

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.274 of 2011

1.L.Sumathi

2.N.Lakshmanan (Died)

3.L.Valli (Minor)

(Minors rep. by mother &
N.F the 1st petitioner)

...Appellants/ Petitioner
Vs.

1.Mahaveer Hardwares,
No.99, TTK Road, Alwarpet,
Chennai 18.

R1 -Remained exparte before the tribunal

2.The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai 1.

... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 31.08.2010, in M.C.O.P.No.709 of 2007 on the file of the Chief Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.K.Ayyadurai

for Mr.N.M.Muthurajan

For Respondents

: Mr.J.Michael visuvasam for R2

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JUDGMENT

The appellants are the claimants in M.C.O.P.No.709 of 2007 on the file of the Chief Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai. They have filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.6,00,000/- for the death of one L.Palani in a road accident that took place on 20.01.2007. The

claimants 1, 2 and 3 are the mother, the father and the sister of the deceased respectively. The second claimant, namely, N.Lakshmanan died on 21.12.2015, pending this Civil Miscellaneous Appeal. After his death, the first and third claimants are brought on record as legal representatives.

2. The brief case of the appellants/claimants is as follows:

(i) The deceased L.Palani was aged 10 years and was studying V standard in M/s. American Advent Children, Middle School, Velacherry, Chennai on the date of the accident.

(ii) On 20.01.2007, at about 15.45 hours, the deceased was standing at Velacherry main road near the junction of 30th street, Kannigapuram, Chennai. At that time, a jeep bearing Registration No. RN 07 K 6379, belonging to the first respondent, hit him, as a result of which, he sustained fatal injuries and died. According to the appellants/claimants, the rash and negligent driving of the driver of the jeep bearing Registration No. RN 07 K 6379 was the cause of the accident, and that, since, the said jeep was insured with the second respondent, both the first and second respondents, are jointly and severally liable to pay compensation of Rs.6,00,000/- to them.

3. The owner of the said jeep remained absent before the Tribunal and therefore, he was set ex-parte. The New India Assurance Company contested the claim petition. The learned Tribunal, after analysing the evidence on record, concluded that the accident occurred due to the rash and negligent driving of the driver of the said jeep and awarded a compensation of Rs.2,35,000/- together with interest at the rate of 7.5% per annum to the appellants/claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.K.Ayyadurai, learned counsel appearing for the appellants/claimants 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.

5. Per contra, Mr.J.Michael visuvasam, learned counsel appearing for the Insurance Company would contend that, since, in the present case, the accident took place only in the year 2007, the compensation awarded by the Tribunal is just and reasonable.

6. A perusal of the available records shows that the manner of the accident is not disputed by both the parties. Coming to the point of quantum of compensation, as rightly pointed out by the learned counsel appearing for the appellants, the Hon'ble Supreme Court in the decision in Kishan Gopal & another vs. Lala & others reported in 2013 (2) TN MAC 358 (SC) had awarded a sum of Rs.4,50,000/- for the pecuniary loss and a sum of Rs.50,000/- for the conventional heads i.e., in toto, a sum of Rs.5,00,000/- was awarded for the death of a student aged 10 years. The finding therein, has been followed by this Court in the decision in G.Sumathy & another vs. K.Anbazhagan & another reported in 2018(2) TN MAC 238.

7. Hence, following the above said decisions, the compensation awarded by the Tribunal is enhanced from Rs.2,35,000/- to Rs.5,00,000/-.

8. 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.2,35,000/- to Rs.5,00,000/- 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.5,00,000/- (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.709 of 2007, dated 31.08.2010, on the file of the Chief Judge, the Motor Accidents Claims Tribunal, Small Causes 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.3,50,000/- together with accrued interests and costs. The third appellant/third claimant is entitled to a sum of Rs.1,50,000/-.

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

(vii) The third appellant/third claimant is a minor and therefore, her share of compensation is ordered to be deposited in any one of the nationalized banks until she attains majority and the first appellant/first claimant is permitted to withdraw the interest directly from the bank,

once in three months in order to maintain the minor.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To
The Chief Judge,
The Motor Accidents Claims Tribunal,
The Small Causes Court,
Chennai.

Copy to
The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.N.M.Muthurajan , Advocate SR.No. 12618
C.M.A.No.274 of 2011
A.SK(29/05/2019)



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