

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1589 of 2015

and

M.P.No.1 of 2015

M/s.New India Assurance Company Ltd.,
Opposite to New Bus stand,
Perambalur.

..Appellant/2nd Respondent

Vs.

1.Alimunizha

2.Mohamed Khan

3.Mohamed Irffan

4.Mohammed Imamdeen

5.Minor.Rasmin Banu,
(Minor respondent rep by her mother
guardian and next friend the
first respondent Alimunizha)

... Respondents 1 to /Petitioners

6.Sakkarammer

... 6th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 24.02.2015 made in M.C.O.P.No.522 of 2013 on the file of the Motor Accidents Claims Tribunal (District Court), Perambalur.

For Appellant : Mr.D.Bhaskaran

For RR1 to R5 : Mr.V.Raghupathi

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/second respondent against the award dated 24.02.2015 made in M.C.O.P.No.522 of 2013 on the file of the Motor Accidents Claims Tribunal (District Court), Perambalur.

2. Appellant Insurance Company is the second respondent in

M.C.O.P.No.522 of 2013 on the file of the Motor Accident Claim Tribunal, Perambalur. The respondents 1 to 5 filed the above claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Mohamed Niyaz, who died in the accident that took place on 07.12.2012. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 6th respondent and directed the appellant Insurance Company to pay a compensation of Rs.15,94,416/- as compensation to the respondents 1 to 5. Against the said award dated 24.02.2015 made in M.C.O.P.No.522 of 2013, the appellant Insurance Company has come out with the present appeal challenging the liability fastened on them as well as the quantum of compensation awarded by the Tribunal.

3. The learned counsel appearing for the appellant/Insurance Company contended that the deceased was a tort-feaser and the petition under section 166 of the Motor Vehicles Act is not maintainable and the Tribunal ought to have dismissed the claim petition. Further, the Tribunal failed to note that the deceased was driving the motor vehicle in a rash and negligent manner and dashed against the back side of the lorry belonging to the 6th respondent. Neither F.I.R was lodged nor criminal proceeding was initiated against the driver of the 6th respondent vehicle. On the other hand, F.I.R was registered only against the deceased. The Tribunal failed to consider Ex.R.2, final report as well as the Exs.R3 and R4 properly and erred in fixing the negligence on the part of the driver of the 6th respondent vehicle and liability on the appellant. The Tribunal in any event ought to have held that the deceased was equally responsible for the accident and apportioned the negligence equally. The Tribunal erred in deducting only 1/3rd towards personal expenses instead of 50% as the deceased was a bachelor. The Tribunal also erred in granting 50% enhancement towards future prospects contrary to the judgment of Hon'ble Apex Court. The amount awarded by the Tribunal is excessive. Hence, prayed for setting aside the award of the Tribunal.

4. Per contra, the learned counsel appearing for the respondents 1 to 5 contended that the driver of the lorry belonging to the 6th respondent suddenly started the lorry from service road and drove the same in reverse at high speed and came to middle of the road and only the driver of the lorry was responsible for the said accident. The respondents have examined P.W.2 eye witness, for the accident, who lodged the complaint before the police and when the police refused to receive the same, the same was sent by registered post with acknowledgement due. In spite of the same, the police did not examine P.W.2. The respondents 1 to 5 have proved that the accident occurred only due to rash and negligent driving by the

driver of the lorry belonging to the 6th respondent. The respondents 1 to 5 have proved that the deceased was earning Rs.12,000/- per month and Tribunal erroneously fixed the monthly income of the deceased at Rs.6,826/- and amount awarded by the Tribunal for loss of income is meagre and prayed for enhancement of compensation.

5. Heard the learned counsel appearing for the appellant as well as the respondents 1 to 5 and perused all the materials on record.

6. According to the respondents 1 to 5, the driver of the lorry belonging to the 6th respondent suddenly came to middle of the road by reversing the vehicle at high speed from service road and caused the accident. The respondents examined P.W.2, who is an eye witness and deposed as stated above. In addition to that P.W.2 has lodged the complaint to the police stating that the accident occurred only due to the rash and negligent driving by the driver of the lorry. When the police refused to receive the said complaint, P.W.2 sent the same by registered post with acknowledgement due. Even after receiving the same, the police did not enquire P.W.2. Respondents 1 to 5 have proved the said contention by marking Ex.P.1 copy of the complaint and Ex.P.2 postal acknowledgement due. The appellant has not let in any evidence to disprove the said contention. Further, the complaint was not lodged by driver of the lorry but lodged by one Thekmar. The appellant has not examined the person who lodged the complaint. Further the appellant has not examined the Inspector of Police, who investigated the complaint. On the other hand, only Grade II Constable was examined as R.W1 and she has admitted that she did not see the accident and she did not register the F.I.R. Further, she admitted that in service road, lorry should not be parked. The Tribunal considering the above facts in proper prospective held that the accident occurred only due to the rash and negligent driving by the driver of the lorry belonging to the 6th respondent. There is no error in the said finding, warranting interference by this Court.

7. As far as the quantum of compensation is concerned, the respondents 1 to 5 contended that the deceased was earning Rs.12,000/- per month and working in Steering Private Company. The Tribunal issued summons to the said company to get salary certificate of the deceased and the same was produced by the company, which was marked as Ex.X1. In the said certificate, it is stated that the deceased was working as a trainee and a sum of Rs.6,826/- was paid to the deceased. The Tribunal took the same as monthly income of the deceased and awarded 50% towards future prospects and deducted 1/3rd towards personal

expenses and arrived at compensation for loss of income. The Tribunal erred in awarding 50% towards future prospects instead of 40% and 1/3rd instead of 50% deduction as the deceased was a bachelor. The respondents 1 to 5 are entitled to only 40% enhancement towards future prospects and 50% has to be deducted towards the personal expenses of the deceased. For the above reasons, the amount awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.}6,826 + (40\% \text{ of } 6826) \times 12 \times 18 \times 1/2 = \text{Rs.}10,32,091/-.$$

8. The Tribunal has awarded Rs.50,000/- towards loss of estate and the same is reduced to Rs.15,000/- and Tribunal only awarded a sum of Rs.10,000/- for funeral expenses and the same is enhanced to Rs.15,000/-. The amounts awarded towards love and affection and transportation are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	14,74,416	10,32,091	Reduced
2.	Loss of estate	50,000	15,000	Reduced
3.	Funeral Expenses	10,000	15,000	enhanced
4.	Love and affection	50,000	50,000	confirmed
5.	Transportation charges	10,000	10,000	confirmed
	Total	15,94,416	11,22,091	Reduced by Rs.4,72,325/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,94,416/- is hereby reduced to Rs.11,22,091/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The learned counsel for the appellant submitted that the Insurance Company had already deposited 50% of the amount awarded by the Tribunal. Further, the appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4 are permitted to withdraw the modified award amount as per the ratio of

apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondent is directed to be deposited in any one of the Nationalised Bank till she attains majority. The first respondent, being the mother of the 5th minor respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

jer/mfa

To

1.The District Judge
Motor Accidents Claims Tribunal (District Court),
Perambalur.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 8062
+1cc to Mr.V.Ragupathi, Advocate, S.R.No. 7926

C.M.A.No.1589 of 2015
and
M.P.No.1 of 2015

CNR(CO)
GN(10/06/2019)

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