

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2537 of 2015

and

M.P.No.1 of 2015

The Branch Manager,
Bajaj Allianz General Insurance Company Limited,
Branch Office, No.15, Kolaman Complex,
1st Floor, Saradha College Main Road,
Alagapuram, Salem-4. ... Appellant/2nd Respondent

Vs.

1.Murugammal
2.Minor Karthik
minor rep. By his next friend mother (1) Murugammal
3.C.Murugan ... Respondents 1 & 2/
Petitioner 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.03.2015 and made in M.C.O.P.No.604 of 2013 on the file of the learned District Judge (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr.S.Manohar

For Respondents : Mr.N.Sivakumar
for Prabakaran for R1 & 2
M/s.Mary Jerline- R3-NA

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.604 of 2013, dated 30.03.2015, on the file of the District Judge (Motor Accidents Claims Tribunal), Krishnagiri.

2. The respondents are the claimants in M.C.O.P.No.604 of 2013, on the file of the District Judge (Motor Accidents Claims Tribunal), Krishnagiri. They filed the above said MCOP claiming compensation of Rs.9,00,000/- as compensation for the

death of one Govindaraj, husband of the first respondent, father of the second respondent (Minor), who died in the accident that took place on 28.05.2011 at about 17.30, when the deceased was proceeding in his Hero Honda motor cycle bearing Regn.No.24 D 7927 slowly, to the extreme left side of the road in Veppanapalli to krishnagiri. At that time, the Eicher vehicle bearing Reg.No.24 E 7557 belonging to the first respondent and is not insured with the 2nd respondent was driven by the driver in a rash and negligent manner without observing any rules of the road without sounding horn and at an uncontrollable speed with heavy load of hay suddenly without giving any signal stopped his vehicle on the middle of the road. The deceased who was proceeding in his motor cycle behind the said Eicher Vehicle has not anticipated that the Eicher vehicle was stopped suddenly on the middle of the road. Due to the negligent Act of the driver of the said Eicher vehicle, the deceased hit behind the Eicher vehicle and that the deceased sustained grievous injuries on his vital organs. which resulting death. Hence the claimants being legal heirs of the deceased has claiming compensation of Rs.9,00,000/-.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Eicher vehicle bus belonging to the third respondent\Transport Corporation and directed the Petitioner/Insurance Company to pay the compensation of Rs.12,39,000/- to the claimants.

4. Before the Tribunal, on the side of the claimants, witnesses P.W.1 and P.W.2 were examined and following exhibits were marked:

- (a)Ex.P1 :Copy of FIR
- (b)Ex.P2 :Photostat copy of the postmortem certificate regarding the body of the deceased Govindaraj
- (c)Ex.P3 :Photostat copy of the Insurance policy of the offending vehicle vehicle Eicher lorry bearing Registration Number TN-24-E-7557
- (d)Ex.P4 :Photostat copy of the driving license of the driver of the offending vehicle Eicher lorry bearing registration number TN-24-E-7557
- (e)Ex.P5 :Is the death summary of the deceased Govindaraj issued by Narayana Hrudayalaya Hospitals.
- (f)Ex.P6 :Medical Bills for Rs.1,45,229/- of the deceased Govindaraj.

(g)Ex.P7 :Photostat copy of the legal heir's certificate issued to the petitioners herein.

(h)Ex.P8 :Photostat copy of the driving license of the deceased Govindaraj

5. Before the Tribunal, on the side of the respondents, witnesses R.W.1 and R.W.2 were examined and following exhibits were marked:-

- (a)Ex.R.1 : Copy of the final report
- (b)Ex.R.2 : Copy of the Insurance policy of the offending vehicle Eicher lorry bearing registration number TN-24-E-7557
- (c)Ex.R.3 : Copy of the Motor Vehicle Inspection report of the vehicle eicher lorry bearing registration number TN-24-E-7557
- (d)Ex.R.4 : Copy of the Motor vehicle Inspection report of the vehicle two wheeler bearing registration number TN -24-D-7927

6. Aggrieved by the award passed by the Tribunal, the Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act.

7. The learned counsel for the appellant/ Insurance Company contended that the accident occurred only due to the rash and negligent driving of the victim. The further grievance is that there is no proof for occupation of income of the deceased and in the absence of any details, the Tribunal has erroneously fixed the monthly income at Rs.9,000/- without any basis and on the whole the sum awarded by the Tribunal under other heads is also excessive and arbitrary. He further submitted that the tribunal ought to have reduced the compensation by taking age and occupation of the deceased.

