

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1762 of 2019

- 1.Sadasiva Padayachi
- 2.Parvathi
- 3.Minor Suseela
- 4.Minor Kalaiyarasi
- 5.Minor Vijaya

... Appellants/Petitioners

(Minors 3 to 5 rep. by their father and
natural guardian 1st appellant)

Vs.

- 1.N.Basheer Mohammed
- 2.United India Insurance Company Limited
Villupuram.
- 3.V.Seenichamy
- 4.National Insurance Company Limited
Villupuram.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 (1) of Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.1995 made in M.C.O.P.No.27 of 1995 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Villupuram.

For Appellants : Mr.V.Srinivasan
For R2 : Mr.S.Arunkumar
For R4 : Mr.D.Bhaskaran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 10.07.1995 made in M.C.O.P.No.27 of 1995 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Villupuram.

2.By consent of both the learned counsel appearing for the appellants and respondents 2 & 4, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellants are claimants in M.C.O.P.No.27 of 1995 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Villupuram. They filed the said claim petition claiming a sum of Rs.1,00,000/- as compensation for the death of one Subramanian, who died in the accident that took place on 09.08.1989. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tanker lorry belonging to the 1st respondent insured with the 2nd respondent and the appellants have not proved that the deceased was a load man in the lorry belonging to the 3rd respondent and that the appellants are entitled to get only a sum of Rs.25,000/- as compensation under Section 140 of the Motor Vehicles Act and directed the 2nd respondent/Insurance Company to pay a sum of Rs.25,000/- as compensation to the 2nd appellant. Against the said award dated 10.07.1995 made in M.C.O.P.No.27 of 1995, the appellants have come out with the present appeal challenging the portion of the award as well as seeking enhancement of compensation.

4.The learned counsel appearing for the appellants/claimants contended that the Tribunal erred in awarding compensation of Rs.25,000/- under Section 140 of the Motor Vehicles Act. The Tribunal failed to note that the 1st appellant, father of the deceased deposed that the deceased was working as a load man under 3rd respondent. The 3rd respondent did not get into witness box to deny the said contention. The Tribunal erred in holding that the appellants have failed to prove that the deceased was a load man as they have not filed any document. There will not be any document with regard to load man from the private operator. The Tribunal erred in holding that the deceased travelled as a passenger based on the evidence of P.W.2. P.W.2 has not stated that the deceased travelled as a passenger in the lorry belonging to the 3rd respondent. The deceased was working as a load man under 3rd respondent and was earning a sum of Rs.900/- per month. The Tribunal ought to have atleast held that the deceased should have earned not less than Rs.750/- per month and after deducting Rs.150/- towards personal expenses, the balance amount was utilised for the benefits of the appellants, who are parents and sisters. The deceased was aged 22 years at the time of accident and applying multiplier, the Tribunal ought to have awarded compensation. The appellants are entitled to get compensation towards loss of love and affection, funeral expenses and loss of estate and prayed for setting aside the award granting only a sum of Rs.25,000/- as compensation under Section 140 of the Motor Vehicles Act and for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased

travelled as a passenger in the lorry belonging to the 3rd respondent. He is not a load man under 3rd respondent and hence, the 2nd respondent/Insurance Company is not liable to pay any compensation. The Tribunal rightly awarded compensation only under Section 140 of the Motor Vehicles Act and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6.The learned counsel appearing for the 4th respondent/Insurance Company contended that the Tribunal dismissed the claim petition against the respondents 3 and 4. The respondents 3 and 4 are not necessary parties to the appeal and prayed for dismissal of the appeal against the 4th respondent/Insurance Company.

7.Heard the learned counsel appearing for the appellants as well as the respondents 2 & 4/Insurance Companies and perused all the materials available on record.

