



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1746 of 2011

1.Lourien Alexander

2.George Alexander ... Appellants / Claimants

Versus

1. M/s.Western Agencies (Madras) Pvt.Ltd.,
No.109, Angappa Naicken street,
Chennai - 600 001.

2. The New India Assurance Co.Ltd.,
Motor Third Party Cell,
No.46, Moore Street,
Chennai - 600 001.

... Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.03.2006 made in MACT.O.P.No.79 of 2002, on the file of the II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.R.Kalaiarasan

For Respondents: Exparte before the Tribunal (for R1)

: Mrs.R.Sreevidhya (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 03.03.2006 made in MACT.O.P.No.79 of 2002, on the file of the II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2.The appellants are the parents of the deceased one Shan Alexander. It is the case of the appellants/claimants that on 31.08.2001, at about 4.30 am., due to rain, the said Shan Alexander was sitting under the lorry bearing Regn.No.TN-04-E-4741, which is owned by the first respondent and insured with



the second respondent/ Insurance company, at inside of the Gate of Harbour, WQ-1, Port Trust, Chennai. At that time, the driver of the lorry, without noticing the said Shan Alexander, started and moved the lorry in a rash and negligent manner, due to which, the said Shan Alexander sustained fatal injuries and died on the spot. He was aged of 17 years, at the time of accident. Therefore, for the death of their son, the appellants/claimants filed a Claim Petition in MACT.O.P.No.79 of 2002, before the II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai claiming for a sum of Rs.8,50,000/- as compensation.

3.The learned counsel appearing for the second respondent/ Insurance company opposed the claim petition made by the appellants/claimants by filing detailed counter affidavit.

4.Before the Tribunal, the first claimant/mother of the deceased as examined himself as PW.1, besides examining one Murali as PW.2 and marked four documents as Ex's.P1 to P4. On the side of the respondents, neither documentary nor oral evidence was adduced.

5.The Tribunal, after analysing the entire evidence, has fixed 50% negligence on the part of the deceased and 50% negligence on the part of the driver of the lorry, for the accident. The Tribunal, by applying multiplier method and taking a sum of Rs.2,000/- as his contribution to the family, arrived at a sum of Rs.4,10,000/- as total compensation and deducted 50% from the amount and awarded a sum of Rs.2,05,000/- to the appellants/claimants, as compensation. Aggrieved over the same, the present appeal has been filed by the appellants/claimants before this Court.

6.The learned counsel appearing for the appellants/claimants submitted that the Tribunal has committed an error in fixing 50% negligence on the part of the deceased. Further, he has drawn the attention of this Court to paragraph No.7 in the award passed by the Tribunal, wherein it has been stated that if the lorry driver had noticed around the lorry before starting the lorry, the accident could have been avoided. Furthermore, he would submit that the compensation amount awarded by the Tribunal under various heads are very meager. Thus, he sought proper enhancement of compensation.

7.Heard the learned counsel appearing for the second respondent/ Insurance company as well and perused the materials available on record.

8.With regard to the manner of the accident committed by the driver of the lorry bearing Regn.No.TN-04-E-4741, there is no dispute between the parties. Considering the Postmortem

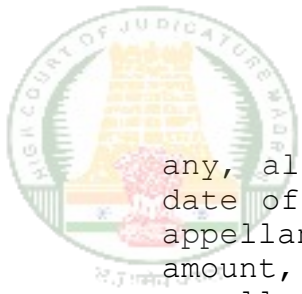


report/ Ex.P2, it is seen that the age of the deceased at the time of accident was 15 years. The deceased was working as cleaner and the Tribunal has fixed the notional income at Rs.3,000/- and deducted 1/3rd towards personal expenses and arrived at a sum of Rs.2000/- per month as his contribution to the family. By applying multiplier 16, Tribunal arrived at a sum of Rs.3,84,000/- as loss of income. Further, the Tribunal has awarded a sum of Rs.3,000/- towards funeral expenses, Rs.23,000/- for loss of love and affection. Though the Tribunal has arrived at a sum of amount of Rs.4,10,000/- as total compensation, it has deducted 50% amount towards contributory negligence of the deceased.

9.But, this Court is of the considered view that fixing 50% negligence on the part of the deceased by the Tribunal is not correct. As has been contended by the learned counsel for the appellants, had the driver of the lorry noticed around the lorry before starting the lorry, the accident could have been avoided. Hence, the findings of the Tribunal fixing 50% negligence on the part of the deceased is liable to be set aside. Furthermore, it is seen that the Tribunal is not awarded any amount towards future prospects. Hence, the total amount of Rs.4,10,000/- is hereby awarded to the appellants/claimants as compensation, without any deduction towards negligence on the part of the deceased. Accordingly, the break-up details of the award amounts of compensation are as follows:-

Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
Loss of income	Rs.3,84,000/- (Rs.2000/- X 12 X 16)	Rs.3,84,000/-
Loss of love and affection.	Rs.23,000/-	Rs.23,000/-
Funeral expenses	Rs.3,000/-	Rs.3,000/-
Total	Rs.4,10,000/- (50% awarded out of total compensation, i.e., Rs.2,05,000/-)	Rs.4,10,000/-

10.In the result, the Judgement and decree dated 03.03.2006 made in MCAT.O.P.No.79 of 2002, on the file of the II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai is modified and the compensation amount is enhanced to Rs.4,10,000/-. The second respondent is liable to pay the compensation on behalf of the first respondent. The second respondent is directed to deposit the amount as determined in this appeal together with interest, after adjusting amount, if



any, already deposited, within a period of eight weeks from the date of copy of this Judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the entire amount, as determined in this appeal, with accrued interest. The appellants are directed to pay additional Court fee, if any, for the enhanced amount. No costs.

Accordingly, the Civil Miscellaneous Appeal is partly allowed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

klt

To

1. The II Judge, Small Causes Court,
(Motor Vehicles Accident Claims Tribunal)
Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to M/s.R.Sree Vidhya, Advocate, S.R.No.10904

+1 cc to M/s.N.M.Muthurajan, Advocate, S.R.No.10402

CMA No.1746 of 2011

SV(CO)
SSM(24/09/2019) .