IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.03.2019
CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.Nos.3222 of 2011 and 172 of 2012 and
M.P.No.1 of 2012 in
C.M.A.No. 172 of 2012

C.M.A.No. 3222 of 2011
1.Suseela
2.K.Kuppammal
3.K.Naveen (Minor)
(Rep. by his mother
and next friend Suseela)

...Appellants

vs.

1.K.Mohan Reddy
2.New India Assurance Co. Ltd.,
No. 46, Moore Street,
Chennai -1.

...Respondents

C.M.A.No. 172 of 2012

New India Assurance Co. Ltd.,
No. 46, Moore Street,
Chennai -1.

...Appellant

vs.

1.Suseela
2.K.Kuppammal
3.K.Naveen (Minor)
4.K.Mohan Reddy
(Rep by his mother and
next friend suseela

...Respondents

Prayer in C.M.A.No. 3222 of 2011: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 14.07.2011, in M.C.O.P.No. 4998 of 2004, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

Prayer in C.M.A.No. 172 of 2012: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 14.07.2011, in M.C.O.P.No. 4998 of 2004, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

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For Appellants in
C.M.A.No.3222 of 2011 : Mr.V.Mohan Choudary

For Appellant in : Mrs.Elveera Ravindran
C.M.A.No.172 of 2012

For Respondents in : Mrs.Elveera Ravindran
C.M.A.No.3222 of 2011 for R2
R1 - exparte

For Respondents in : Mr.V.Mohan Choudary
C.M.A.No.172 of 2012 for R1 to R3
R4 - exparte

C O M M O N J U D G M E N T

In C.M.A.No. 3222 of 2011, the appellants are the claimants in M.C.O.P.No. 4998 of 2004, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai. The claimants filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. rules seeking compensation of Rs.10,00,000/- for the death of one C.Kasi, in a road accident that took place on 06.10.2004. The New India Assurance Company Limited, the second respondent in the above said M.C.O.P. has filed C.M.A.No. 172 of 2012, questioning their liability as well as the quantum of compensation awarded by the Tribunal. The claimants have filed C.M.A.No. 3222 of 2011 seeking for enhancement of compensation. The first, second and third claimants are the wife, daughter and son of the deceased respectively.

2.For the sake of convenience, the parties are called as per their ranking in the Tribunal.

3.The brief case of the claimants is as follows:

(i) The deceased C.Kasi was aged about 47 years and was doing vegetable business on self-employment, earning a sum of Rs.300/- per day.

(ii) On 06.10.2004, at about 07.30 hours, the deceased was travelling as an occupant in a lorry bearing Registration No. AP 03 U 0765, along with the vegetables and the driver of the said lorry drove the vehicle rashly and negligently on Madras Bangalore high road from east to west i.e., from Koyembedu market towards Vellore, near Mambakkam. The said lorry went to the wrong side and hit against a van bearing Registration No. TN 07 W 3688, which was coming in the said road from west to east. As a result, the deceased who was sitting

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inside the cabin of the said lorry sustained fatal injuries, which resulted in his death.

(iii) According to the claimants, the accident occurred due to the rash and negligent driving of the driver of the said lorry. The first respondent being the owner and the second respondent being the insurer are jointly, severally and statutorily liable to pay compensation of Rs.10,00,000/- to the claimants with interest and costs.

4. The owner of the lorry bearing Registration No. AP 03 U 0765 was absent before the Tribunal and therefore, he was set ex-parte. The New India Assurance Company Limited contested the claim petition by filing counter and they have also filed a petition under Section 170 of the Motor Vehicles Act, 1988 and the same was also allowed.

5. During the trial, the Insurance Company contended that the FIR (Ex.P1) was tampered with and there is an insertion in the same, to include the name of the deceased C.Kasi, who is alleged to have died in the said accident and therefore, the involvement of the lorry bearing Registration No. AP 03 U 0765 in respect of the alleged accident is doubtful.

6. Before the Tribunal, Suseela (PW1), the wife of the deceased and G.Mani (PW2), an eye witness to the occurrence of the accident were examined and exhibits P1 to P6 were marked. On the side of the Insurance Company, Hariharan (RW1), a staff of the Insurance Company is examined and authorization letter (Ex.R1), copy of the Insurance particulars (Ex.R2) and Complain copy (Ex.R3) were marked. After taking into consideration, the oral and documentary evidence, the Tribunal has come to a conclusion that, the accident has taken place due to the rash and negligent driving of the driver of the lorry bearing Registration No. AP 03 U 0765, in which the deceased was travelling as the owner of the goods, taking vegetables from the whole sale market to his native place. The Tribunal, awarded a sum of Rs.3,62,000/- together with interest at the rate of 7.5% per annum to the claimants.

7. The learned counsel for the claimants would contend that the deceased worked as a vegetable vendor. As per the decision in Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Co. Ltd. reported in 2011 ACJ 2436, the income of the deceased should be fixed as Rs.4,500/- per month. He would further contend that no amount was added towards future prospects of the deceased and the award passed under other heads are also very meagre, and therefore, he would submit that the award passed by the Tribunal should be enhanced.

8. The learned counsel appearing for the Insurance

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Company would contend that, whether, the deceased C.Kasi travelled in the said lorry is not proved by the claimants. He would also contend that, the involvement of the said lorry in the above said accident is also not proved, in the manner known to law. He would therefore, contend that in the absence of proper evidence to prove the accident, the Insurance company should be exonerated from their liability to pay compensation to the claimants. With regard to, the quantum of compensation, he would submit that, the Tribunal after analysing various aspects, awarded a just and reasonable compensation and the same need not disturbed at this juncture.

