

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2019

Pronounced on : 29.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2152 of 2011

1.Rani

2.Kuppan

3.K.Venkatesan Appellants / Petitioners

Versus

1. Rama Valliappan

2. The New India Assurance Company Limited,
rep.by its Divisional Manager,
Divisional Office,
Hosur, Krishnagiri District. Respondents / Respondents

[R1 given up]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 26.02.2010 and made in M.C.O.P.No.502 of 2007 on the file of the Motor Accidents Claims Tribunal, Principle District Judge, Krishnagiri.

For Appellant : Mr.D.Rameshkumar

For Respondents : Not ready in notice (for R1)

: Mr.G.Udaya Sankar (for R2)

JUDGMENT

The Claimants in the claim petition are the appellants herein, seeking for enhancement of compensation and also challenging the findings rendered by the Tribunal regarding fixation of contributory negligence only to the extent of 50 % on respondents 1 & 2.

2.The appellants are the claimants in the claim petition in MCOP.No.502 of 2007. It is the case of the claimants that on 10.05.2006, at about 10.45 pm, the deceased Ramakrishnan was proceeding in the Yamaha Crux Motorcycle bearing Regn.No.TN-24-1053 as pillion rider along with one Boopalan. The said motorcycle was driven by the said Boopalan from Uthangarai to Thiruvannmalai towards Pambaru Dam. At that time, all off a sudden the said motorcycle hit the parked lorry bearing Regn.No.KA-01-AD-4554 belonging to the first respondent which was insured with the second respondent. It is alleged that the lorry was not parked on the left side of the road, which is the mandatory road rule and that the required danger lights were not also glowing on the lorry. On account of the same, the accident had occurred due to which the deceased Ramakrishnan and the rider of the said Yamaha motorcycle sustained fatal injuries and died on the spot itself. The accident had occurred only due to the negligent act of the driver of the said Lorry in not parking the lorry properly. Therefore, the claimants have filed a claim petition in the above said MCOP before the Tribunal, claiming a sum of Rs.23,65,000/-, as compensation, which was restricted to Rs.5,25,000/-.

3.The second respondent/Insurance company has filed a detailed counter statement to the claim petition denying the manner of accident and also raised the ground of negligence on the part of the driver of the motorcycle as well, in which the deceased travelled as Pillion rider. Therefore, it was prayed that the insurance company cannot be fastened with any liability and, therefore, prayed for dismissal of the claim petition.

4.Before the Tribunal, on the side of the claimants, one Rani was examined as PW.1 and four documents were marked as Ex.P1 to P4. On the side of the respondents, neither oral nor documentary evidence was adduced.

5.The learned counsel appearing for the claimants/appellants would contend that the Tribunal has erred in coming to the conclusion that the rider of the motorcycle also contributed to the accident and, therefore, fixation of 50% negligence on the rider of the motorcycle is erroneous and further contended that the quantum of compensation is not commensurate with the age of the deceased.

6.On the above contentions, this Court heard the learned counsel appearing for the insurance company.

7.I have heard the submissions made by the respective counsel and perused the materials available on record.

8. It is seen from the records filed before the Tribunal that the wife of the deceased examined herself as PW.1. However, no other person was examined to speak about the manner in which the accident had occurred. Further, very limited number of documents have been marked. No doubt, it is true that the claim petition has been filed under 163-A of Motor Vehicles Act, claiming compensation. Ex.P1/FIR reveals that the motorcycle hit the stationary lorry and that the driver of the lorry, Durairaj, has stated that the rider and the pillion rider fell down after hitting the lorry on the back side and that the motorcycle was driven in a rash and negligent manner. The report of the Motor Vehicle Inspector, Ex.P4, lends support to substantiate the FIR. Further, as evidenced in the FIR, Ex.P1, the lorry was parked on the left side of the road for replacing the tyre. A case was registered against the rider of the motorcycle at Uthangarai Police in Crime No.274 of 2006 under Section 279 & 304(A) of IPC.

9. Based on the Motor Vehicle Inspector's report, Ex.P4 and the First Information report, Ex.P1, the Tribunal has come to the conclusion that the rider of the two wheeler had driven the vehicle in a rash and negligent manner, thereby, contributing to the accident. Further, Ex.P-1 clearly reveals that the first respondent's vehicle was not parked on left side of the road, following the mandatory road rules and had, thereby contributed to the accident. The time of the accident appears to be at 10.45 p.m. in Uthangarai to Thiruvannamalai road near Pambaru Dam and hence, the visibility on the road could have been less without displaying the parking light. Furthermore, it is to be stated that the two wheeler, which was driven by the deceased, could have avoided the accident had he not went on the high speed violating the speed restrictions on the said road and hence, taking into consideration the entirety of facts as stated supra, the negligence is fixed at the rate of 75% on the part of the lorry and 25% on the part of the driver of the two wheeler. Accordingly, the finding rendered in this aspect by the Tribunal at 50% : 50% stands modified at 75% (lorry) and 25% (motorcycle) and this point is answered accordingly.

