

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.3386 of 2014

1.Mallika
2.Sekar
3.Kalaimani

... Appellant/Petitioners

Vs.

1.S.Balasubramanian
2.The Branch Manager,
National Insurance Company,
1st,Floor, KRT Building, Bharathidasan Salai,
Premananda Road, Cantonment,Trichy. ..Respondents/Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in M.A.C.T.O.P.No.210 of 2013 on the file of the District Court (PCR) Motor Motor Accidents Claims Tribunal at Nagapattinam, dated 03.07.2014

For Appellant : M/S.R.K.Kamala Rani
For R1 : No appearance
For R2 : Mr.Chandran

JUDGMENT

The appellant herein is a claimant has preferred this appeal against the finding of the tribunal in placing the liability at Contributory Negligence.

Brief facts of the case:

2. On 08.03.2013 at about 9.am when the deceased Veeramani was riding his Bajaj Discover motorcycle along with his friends in the extreme left side of the road in Alangkadu bye-pass road and when they were nearing Valluvar statue, a Tata Ace load van bearing Reg. No. TN57 AZ 1071 belongs to the first respondent, driven by its driver in a rash and negligent manner and dashed against motor cycle driven by the deceased Veeramani. The said Veeramani and the pillion riders were thrown away. They were immediately taken to the Government Hospital, Tiruthuraipundi, inspite of the treatment given to him, he died. A criminal case has also been registered against the driver in Crime No. 100/2013 U/s.279, 337 & 304(A) IPC. The claimant who are the parents and brother of the deceased have claimed compensation for Rs.20,00,000/-.

3. The tribunal after analysing the finding and document, has awarded a sum of Rs.6,94,000/- (Rupees Six Lakhs and Ninety Four thousand only) and 50% of the said compensation was deducted towards Contributory Negligence and the petitioners/Appellants are entitled for a sum of Rs.3,47,000/- (Rupees Three Lakhs and Forty seven thousand only) against the claim of Rs.20,00,000/- (Rupees Twenty lakhs only).

4. Aggrieved over the said award, the claimants have preferred the present appeal for enhancement.

5. In the grounds of appeal, it has been stated that the tribunal has failed to consider to fix the monthly income of the deceased at Rs.15,000/- who was an electrician and also undergone training in Sri Ramakrishna I.T.C. It is also the grievance that the tribunal has not considered the future prospects of the deceased even on considering his age of only 24. It is further stated that in the absence of any scintillating evidence produced by the respondent to prove the fact of contributory negligence of the deceased due to three people riding a two wheeler, no negligence could be fastened on the deceased as enumerated in many judgments of the Apex Court. Further, the multiplier adopted by the tribunal for calculating loss of income and the amount awarded under the other heads are also very much aggrieved by the appellants. Hence this Appeal.

6. The appellant has contended that the petitioners 1 and 2 are the parents of the the 3rd petitioner who is the brother of the deceased Veeramani. It is further contended that when the deceased Veeramani was riding Bajaj Discover motor cycle along with his friends in the extreme left side of the road in Aalangadu Bye-pass road, at the time a TATA ACE load van bearing registration No.TN 51 AZ 1071 belongs to the first respondent, driven by its driver in a rash and negligent manner and dashed against motor cycle driven by the deceased Veeramani. The said Veeramani and the pillion riders were thrown away. It is argued by the appellant that the tribunal ought not to have given a finding fixing contributory negligence on the part of the deceased.

7. The learned counsel for the appellants has relied upon the judgment reported in 2004 (1) CTC 677 in the case of Kattabomman Transport Corporation Limited, Tirunelverli. Vs Vellai Duraichi and others.

"In the light of the said conclusion, we have carefully verified the factual details and the

ultimate decision arrived at in the first Division Bench decision, namely, *Tamil Nadu State Transport Corporation, Coimbatore Division v. Abdul Salam* (cites supra). As observed earlier, except stating that 3 persons travelled in a motor vehicle, which is prohibited, no specific finding was given to the effect that traveling of three persons in a motor cycle was responsible for the accident; hence we are of the view that the conclusion in 2003 I M.L.J. 489 is to be confined to that case. In other words, merely because there is violation of the provisions of the Act or Rules or the policy conditions, it is not automatic that in every case the principle of contributory negligence is to be applied mechanically."

