

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :09.04.2019

Judgment Pronounced on :23.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1933 of 2012

1.R.Selvi

2.K.Ramu

...Appellants/Claimants

Vs.

1.The Tamil Nadu Co-operative
Milk Producers Federation Ltd.,
Transport Unit,
Madhavaram Milk Colony,
Chennai-51.

2.National Insurance Co.Ltd.,
Vijaya Plaza Building, 2nd Floor,
C-32, 2nd Avenue, Anna Nagar,
Chennai-40.

(Now operating from Motor Third Party
Claims office, No.751, Anna Salai,
Chennai-600 002)

... Respondents/Respondents

R1 Exparte before Tribunal

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 06.04.2011 in M.C.O.P.No.446 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District & Session Judge, II Fast Track Court), Chennai.

For Appellants : Mr.Ganagaram Prasad

For Respondents : Mr.M.Krishnamoorthy (for R2)

JUDGMENT

The present appeal has been filed by the claimants challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Additional District & Session Judge, II Fast Track Court, Chennai by judgment dated 06.04.2011 in

M.C.O.P.No.446 of 2008.

2. The parents of the deceased girl are the claimants before the Tribunal. They have filed the above said Claim Petition alleging that due to the rash and negligent manner of driving of the driver of the first respondent's Aavin Milk Tanker Lorry bearing Registration No.TN 22 W 8911 and dashed against the minor claimant and wheel of the lorry ran over the head of the deceased child, who died on the spot. Due to the impact, the minor claimant sustained grievous injuries. The first respondent is the owner of the vehicle, which was insured with the second respondent/Insurance Company. Hence, the claimants filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation.

3. Before the Tribunal, on behalf of the claimant, two witnesses were examined and twelve exhibits were marked. None were examined on behalf of the appellant/Insurance Company nor were any exhibits marked.

4. Upon consideration of both and documentary evidence, the Tribunal has held that the accident had taken place due to the rash and negligent manner of driving of the driver of the offending vehicle. The first respondent is being the owner of the tanker lorry, which was insured with the second respondent/Insurance Company and there is valid policy coverage at the time of accident. On appreciation of materials, the Tribunal awarded a sum of Rs.1,80,000/- as compensation. The said sum was directed to be paid together with interest at 9% per annum from the date of petition till the date of deposit. Hence, the Tribunal held that the first and second respondents are liable to pay compensation to the claimants is hereby confirmed.

5. Not being satisfied with the award passed by the Tribunal, the appellants/claimants have filed this appeal, seeking enhancement of compensation.

6. The learned counsel appearing for the claimants quoted that the notional income of the 8 years child at Rs.40,000/- as against the Tribunal's award of Rs.15,000/- was fixed in the year 2007 accident case in G.Sumathy and others V.K.Anbazhagan and others reported in (2018) 2 TN MAC 238 and he also relied on the decision in Kishan Gopal and another V.Lala and others reported in 2013 (5) CTC 212 (SC) and contended that the Hon'ble Supreme Court had awarded a sum of Rs.5,00,000/- for a student aged 10 years who died in a road accident that took place on 19.07.1992.

7. On a combine reading of Ex.P5 Birth Certificate and

Exs.P6 to P9 relating to School certificates goes to show that the deceased-Rekha was studying in the Dr.Alagappa Matriculation School, Gangadeeswara Koil Street, Chennai and the Tribunal has considered the case on a consolidated basis and taken the notional income as Rs.15,000/- and awarded compensation of Rs.1,80,000/- and this Court fixing notional income Rs.40,000/- and the multiplier of '16' is adopted. Accordingly, the following calculation is made towards 'pecuniary loss':-
[Rs.40,000/-x16=Rs.6,40,000/-]

8. Furthermore, the claimants are the parents of the deceased. Accordingly, for "loss of love and affection" to both the parents, Rs.25,000/- each is granted, totalling Rs.50,000/-. Further, under the head "loss of estate", a sum of Rs.15,000/- is awarded. For "funeral expenses", Rs.15,000/- is awarded.

9. After going through the judgment cited by the claim petitioners/appellants, I am inclined to accept the same and thus, in toto, the compensation awarded is hereby tabulated:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Pecuniary Loss	Rs. 1,50,000/-	Rs. 6,40,000/-
2.	Loss of Love & Affection	Rs. 25,000/-	Rs. 50,000/-
3.	Funeral Expenses	Rs. 5,000/-	Rs. 15,000/-
4.	Loss of Estate	-----	Rs. 15,000/-
	Total	Rs. 1,80,000/-	Rs. 7,20,000/-

10. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,80,000/- to Rs.7,20,000/- which shall carry interest at the rate of 7.5% per annum.

(iii) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent - the New India Assurance Company Limited is directed to deposit the entire compensation of Rs.7,20,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.446/2008, on the file of the Additional District & Sessions Judge, the Motor Accidents Claims Tribunal, II Fast Track Court, Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(v) The first appellant/first claimant is entitled to a sum of Rs.5,00,000/- together with accrued interests and costs.

The second appellant/second claimant is entitled to a sum of Rs.2,20,000/-.

(vi) On such deposit being made by the National Insurance Company Limited, the first appellant/first claimant is permitted to withdraw the entire compensation awarded to her.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

nvi

To

1.The Motor Accidents Claims Tribunal
(Additional District & Session Judge, II Fast Track Court),
Chennai.

Copy To

The Section Officer,
V.R.Section, High Court,
Chennai.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 62891
+1cc to Mr.G.Balaji Prasad, Advocate, S.R.No. 62667

C.M.A.No.1933 of 2012

GP (CO)
GN (15/10/2019)

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