

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 13.02.2019]

[PRONOUNCED ON : 10.06.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2511 of 2011

Mani (Deceased)

1. Kannammal
2. Senthil Kumar
3. Karthikeyan
Thangammal (Deceased) ... Appellants/ Petitioners

.. Vs ..

1. M.P.Shibukumar (Given up)
2. Abdul Rafeeqe (Given up)
3. The New India Assurance Co. Ltd.,
Divisional Office, Shafeer Complex,
6/975-D, Opp. YMCA, Kannur Road,
Calicut - 673 001.
4. United India Insurance Co. Ltd.,
1170, Mettur Main Road,
2nd Floor, Muthiah Complex,
Erode. (Given up)
5. Divisional Office, the New India Assurance Co. Ltd.,
Amman Complex, 1st Floor,
E.V.N. Road, Erode. (Given up)

... Respondents/ Respondents

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PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No.61 of 2007 on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Fast Track Court No.4, Bhavani, Erode District, dated 21.07.2009 and for enhancement of compensation.

For Appellants : Mr.C.Kulanthaivel
For RR-1, 2, 4 & 5 : Given up
For R-3 : Mrs.Elveera Ravindaran
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JUDGMENT

Seeking enhancement of compensation, the claimants 2 to 5, who are the legal representatives of the first claimant namely Mani, have filed this civil miscellaneous appeal dissatisfied with the award dated 21.07.2009 passed by the Motor Accidents Claims Tribunal cum Additional District Judge, Fast Track Court No.4, Bhavani, Erode District, in M.C.O.P.No.61 of 2007.

2.The short facts that are essential for the disposal of this appeal is that the first claimant namely, Mani, aged about 54 years at the time of the accident, has preferred the claim petition in M.C.O.P.No.61 of 2007 before the Motor Accidents Claims Tribunal cum Additional District Judge, Fast Track Court No.4, Bhavani, Erode District, alleging that on 09.07.2006 at about 07.40 a.m., when he was traveling in R.K.M. bus service bearing Registration No.TN-36-K-2988 in Salem - Bhavani NH 47 Main Road, the bus stopped at Sankari ICL bus stop to alight the passengers and at that time, the first respondent drove the Tata Bens Lorry bearing Registration No.KL-8-G-583 from west to east side in a rash and negligent manner without following the traffic rules and dashed the bus from behind and hence, the bus was made to move and dashed against a tree in the left corner of the road and the bus was damaged. As a result of the said accident, the first claimant and many passengers got bleeding injuries. The first claimant got injuries on his chest and all over the body and he was admitted as an inpatient and took treatment for 5 days and then admitted as an inpatient in IRT Perundurai Medical College and hospital, Perundurai, Sanatorium for his better treatment for 12 days for chest problem, since he is an T.B. patient. He was taking proper treatment for his T.B. disease before the accident and hence, the disease was in control and because of the accident, his condition became worse. Under the above circumstances, the first claimant has filed the claim petition claiming a sum of Rs.2,00,000/- as compensation.

3. After the filing of the above claim petition, the first claimant was suffering very much with his grievous injuries caused to him in the motor accident dated 09.07.2006 and in spite of best treatment given to him,

without fruitful result, he died on 04.04.2004, leaving his legal representatives, the claimants 2 to 5 as his wife, sons and mother respectively to represent after his demise. Only due to the grievous injuries sustained by him in the aforesaid motor accident, the first claimant died. Hence, the claimants 2 to 5 have been added as legal representatives of the deceased first claimant as per the order passed in I.A.No.644 of 2008, dated 10.09.2008. During the pendency of the claim petition, the fifth claimant, who is the mother of the first claimant, died and hence, claimants 2 to 4, who are the wife and sons respectively of the first claimant, are entitled to claim compensation payable to the deceased Mani/first claimant.

4. Before the tribunal, the second claimant, who is the widow of the deceased first claimant was examined as P.W.1 and eight documents were marked as Exs.P.1 to P.8. On behalf of the respondents before the Tribunal, no witness was examined and no document was marked.