8. On perusal of the order and also the argument advanced by the respondent, it is pertinent to read the Section 128 of the Motor Vehicles Act, which reads as follows:

(1) No driver of a two-wheeled Motorcycle shall carry more than one person in addition to himself on the Motorcycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the Motorcycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled Motorcycle and pillion riders thereon."

9. It is also pertinent to refer the decision of other Division Bench, namely, *M. Anandavalli Amma v. Arvind Eye Hospital* (2002-3 L.W. 710), in which it has been observed that "unless there is evidence to prove that the accident took place only because of such act that is taking/travelling more persons in a motor cycle which resulted in an accident, the owner of the other vehicle and its insurer will be liable to pay compensation."

10. Now, coming to the case on hand, the tribunal has observed that the offending vehicle has swerved sharply across the road. But the deceased who was entering the other side of the road turned north side. Hence, it is very clear that the deceased entered the wrong side of the road and lost his balance and caused the accident on his negligence. Hence, the argument

advanced by the appellant for claiming compensation by quoting the case law reported in 2004 (1) CTC 677 is not very much supported to the present case.

11. Hence, the finding of the tribunal that the deceased was carrying two passengers besides himself has definitely resulted in the head-on-collision and from the rough sketch, it can be seen that the deceased should have seen the vehicle coming from the opposite direction. Therefore, definitely there is an element of contributory negligence, especially in cases of head-on-collision" is very much proper and therefore, the contributory negligence fixed on the deceased does not require any interference.

12. However, with regard to the quantum, it is argued by the learned counsel for the appellants that the tribunal has not considered the age of the deceased for determining the loss of income and the multiplier taken is also not reasonable. On perusal of the details in the claim application, it is noted that the deceased was 24 years at the time of accident. The tribunal by considering the age of the deceased, has fixed the monthly income at Rs.4000/- after deducting 2/3 towards the person expenses is very much proper. While determining the multiplier, the tribunal has taken the multiplier according the age of the mother of the deceased, which is not reasonable. Hence the proper multiplier 18 is taken and calculated the loss of income without changing the monthly income fixed by the tribunal as discussed above as Rs.8,64,000/- (48,000x18=8,64,000). The tribunal has rightly awarded sum under the heads loss of love and affection and funeral expenses.

Accordingly, the sum modified by this Court as follows;

<i>Heads</i>	<i>sum awarded by the tribunal</i>	<i>sum modified by this Court</i>
Loss of Income	Rs. 6,24,000/-	Rs. 8,64,000
Loss of love and affection (Rs.20,000/- each)	Rs. 60,000/-	Rs. 60,000/-
Funeral expenses	Rs. 10,000/-	Rs. 10,000/-
Total	Rs. 6,94,000/-	Rs. 9,34,000/-

In view of the above, the following order is made;

(i). The compensation is enhanced to Rs. 9,34,000/- from Rs.6,94,000/-

(ii). The Civil Miscellaneous Appeal is partly allowed. No costs.

(iii). The finding of the Tribunal in respect of contributory negligence on the part of the claimants stands confirmed.

(iv). The claimants would be entitled to Rs. 4,67,000/- (50% of the compensation amount)

(v) The claimants shall pay the additional court fee for the enhanced award amount.

The 2nd respondent/Insurance Company is directed to deposit the 50% of enhanced compensation amount passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimant's bank account thro' RTGS within one week thereon. The rate of interest and apportionment shall carry the same as awarded by the tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The District Judge, (PCR)
Motor Accidents Claims Tribunal
Nagapattinam.

Copy To: The Section Officer, V.R.Section,
High Court of Madras

+1 cc to M/s.R.Kamalini, Advocate Sr.No.7527

+1 cc to Mr.J.Chandran, Advocate SR.No.7495

AKM/03.10.19/5P-5C /

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