

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1569 of 2013

1. Isabella Mary
2. Johspin Selvarani
3. Anjal Priya
4. Raja

.... Appellants/Petitioners

Vs.

1. Selvaraj
2. New India Assurance Company Limited,
Divisional Office,
Srivari Complex,
New Bus stand Road,
Salem - 4.

.... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 19.12.2011 made in M.C.O.P.No.1938 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, No.2, Salem.

For Appellants : Mr.K.Kuppusamy

For R2 : Mrs.R.Sreevidhya

R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 19.12.2011 made in M.C.O.P.No.1938 of 2010 on the file of the Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court, No.2, Salem.

2. The first appellant is the wife of the deceased, the second and third appellants are the daughters of the deceased and the fourth appellant is the son of the deceased.

3. The brief facts of the case is that on 07.07.2010 at 6.15 p.m., the first appellant's husband, namely, Mickale (deceased), was just riding his Motorcycle bearing Reg. No.TN-30-F-5724 near Kandashwarana Mahal on the Saradha College Main Road and at that time, the first respondent's lorry bearing Reg. No.TN-33-AA-5724 was also proceeding in the same direction. While the deceased tried to overtake the Lorry, he was hit by an unknown Motorcycle which was coming from the opposite direction, and due to which, he fell down from the vehicle and the first respondent's lorry came from backside in a rash and negligent manner was ran over him. Thus, he died on the spot itself. At the time of accident, he was 61 years old and was earning Rs.4,000/- per month. Since the accident occurred due to the negligent act of the first respondent's driver, the appellants who are the legal heirs of the deceased have filed a petition before the Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court, No.2, Salem, claiming Rs.10,00,000/- as compensation under various heads.

4. Denying the allegations, the second respondent insurance company filed a counter affidavit stating that the accident had occurred only due to the negligent act of the deceased and not due to the negligent act of the first respondent's driver. Further, the deceased had no valid driving licence at the time of accident and the amount of compensation claimed is also very high. Moreover, it has been stated that the deceased had left behind his wife, two daughters and a son, and one of his daughters got married and now she is living with her husband. The son and other daughter are working as teachers in a private school and hence the appellants are not the dependants of the deceased and they are having sufficient income and means.

5. The Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court, No.2, Salem, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded Rs.2,70,020/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Income (2667 X 12 X 5)	1,60,020
2.	Loss of Consortium	25,000
3.	Loss of Love & Affection	75,000
4.	Funeral Expenses	10,000
	Total	2,70,020/-

6. Aggrieved by the award, the appellants/claimants have filed this appeal before this Court seeking for enhancement of same.

7. Heard the learned counsel for the appellants and the learned counsel for the second respondent, and perused the materials available on record.

8. On perusal of the award dated 19.12.2011 passed by the Additional District Judge (Motor Accident Claims Tribunal), Fast Track Court, No.2, Salem in M.C.O.P.No.1938 of 2010, it is observed that the appellants in order to prove that the first respondent's lorry driver is the cause for the alleged accident marked Ex.P1 i.e. the FIR copy which was against the first respondent's driver as well as the rider of the unknown Motorcycle, and only after considering the same, the Tribunal has come to the conclusion that the second respondent as a insurer is liable to compensate only 50% and the remaining 50% to be compensated by the rider of the unknown Motorcycle involved in the accident. Further, it is observed that the appellants in order to prove the age of the deceased have not marked the birth certificate of the deceased, but the Tribunal has found from the documents marked as Exs.P1 and P2 i.e. the FIR copy and Postmortem report that the age of the deceased was 61 at the time of accident and therefore fixed the same as his age. Moreover, it is observed that the Tribunal has fixed the monthly income of the deceased as Rs.4,000/-, but while calculating the total loss of income, the Tribunal has taken only Rs.2,667/- as his income stating that if he was alive, he would have spent the remaining sum i.e. Rs.1333/- for his personal expenses, which is found to be improper and this Court modifies the same as Rs.3,000/-. Accordingly, the total Loss of Income is fixed as Rs.1,80,000/- i.e. $3000 \times 12 \times 5$.

9. It is also observed that the sum of Rs.25,000/- awarded towards Loss of Consortium and the sum of Rs.10,000/- awarded towards Funeral Expenses are found to be meager and hence the same are hereby enhanced at Rs.40,000/- for Loss of Consortium and Rs.15,000 for Funeral Expenses. The sum of Rs.75,000/- awarded towards Loss of Love & Affection is found to be reasonable and hence the same is hereby confirmed. The Tribunal has omitted to award amount under the head of Loss of Estate and hence a sum of Rs.5,000/- is awarded under the said head.

10. In view of the above observations, the compensation awarded by the Tribunal is modified as follows :

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or enhanced or granted
1.	Loss of Income	1,60,020	1,80,000	Enhanced
2.	Loss of Consortium	25,000	40,000	Enhanced
3.	Loss of Love & Affection	75,000	75,000	Confirmed
4.	Funeral Expenses	10,000	15,000	Enhanced
5.	Loss of Estate	-	5,000	Granted
	Total	2,70,020	3,15,000	Enhanced by 44,980/-

11. As per the order of the Tribunal, the second respondent insurance company is liable to compensate only 50% and hence they are directed to deposit 50% of the compensation amount i.e. Rs.1,57,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. After depositing the said amount, the appellants/claimants can withdraw the same as per the apportionment made by the Tribunal by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Additional District and Sessions Judge
Fast Track Court, No.2, Salem.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.K.Kuppusamy, Advocate Sr.104374

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srg 10/02/2021



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