

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 12.04.2019	Date of Pronouncing Judgment 02.08.2019
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2818 of 2012
and M.P.No.1 of 2011

- 1.Rukmani
- 2.Minor.S.Boopathy
- 3.Minor.Ramya
- 4.P.Marimuthu
- 5.Ponnammal

Minors 2 and 3 are represented by Natural guardian
mother Rukmani. ...Appellants

Vs.

- 1.K.Ranganathan
- 2.N.Dorairaj
- 3.The ICICI Lombard General Insurance Co., Ltd.,
Zenith House, Keshavrao Khode Marg,
Mahalaxmi, Mumbai - 400 034. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal Cum Additional District and Sessions Judge Cum Fast Track Court No.I, Coimbatore dated 24.06.2011 made in M.C.O.P.No.534 of 2009.

For Appellants : Mr.I.Abrar Mohamed Abdullah

For Respondent 3 : Mrs.R.Sreevidhya

For R1 and R2 : Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal is filed against the Judgment and Decree of the Motor Accidents Claims Tribunal Cum Additional District and Sessions Judge Cum Fast Track Court No.I, Coimbatore dated 24.06.2011 made in M.C.O.P.No.534 of 2009.

2.The legal representatives of the deceased Subramaniam who filed the claim petition in M.C.O.P.No.534 of 2009 are the appellants herein, seeking enhancement of compensation.

3.The appellants herein filed the above said MCOP alleging that on 11.01.2008 the said M.Subramaniam was riding a Motor cycle bearing Registration No. TN 38 T 4746 on the Thayanur to Velliyangadu Road, Karamadai, Coimbatore from East to West direction. The said M.Subramaniam was riding his Motor cycle very slowly, abiding traffic rules and regulations. When he was nearing Thanneer Pandal, it was 10.15 P.M on 11.01.2008. At that time all of a sudden a Tempo Trax Car bearing its Registration No. TN 38 AR 9033 came from the opposite direction i.e., from west to east in a rash and negligent manner without minding the on coming vehicles, dashed against the said motor cycle in an unexpected manner. Due to the sudden knock down the said M.Subramaniam was thrown at tarmac and sustained severe injuries all over the body.

4.The respondents / Insurance Company filed a counter statement alleging that the manner of the accident as pleaded by the claim petitioners are denied and the alleged age avocation and income are also denied before the Tribunal. The first plaintiff widow of the deceased Subramaniam filed and examined herself as P.W.1 and occurrence witness was examined as P.W.2 and Employer of the deceased was examined as P.W.3 and marked Exs.P1 to P12 and on behalf of the respondents no oral or documentary evidence.

5.On consideration of both oral and documentary evidence the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the first respondent's vehicle which was insured that the second respondent and hence both the respondents are jointly and severally liable to pay the compensation and awarded sum of Rs.4,35,500/- having not satisfied with the quantum of compensation awarded by the Tribunal, the legal representatives have preferred this appeal.

6.The factum of the accident, the manner of the accident and finding of the Tribunal that the accident taken place due to the rash and negligent driving of the first respondent's vehicle, are not in dispute and hence the same are hereby confirmed.

7.On the point of quantum, I have heard both sides. It is seen from the oral evidence of the P.W.3 Mathiyazhagan the Manager of the Company whether the deceased Subramaniam worked as a driver of the lorry in the quarry run by the P.W.3 and Ex.P12 is a Salary Certificate. It appears that as per Ex.P12 the monthly Salary is Rs.8500/-. Taking into consideration the date of the accident being in the year 2008 this Court is of the considered view that the sum of Rs.5000/- would reasonable fixed as a monthly Salary the deduction has been effected by $1/4^{th}$ i.e., $5000 - 1/4 = 1250$. As per the decision of the Constitutional Bench Judgment reported in 2017 (2) Tamil Nadu Motor Accident Cases 39 National Insurance Co. Ltd., -vs- Pranay Sethi and others 40% has to be added

towards the future prospects and considering the date of birth as given in the Ex.P6 driving licence and the date of accident being 11.01.2008 and hence, the age of the deceased, on the date of the accident is 31 years and accordingly, following the decision reported in 2009 TN MAC Volume 2 Sarla Verma and others -vs- Delhi Transport Corporation and another the multiplier of 16 has to be adopted and thus, compensation is reassessed as under.

Rs.5000 - (1/4 of 5000) Rs.1250 = Rs.3750/-
 (Add 40% of Future Prospects i.e., Rs.1500)
 Rs.3750 + Rs.1500 = Rs.5250
 Pecuniary Loss is assessed as) Rs.5250 x 12 x 16 =
 Rs.10,08,000/-

The first claim petitioner being the widow is entitled for Rs.40,000/- towards consortium and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate while the claim petitioner / appellants 2 and 3 are minor at the time of accident are entitled to Rs.75,000/- each towards loss of love and affection while appellant / claim petitioners 4 and 5 being the parents of the deceased are entitled to loss of love and affection at Rs.50,000/- each. Total sum of Rs.13,28,000/-.

S.No.	Head	Amount granted(Rs.)
1.	Pecuniary Loss	Rs.10,08,000/-
2.	Consortium	Rs.40,000/-
3.	Funeral Expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
5.	Loss of Love and affection of appellants 2 and 3	Rs.1,50,000/-
6.	Loss of Love and affection of appellants 4 and 5	Rs.1,00,000/-
	Total Compensation	Rs.13,28,000/-

8.In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
 No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The award amount is enhanced from Rs.4,35,500/- to Rs.13,28,000/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) As per the above said decision since at the time of the accident driver of the offending vehicle did not possess valid and effective driving license, the third respondent / Insurance Company is directed to pay the amount to the appellant and recover the same from the first respondent. Time for deposit balance of the amount is eight weeks.

(iv) The Tribunal is directed to deposit the share of the minor appellants 2 and 3 / claimants 2 and 3 as apportioned by the Tribunal in any one of the Nationalized Bank under reinvestment scheme, till they attain majority and the first appellant - mother is permitted to withdraw interest once in three months for their maintenance.

(v) On such deposit, the appellants are permitted to withdraw the amount with accrued interest.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

rna

To

1.The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court No.I,
Coimbatore.

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

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.67226

+1cc to Mr.I.Abrar Mohamed Abdullah, Advocate SR.No.66806

C.M.A.No.2818 of 2012
and M.P.No.1 of 2011

RV(CO)
GMY(09/12/2019)