

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1741 of 2016

and

C.M.P.No.13073 of 2016

The Executive Officer,
Tharangambadi Town Panchayat
Town Panchayat Office, Poraiyar. ... Appellant

Vs.

1. Shanthi
2. Lakshmi
3. Geetha
4. Maheswaran
5. The District Collector,
Collectorate, Nagapattinam. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the Judgment and Decree dated 21.03.2016 made in M.C.O.P.No.390 of 2013 on the file of the Motor Accident Claims Tribunal, District Court, Nagapattinam.

For Appellant : Mr.A.Kumar,
Additional Advocate General III
Assisted by M.E.Raniselvam
S.Jaganathan

For R1 to R4 : Mr.K.M.Subramaniam

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 21.03.2016 made in M.C.O.P.No.390 of 2013 on the file of the Motor Accident Claims Tribunal, District Court, Nagapattinam.

2. The brief facts of the case is that the first petitioner is wife, the second and third petitioners are daughters and the fourth petitioner is son of one Raja (deceased). The deceased Raja was working as a Sanitary Worker in Tharangambadi Town Panchayat and he was also cleaning the toilet of private persons in holidays, and thereby he was earning a sum of Rs.25,000/- per month. On 25.11.2011 at about 06.00 a.m., when he was doing Sanitary work and was loading the wastages into the Eicher Lorry bearing Registration No.TN-

51-R-7711 belongs to the appellant, the driver of the lorry suddenly drove the lorry in a rash and negligent manner towards reverse and dashed against him. As a result, he was crushed against the compound wall and died on the spot itself. Since the accident occurred only due to the rash and negligent driving of the driver of the appellant, the respondents 1 to 4 who are the legal heirs of the deceased have filed a Claim Petition before the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Nagapattinam, claiming a sum of Rs.15,00,000/- as compensation under various heads.

3. Denying the mode of accident, the appellant herein before the Tribunal has contended that there was no negligence on the part of their driver and it is the deceased who without noticing the vehicle which was coming on the reverse side suddenly came behind the lorry, and therefore, the accident occurred only due to the negligence of the deceased and they are not liable to pay any compensation to the claimants. Further, it has been contended that the wife of the deceased, the first respondent herein, has obtained a sum of Rs.8,30,935/- from the Government as Earned Leave Savings Amount, Gratuity and G.P.F., after the death of her husband and she is also receiving family pension of Rs.9,970/- per month. Moreover, she is working as a Sanitary Worker in the office of the appellant from 15.12.1992 and getting a monthly salary of Rs.19,317/- and yearly bonus of Rs.3,000/-. Apart from this, the husband of the second respondent was also joined as Sanitary Worker at the office of the appellant on 26.08.2013. Therefore, they are not depending upon the income of the deceased and the amount of compensation claimed is highly excessive.

4. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded a sum of Rs.12,20,000/- as compensation under the following heads:

S.No.	Particulars	Amount in Rs.
1.	Loss of Income (12000 x 12 x 8)	11,52,000/-
2.	Loss of Love and Affection	60,000/-
3.	Funeral Expenses	8,000/-
	Total	12,20,000/-

5. Aggrieved by the award, the appellant has filed this appeal by submitting that the accident occurred only due to the negligence of the deceased, while being so, the Tribunal has erroneously fixed the entire negligence on the part of the driver of the lorry. Further, it has been submitted that when there was no valid document to prove the age and income of the deceased, the Tribunal ought not to have fixed the monthly income of the deceased as Rs.18,000/-.

6. In support of his contention, the learned counsel for the appellant has produced the salary certificate of the deceased which he received in the month of October 2011. Further, the learned counsel submitted that when the salary of the deceased is mentioned as Rs.15,555/- in the salary certificate, the Tribunal has wrongly fixed the monthly income of the deceased as Rs.18,000/-. Hence, the same has to be set aside.

7. Heard the learned counsel on either side and perused the materials available on record.

8. On perusal of the award 21.03.2016 passed in M.C.O.P.No.390 of 2013 by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Nagapattinam, it is observed that the Tribunal has considered the fact that the vehicle involved in the accident belongs to the appellant and further, the FIR report revealed that the accident occurred only due to the rash and negligent driving of the driver of the appellant. Moreover, it is observed that though it was stated by the appellant that there was no negligence on the part of their driver, they have not chosen to examine their driver, therefore the Tribunal has fixed the negligence on the part of their driver. It is further observed that the appellant has not raised any objection before the Tribunal regarding the Legal Heirship Certificate (Ex.P5) filed by the claimants, therefore the Tribunal has held that the claimants are entitled to receive compensation for the death of the deceased. Moreover, the appellant has not disputed that the deceased had not worked in their office as a Sanitary Worker, therefore the Tribunal has concluded that the deceased had worked as a Sanitary Worker before the accident.

9. It is also observed from the order of the Tribunal that the first respondent who is the wife of the deceased has filed her Pay certificate (Ex.P8) before the Tribunal, which revealed that she was also working as a Sanitary Worker at the office of the appellant and was earning a sum of Rs.19,317/- as monthly income. So when the first petitioner was earning a sum of Rs.19,317/- in the Sanitary work, the deceased was also earning the same when he was working under the appellant as a Sanitary Worker. However, there was no document filed to show the actual income of the deceased, therefore the Tribunal has taken the monthly income of the deceased as Rs.18,000/-, which is found to be very much reasonable.

10. It is further observed from the order of the Tribunal that there was no document filed to prove the actual age of the deceased, therefore the Tribunal has taken the age which was found in the Post-mortem Report (Ex.P2). Moreover, since it was found by the Tribunal based on the documents that the first respondent is earning a sum of Rs.19,317/- and the respondents 2 to 4 are married and thereby, they are not depending upon the income of the deceased, the Tribunal has

deducted 1/3rd of the monthly income i.e. Rs.6,000/- for personal expenses of the deceased and awarded a sum of Rs.1,44,000/- (12,000 x 12 x 8) under the head of Loss of Income, which is found to be reasonable. Furthermore, it is observed that since there are four dependants, the Tribunal has awarded Rs.15,000/- each towards Loss of Love and Affection, and also the sum of Rs.8,000/- awarded under the head of Funeral Expenses is very reasonable and not on the higher side.

11. In view of above observations, it is seen that the income taken by the Tribunal based on the documents placed before the Tribunal is very much reasonable. Hence, the salary certificate now produced by the appellant cannot be considered by this Court. Further, the sum awarded under the heads of Loss of Love and Affection and Funeral Expenses is reasonably awarded by the Tribunal, therefore this Court is not inclined to modify the same.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed by confirming the award dated 21.03.2016 passed in M.C.O.P.No.390 of 2013 on the file of the Motor Accident Claims Tribunal, District Court, Nagapattinam. The appellant and the 5th respondent are directed to deposit the amount as fixed by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the respondents 1 to 4/claimants are permitted to withdraw the amount as apportioned by the Tribunal, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

raja
To

The District Judge,
(Motor Accident Claims Tribunal),
Nagapattinam.

Copy To: The Section Officer,
VR Section, High Court, Madras

C.M.A.No.1741 of 2016
and
C.M.P.No.13073 of 2016

PA (CO)
GMI (24/02/2020)