8. The learned counsel appearing for the respondents/claimants that on 28.05.2011 at about 17.30, when the deceased was proceeding in his Hero Honda motor cycle bearing Regn.No.24 D 7927 slowly, to the extreme left side of the road in Veppanapalli to krishnagiri. At that time, the Eicher vehicle bearing Reg.No.24 E 7557 belonging to the first respondent and is not insured with the 2nd respondent was driven by the driver in a rash and negligent manner without observing

any rules of the road without sounding horn and at an uncontrollable speed with heavy load of hay suddenly without giving any signal stopped his vehicle on the middle of the road. The deceased who was proceeding in his motor cycle behind the said Eicher Vehicle has not anticipated that the Eicher vehicle was stopped suddenly on the middle of the road. Due to the negligent act of the driver of the said Eicher vehicle, the deceased hit behind the Eicher vehicle and that the deceased sustained grievous injuries on his vital organs. He further submitted that the Ex.R1 Final Report which shows that the criminal case charge abates this aspect and the same was not considered by the tribunal. He further submitted that the tribunal has not awarded any amount towards future prospects.

9. On perusal of records it is seen that the accident was occurred only due to the rash and negligent driving of the driver of the Eicher Vehicle. The Tribunal by taking into consideration the particulars furnished by the claimant with regard to the age, income and occupation of the deceased, has awarded the compensation. It is seen that the deceased was aged about 35 years at the time of accident and he was earning Rs.10,000/- per month by driving Auto is not admitted. The petitioner/ Insurance Company is called upon to prove and substantiate his age, avocation and the income. In the absence of proof of Income, Rs.250/- per day was fixed by the Tribunal. The tribunal has fixed as monthly income of the deceased a sum of Rs.7,500/- per month. The amount awarded by the Tribunal towards loss of income is meager and the same is enhanced by taking months income of the Rs.10,500/- , which would be at Rs.13,44,000/-(10500 X 12 X 16 X 2/3). A sum of Rs.15,000/- is awarded to the respondents towards loss of estate. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

10. Hence the total compensation payable to the claimants are as hereunder:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Future Loss of income	Rs.8,64,000/-	Rs.13,44,000/-
2.	Loss of Consortium for the first petitioner had lost her husband at the young age of 25 years	Rs.1,00,000/-	Rs.40,000/-

3.	Loss of love and affection for the minor petitioner 2 who had lost his father throughout his life	Rs.1,00,000/-	1,00,000/-
4.	Medical expenses Ex.P.6 Rs.1,45,229/- (rounded off Rs.1,45,000/-)	Rs.1,45,000/-	Rs.1,45,000/-
5.	Transport to Hospital	Rs.10,000/-	Rs.10,000/-
6.	Funeral Expenses	Rs.20,000/-	Rs.15,000/-
7.	Loss of estate	-	Rs.15,000/-
	Total	Rs.12,39,000/-	Rs.16,69,000/- -

Though the Insurance Company has preferred this appeal, challenging the compensation as excessive, this Court by relying upon the evidence and documents, enhanced the compensation awarded by the Tribunal, to some extent as above.

11.In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.12,39,000/- is hereby enhanced to Rs.16,69,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

12.The appellant/Insurance Company is directed to deposit the enhanced award amount now determined by this Court with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the enhanced total award amount of Rs.16,69,000/- as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. Out of the award amount, the first respondent is allotted at the rate of 75% of the total award amount arrived at Rs.12,51,750/-. The minor second respondent is allotted at the rate of 25% of the total award amount arrived at Rs.4,17,250/-. The share amount of the minor second respondent is directed be deposited in any one of the Nationalised Bank till she attains majority. On such deposit, the 1st respondent, being the mother of the minor second respondent is permitted to withdraw the accrued interest, once

in three months for the welfare of the minor. No costs.
Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Judge
(Motor Accident Claims Tribunal),
Krishnagiri.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.C.Prabakaran, Advocate, SR.No.47632

+1cc to Mr.S.Manohar, Advocate, SR.No.47630

C.M.A.No.2537 of 2015

Kak(17/09/2019)



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