9. On going through the FIR (Ex.P1), it appears that, the van bearing Registration No. TN 07 W 3688 was proceeding from west to east, while, the lorry bearing Registration No. AP 03 U 0765 was proceeding from east to west. The driver of the said van is the informant. The accident took place on 06.10.2004, at 07.30 hours and the complaint was given by the driver of the said van on 07.10.2004, at 09.00 hours, which shows that, the case has been registered within a short span of time, and the same removes the suspicion over the genuineness of the accident. The driver of the said van, has stated in FIR (Ex.P1) that three persons, namely Maheswaran, Rajendran and Elumalai who have travelled in the van were injured, while, other three persons namely, Dharman, Thulasi Reddy and Subramani who have travelled in the said lorry were also injured.

10. Accordingly, the contention of the learned counsel for the Insurance company that, whether, the deceased C.Kasi travelled in that ill-fated lorry is doubtful, cannot hold ground in view of the FIR (Ex.P1) given by the driver of the van, immediately after the accident coupled with the post mortem certificate (Ex.P2) issued by Government Hospital, Kancheepuram, wherein, it has been specifically mentioned about the road traffic accident and hence, the above said contention of the Insurance Company stands negative. The finding given by the Tribunal that, the deceased travelled in the said lorry as the owner of the goods taking vegetables from the whole sale market to his native place is hereby confirmed. Accordingly, the rash and negligence on the part of the driver of the lorry is also confirmed.

11. In view of the existence of the policy (Ex.R2), both the owner as well as the Insurance Company are jointly and severally liable to pay compensation to the claimants and the same finding arrived at by the Tribunal is hereby confirmed, as it does not suffer from any irregularity or illegality warranting interference, at this appellate stage.

12. Quantum of compensation: As per the post mortem

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certificate (Ex.P2), the deceased was aged about 47 years, and accordingly, the multiplier 13 was adopted by the Tribunal, as per the decision of the Apex Court in the case of Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since, there is no income proof adduced by the claimants, the Tribunal has fixed the notional income of the deceased as Rs.3,000/-. However, since, the deceased was a vegetable vendor, taking into consideration, the date of the accident, the monthly income of the deceased is fixed at Rs.4,500/- following the decision in Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited reported in 2011 ACJ 2436. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 25% should be added towards the future prospectus of the deceased. Since, there are three persons depending on the income of the deceased, 1/3rd has to be deducted towards the personal expenses of the deceased. Accordingly, the 'loss pecuniary benefits' sustained by the legal representatives of the deceased C.Kasi is re-assessed as below:

Calculation:

Notional income = Rs.4,500/-
25% Future Prospects = Rs.1,125/-
Total = Rs.4,500/- + Rs. 1,125 = Rs.5,625/-

Loss of pecuniary benefits
= Rs. 5,625/- x 12 x 13 x 1/3 deduction
= Rs.5,85,000/-

13. The first claimant being a widow is entitled to a sum of Rs.40,000/- towards 'loss of consortium' as against Rs.10,000/- awarded by the Tribunal. The second and third claimants, who are minors, at the time of the accident, are entitled to a sum of Rs.25,000/- each (i.e., in toto Rs.50,000/-) towards 'loss of love and affection'. A sum of Rs.15,000/- is awarded towards 'funeral expenses' as against the sum of Rs.10,000/- awarded by the Tribunal. The Tribunal has not granted any amount under the head 'loss of estate' and therefore, the claimants are also entitled to a sum of Rs.15,000/- towards the same.

14. Accordingly, the award of the Tribunal in M.C.O.P.No. 4998 of 2004 is modified as follows:

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Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits	Rs.3,12,000/-	Rs.5,85,000/-
2.	Loss of consortium	Rs.10,000/-	Rs.40,000/-
3.	Loss of love and affection	Rs.30,000 /-	Rs.50,000 /-
4.	Funeral expenses	Rs.10,000/-	Rs.15,000/-
5.	Loss of estate	NIL	Rs.15,000/-
	Total	Rs.3,62,000/-	Rs.7,05,000/-

The compensation awarded by the Tribunal is enhanced from Rs.3,62,000/- to Rs.7,05,000/- which shall carry interest at the rate of 7.5% per annum.

15. In the result,

(i) The C.M.A.No. 3222 of 2011 is allowed in part. No costs.

(ii) The C.M.A.No. 172 of 2012 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

(iii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,62,000/- to Rs.7,05,000/-.

(iv) The New India Assurance Company Limited is directed to deposit the entire enhanced compensation of Rs.7,05,000/- (less the amount 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. 4998 of 2004, dated 14.07.2011, on the file of the Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the first and second claimants are permitted to withdraw their share of compensation after following the due process of law. The apportionment granted by the Tribunal shall be kept intact.

(vi) The the third claimant is a minor, and therefore, his share of compensation amount is ordered to be deposited in any one of the nationalized bank until he attains majority and the first claimant is permitted to withdraw the interest

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directly from the bank, once in three months in order to maintain the minor.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
II Court of Small Cases,
Chennai.

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

+2 ccs to Mr.v.Mohan Choudary Advocate sr21195
+1 cc to M/s.Elveera Ravindran Advocate sr20427

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