (Rs.75,000/- each)
4.	For loss of consortium	Rs. 10,000/-	Rs. 40,000/-
5.	For medical expenses	Rs. 1,05,150/-	Rs. 1,05,000/-
6.	Loss of estate	-----	Rs. 15,000/-
	Total	Rs. 4,94,150/-	Rs. 9,07,400/-

24. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,94,150/- to Rs.9,07,400/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment.

25. In the result,

(i) The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

(ii) The * respondents **1,2 & 3** is directed to deposit the 80% compensation as calculated above viz Rs.9,07,400/- (80% of Rs.7,25,920/-) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the appellants/claimants are permitted to withdraw their share of compensation amount, in the proportion mentioned by the Tribunal. As far as the minor appellants 2 and 3/claimants are concerned, their respective share amount of compensation shall be deposited in any interest bearing Nationalized Bank and the interest accrued thereon shall be withdrawn by their natural

guardian mother once in three months and their share of compensation amount shall be kept in deposit, periodically renewed till they attain majority.

(iv) Since this Court has enhanced the award amount of the Tribunal, the claimants shall pay necessary Court fee, if any on the enhanced compensation amount.

Sd/-

Assistant Registrar(CCC) (15/10/19)

***Corrected as per order dated 03/02/2021**

in CMA.No.829/2010

Sd/

Assistant Registrar(CCC)

02/03/2021

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
(Fast Track Court No.II), Coimbatore. To be Substituted the
order already
despatched on 24/10/19

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

+1cc to Ms.M.Srividhya, Advocate SR.6260/21

+1cc to Mr.N.Vijayaragavan, Advocate SR.64741

C.M.A.No.829 of 2010

NRJK (CO)

CB(23/10/2019)

CB(03/03/2021)

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