10. On the point of quantum, both the parties are heard. It appears from the trial Court records that in the absence of any material relating to monthly income of the deceased, the Tribunal has fixed the income of the deceased at Rs.3,000/-. This Court is of the considered view that by adding future prospects, it will be Rs.4,500/- as monthly income of the deceased. After deducting 50% towards personal expenses of the deceased, loss of income to the family is arrived at Rs.2,250/- per month and taking into consideration the age of the deceased, adopting multiplier of 18, quantified the compensation payable under the head 'Loss of Income' at Rs.4,86,000/- (Rs.2,250

X12X18 = Rs.4,86,000). The Tribunal has awarded a sum of Rs.10,000/- towards loss of estate and the same is confirmed. The Tribunal has awarded a sum of Rs.2,000/- towards transportation charges, the same is enhanced to Rs.5,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, the same is enhanced to Rs.15,000/-. Under the head of loss of love and affection to the parents/claimants 1 and 2, a sum of Rs.30,000/- each (totally Rs.60,000/-) is awarded.

11. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of dependency	Rs. 3,24,000/-	Rs. 4,86,000/-
2.	Loss of estate	Rs. 10,000/-	Rs. 10,000/-
3.	Transportation charges	Rs. 2,000/-	Rs. 5,000/-
4.	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
5.	Loss of love and affection to the parents/claimants 1 and 2	Nil	Rs. 60,000/-
	Total	Rs. 3,41,000/-	Rs. 5,76,000/-

12. In the result,

I. This Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.3,41,000/- to Rs.5,76,000/- with proportionate costs.

II. The interest granted by the Tribunal at 6% stands confirmed.

III. The second respondent-Insurance Company is directed to deposit its share of 75% of Rs.5,76,000/- the enhanced amount within a period of twelve weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. Since R1 was given by up in the appeal, there will be no decree on R1 regarding 25% as arrived.

IV. On such deposit being made, the appellants/claimants are permitted to withdraw the entire award amount with proportionate interest, as apportioned by the Tribunal, less the amount already withdrawn, if any.

V. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation.

VI.No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

klr

To

1. The Motor Accidents Claims Tribunal,
Principle District Judge, Krishnagiri.

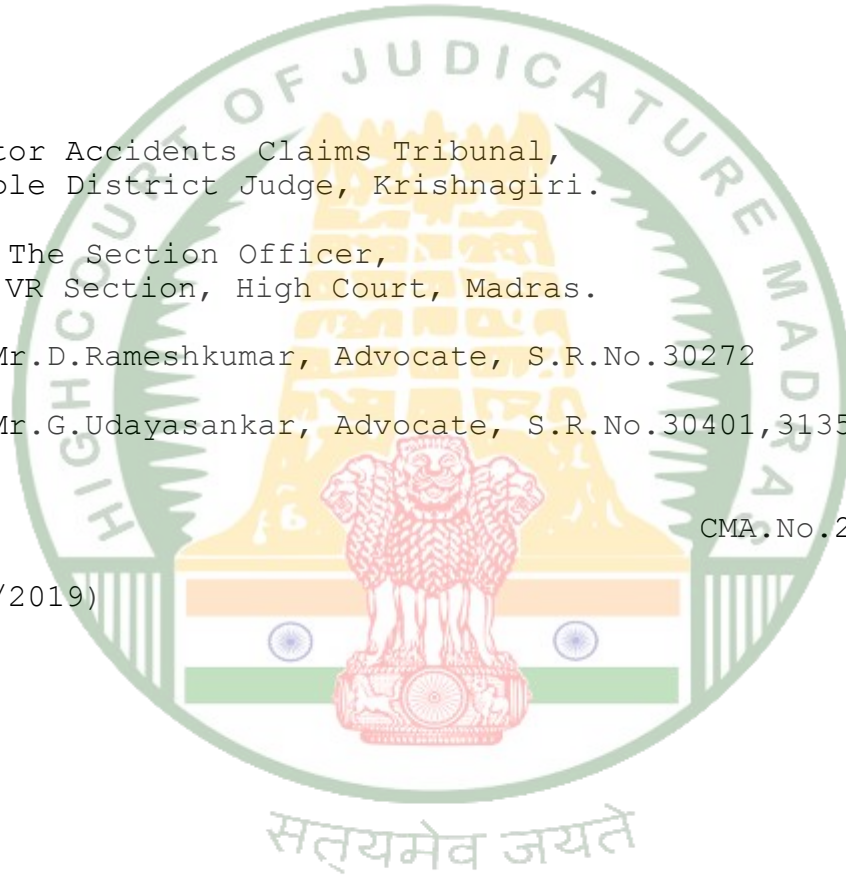
copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.D.Rameshkumar, Advocate, S.R.No.30272

+2 cc to Mr.G.Udayasankar, Advocate, S.R.No.30401,31353

CMA.No.2152 of 2011

SSD(CO)
SSM(30/09/2019)



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