8.From the materials available on record, it is seen that the appellants have contended that the deceased was working as a load man and on the date of accident, the deceased travelled in the lorry belonging to the 3rd respondent as a load man. The 1st appellant/father of the deceased as P.W.1 deposed to that effect. The 3rd respondent or driver of the lorry belonging to the 1st respondent did not deny the said contention. The respondents 1 and 2 have not let in any evidence to substantiate their contention that the deceased travelled in the lorry belonging to the 3rd respondent only as a passenger. P.W.2/eye witness who travelled in the lorry belonging to the 3rd respondent along with the deceased and others, deposed that the accident occurred only due to rash and negligent driving by the driver of the tanker lorry belonging to the 1st respondent. F.I.R. was registered only against the driver of the tanker lorry belonging to the 1st respondent. The respondents 1 and 2 have not let in any evidence to show that the accident did not occur due to the rash and negligent driving by the driver of the tanker lorry. No complaint was lodged against the driver of the lorry belonging to the 3rd respondent. They have not filed any objection to the contents in the F.I.R., which is lodged against the driver of the tanker lorry belonging to the 1st respondent. The Tribunal considering the above materials, held that the accident occurred only due to rash and negligent driving by the driver of the tanker lorry. Having held so, the Tribunal erroneously held that the appellants are entitled to only a sum of Rs.25,000/- as compensation under Section 140 of the Motor Vehicles Act. The Tribunal failed to note that the deceased did not travel as a passenger in the tanker lorry belonging to the 1st respondent. On the other hand, the deceased travelled in the lorry belonging to the 3rd respondent. Whether the deceased

travelled as a load man or passenger in the lorry belonging to the 3rd respondent is immaterial as the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent. The respondents 1 and 2 are liable to pay compensation as the deceased was 3rd party in respect of the insurance policy issued by the 2nd respondent for the tanker lorry belonging to the 1st respondent. In view of the error committed by the Tribunal, the award of the Tribunal granting only a sum of Rs.25,000/- as compensation to the 2nd appellant under Section 140 of the Motor Vehicles Act is set aside. The appellants are entitled to compensation under Section 166 of the Motor Vehicles Act.

9. The appellants have contended that the deceased was working as a load man and was earning a sum of Rs.900/- per month. The accident is of the year 1989. The load man or a coolie would have earned Rs.900/- month. The notional income of the deceased is fixed at Rs.900/- per month. Deducting 50% towards personal expenses and applying multiplier 18, the loss of income of the deceased is arrived at Rs.97,200/- (Rs.900/- X 12 X 18 X 1/2). The appellants are parents and sisters of the deceased. The appellants 1 and 2/parents of the deceased are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The appellants 3 to 5/sisters of the deceased are entitled to a sum of Rs.25,000/- each towards loss of love and affection. A sum of Rs.10,000/- each is granted towards funeral expenses and loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	Compensation	25,000		Set aside
1.	Loss of income	-	97,200	Granted
2.	Funeral expenses	-	10,000	Granted
3.	Loss of love & affection to the appellants 1 and 2	-	80,000	Granted

4.	Loss of love and affection to the appellants 3 to 5	-	75,000	Granted
5.	Loss of estate	-	10,000	Granted
	Total	Rs.25,000/-	Rs.2,72,200/-	Enhanced by Rs.2,47,200/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.25,000/- is hereby enhanced to Rs.2,72,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of award and thereafter, from 01.03.2019 till the date of deposit. The appeal is dismissed against the respondents 3 and 4. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The appellants 1 and 2 being father and mother of the deceased are entitled to a sum of Rs.1,07,600/- each and the appellants 3 to 5 being sisters of the deceased are entitled to a sum of Rs.19,000/- each as compensation. Both the 1st respondent and 2nd respondent/ Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs jointly and severally, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 and 2/claimants 1 and 2 are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minors/appellants 3 to 5 are directed to be deposited in any one of the Nationalised Bank till the minors attain majority. The 1st appellant being the father of the minors/appellants 3 to 5 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate
Motor Accidents Claims Tribunal,
Villupuram.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.S.Kalyanaraman, Advocate, S.R.No.26089

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.25335

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.25464

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RJI (CO)
CS/25/06/2019



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