5. The first respondent herein is the driver of the Tata Bens Lorry bearing Registration No.KL-8-G-583 and the second respondent herein is the owner of the said Lorry and the third respondent herein is the insurer of the said Lorry. The fourth respondent herein is the insurer of the bus bearing Registration No.TN-36-K-2988 in which the first claimant Mani was travelled. The fourth respondent was added as a formal party for proper adjudication of the claim petition. Since the first respondent, who is the driver of the Lorry, is solely responsible for the accident, respondents 1 to 3 are jointly and severally liable to pay the compensation to the claimants 2 to 4 as claimed in the claim petition.

6. The Tribunal, after considering both oral and documentary evidence adduced on behalf of the claimants, has come to a conclusion that the accident has taken place only due to the rash and negligent driving of the driver of the Lorry and awarded a total sum of Rs.20,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of payment. Having not satisfied with the award passed by the Tribunal, the appellants herein, who are the wife and sons of the deceased respectively, have preferred this appeal before this Court seeking enhancement of compensation.

7. On a perusal of the records, it is seen that based upon the evidence of P.W.1 coupled with Ex.P.1-FIR,

Ex.P.2-Observation Mahazar, Ex.P.3-Rough Sketch, Ex.P.4-Motor Vehicle Inspector's inspection report relating to bus, Ex.P.5-Motor Vehicle Inspector's inspection report relating to Lorry, Ex.P.6-Charge Sheet, Ex.P.7-Discharge Summary and Ex.P.8-Judgment copy of the criminal Court in S.T.C.No.3720 of 2006, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the lorry. Further, taking into consideration the fact that no document has been filed before the Court showing the medical expenses, the Tribunal has disallowed it in entirety and also stated that the death of the first claimant-Mani was not due to the injuries sustained by him and therefore, refused to treat the case as a fatal accident case, in the absence of any material being placed before the Tribunal and no post-mortem report also appears to be given. On a perusal of the documents filed before the Court, it is seen that except Ex.P.7-Discharge Summary, no other documents were produced before the Tribunal to enlighten the plea to substantiate that the original claim petitioner/first claimant Mani died eight months after the accident due to the injuries sustained by him in the accident and hence, this Court is unable to uphold the contention of the learned counsel for the appellants 1 to 3/claimants 2 to 4 that the first claimant/Mani had died due to the injuries sustained by him in the accident, in the absence of any evidence placed before the Court.

8. It remains to be stated that as per Ex.P.7-Discharge Summary, it is seen that even at the time of taking treatment in I.R.T. Perundurai Medical College & Hospital, Perundurai Sanatorium, the first claimant/Mani was already suffered with the disease TB. In the absence of any medical evidence being produced to corolate that the injuries sustained in the accident have aggregate and being the cause of the death of the said Mani/first claimant, this Court is unable to uphold the contention raised by the learned counsel for the appellants herein. However, taking note of the injuries sustained by the first claimant and the treatment given to him as could be seen from Ex.P.7, this Court is of the considered view that in respect of the injuries sustained by the first claimant in the accident which occurred in the year 2006, pecuniary loss is assessed at Rs.50,000/-. Further, this Court awards a sum of Rs.5,000/- towards pain and sufferings, a sum of Rs.5,000/- towards transportation, a sum of Rs.5,000/- towards Extra Nourishment and a sum of Rs.5,000/- towards Loss of amenities. In total, the appellants 1 to 3 herein/claimants 2 to 4 are entitled to a sum of Rs.70,000/- as compensation for the death of the first claimant/Mani.

9. In the result,

I. This Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.20,000/- to Rs.70,000/-.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The third respondent-Insurance Company is directed to deposit the enhanced amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit being made, the appellants 1 to 3/claimants 2 to 4 are permitted to withdraw the enhanced award amount with proportionate interest, as apportioned by the Tribunal, less the amount already withdrawn, if any.

V. The appellants 1 to 3/claimants 2 to 4 shall pay necessary Court fee, if any, on the enhanced compensation amount.

VI. No order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Jrl
To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.4,
Bhavani, Erode District.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 46375

+1cc to Mrs.Elveera Ravindaran , Advocate SR.No. 46346

C.M.A.No.2511 of 2011

A.SK(05/11/2019)