

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.597 of 2013

1.M.Phirdoz
2.A.Anbu Reeghana
3.Minor A.Aquib Javed Raja ... Appellants/Petitioners
(Minor rep by mother M.phirdoz)

vs.

1.S.Thulasimani
2.P.Vijayakumar
3.M/s.United India Insurance Co. Ltd.,
No.5, Big Bazar Street, Dharapuram,
Erode District (now Thiruppur District).
...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 22.12.2010 in MCOP.No.456 of 2009 on the file of the Motor Accident Claims Tribunal / Principal District Court, Erode.

For Appellants : Mr.V.Kadhirvelu

For respondents : Mr.S.Parthiban
for Mr.C.S.Saravanan
for R1 and R2
Mrs.I.Malar for R3

J U D G M E N T

The appellants are the claimants in MCOP.No.456 of 2009 on the file of the Motor Accident Claims Tribunal / Principal District Court, Erode. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.40,00,000/- for the death of one Aleem Batcha, husband of the first claimant and father of the second and third claimants in a road accident on 13.02.2009.

2. The case of the claimants in nutshell is as

follows:

On 13.02.2009, the deceased Aleem Batcha was riding his two wheeler bearing Registration No. TN 33 AL 4051 on Erode - Poondurai Road near Railway Colony School, Kollampalayam and at about 09.00 pm, a speeding lorry bearing Registration No. TN 33 4849, hit the two wheeler from behind, as a result of which, he fell down and sustained fatal injuries. He was immediately rushed to the Government Hospital at Erode. However, he succumbed to injuries on the way to the Hospital.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the lorry belonging to the second respondent and that since the said lorry was insured with the United India Insurance Company, the driver, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

4. The driver and the owner of the lorry (first and second respondents) remained absent before the Tribunal and therefore, they were set ex-parte. The third respondent, United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned Principal District Judge / Motor Accident Claims Tribunal, Erode while awarding compensation of Rs.20,12,312/- together with interest at the rate of 7.5% per annum, also concluded that since the deceased also contributed to the accident, 50% of the compensation should be deducted. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.V.Kadhirvelu, learned counsel appearing for the appellants/ claimants contended that this is not a case of head on collision between two vehicles and the Tribunal was wrong in fixing negligence on the part of the deceased to the extent 50%. He also relied on the decision of the Honourable Supreme Court in Kusum Lata vs. Satbir reported in 2011(2) RCR (C) 379 (SC) and contended that in a case relating to Motor Accident Claims, the claimants are not required to prove the case as it is required to be done in a criminal trial and the Courts should keep this distinction in mind and that strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants. His main contention is that since the lorry and the two wheeler were proceeding in the same direction and the lorry hit the two wheeler from behind, the Tribunal was wrong in fixing 50% contributory negligence on the part of the deceased. He also prayed for

enhancement of compensation.

6. A perusal of a copy of the First Information Report (Ex.P1) and the evidence of Nedunzelian (PW2), an eyewitness to the occurrence clearly shows that the lorry was coming behind the two wheeler ridden by the deceased and hit the two wheeler from behind. In the facts and circumstances, the contributory negligence fixed on the part of the deceased by the Tribunal cannot be sustained for the following reasons:

(i) The driver of the lorry was not examined to show that the rider of the two wheeler was also rash and negligent.

(ii) The rough sketch (Ex.P2) prepared by the police alone cannot be the sole reason to fix contributory negligence on the part of the deceased in the absence of acceptable oral or documentary evidence.

Therefore, I hold that contributory negligence fixed on the part of the deceased to the extent 50% cannot be sustained and the same is set aside.

7. Quantum of compensation: In the claim petition, it is contended that the deceased was a Special Assistant in State Bank of India, earning a sum of Rs.30,582/- per month. The pay slip (Ex.P8) shows that the deceased was earning a sum of Rs.30,582/- per month and the same is taken up for calculating 'loss of dependency'. The Tribunal did not award any amount towards future prospects of the deceased, especially, when the deceased was aged 52 years on the date of the accident. As per the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 15% should be added towards future prospects of the deceased. Since the deceased comes under Income Tax slab and the accident is of the year 2009, 20% should be deducted towards Income Tax. Since there are three dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 11 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Monthly Income = Rs.30,582/-
15% Future Prospects = Rs.4,587/-
Total = Rs.30,582/- + Rs.4,587/- = Rs.35,169/-
20% IT deduction = Rs.28,135/- (Rs.35,169/- -
Rs.7,034/-)

After 1/3 deduction = Rs.18,757/-

Loss of dependency
= Rs.18,757/- x 12 x 11
= Rs.24,75,924/-

8. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively, as per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.24,75,924/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.25,45,924/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.20,12,312/- to Rs.25,45,924/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.20,12,312/- to Rs.25,45,924/-.

(iii) The contributory negligence fixed on the part of the deceased to the extent 50% is set aside and the United India Insurance Company is liable to pay the entire compensation awarded by this Court.

(iv) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(v) The respondents are directed to deposit the compensation awarded by this Court i.e., Rs.25,45,924/- (less the amount already deposited) jointly and severally 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 MCOP.No.456 of 2009 on the file of the Motor

Accident Claims Tribunal / Principal District Court, Erode within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Court,
The Motor Accidents Claims Tribunal,
Erode.

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

+1cc to Mrs.D.Malar, Advocate, S.R.No.99366

+1cc to Mr.V.Kadhirvelu, Advocate, S.R.No.100245

EV(CO)
CB(27/07/2020)

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