

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.396 of 2014

1.S.Deivanai
2.Minor S.Sathishkumar
3.Minor Girakeshkumar @ Girakeshdharan
4.Kanjammal
Minor represented by their mother and
next friend The first Appellant S.Deivanai

...Appellants/Petitioners

.Vs.

1.S.Sagayaraj
2.The Branch Manager
National Insurance Company Limited
BO No.62 A, J.N Street,
Puducherry-605 001.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 27.02.2013 passed in MCOP.No.514 of 2011 on the file of the Motor Accident Claims Tribunal / Cuddalore I Additional District and Sessions Court, Cuddalore.

For Appellants : Mr.R.Reena

For Respondents : No appearance for R1 & R2

JUDGMENT

The appellants are the claimants in MCOP.No.514 of 2011 on the file of the I Additional District Judge / Motor Accident Claims Tribunal, Cuddalore. They filed the claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.25,00,000/- for the death of one Siva @ Sivalingam, husband of the 1st claimant and father of the claimants 2 and 3 and son of claimant No.4 in a road accident that took place on 27.06.2010.

2. The case of the claimants is that on 27.06.2010, at about 12.30 hours, when the deceased Siva @ Sivalingam was riding his TVS XL Super Moped bearing Registration No.PY-01-AV-4347 near 2nd Cross Street, Uthiranipet, a speeding Bajaj

Pulsar motor cycle bearing Registration No.PY-01-AX-1714 belonging to the 1st respondent and insured with the 2nd respondent hit the two-wheeler ridden by Siva @ Sivalingam, as a result of which, he sustained fatal injuries and died on the way to the hospital.

3. The learned I Additional District Judge / Motor Accident Claims Tribunal, after analysing the evidence on record awarded a compensation of Rs.6,62,500/- together with interest at 7.5% per annum to the claimants. However, the Tribunal reduced 50% of the compensation amount on account of contributory negligence on the part of the deceased Siva @ Sivalingam. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal.

4. Miss.R.Reena, learned counsel appearing for the appellants / claimants would contend that though the final report filed by the Villianur Traffic Police shows that the rider of the two-wheeler bearing Registration No.PY-01-AX-1714 was responsible for the accident, the Tribunal is not justified in fixing the contributory negligence on the part of the deceased and that too at 50%. She would further contend that Thiru.Murugan (PW2) who is an eyewitness to the occurrence had clearly spoken to about the rash and negligent riding of the motor cycle by the 1st respondent and the Tribunal has not considered the same before coming to a conclusion that the deceased was also equally responsible for the accident.

5. No appearance on behalf of the respondents.

6. A perusal of the copy of the FIR and the final report clearly shows that one Ramesh @ Govindasamy who drove the 1st respondent's vehicle was responsible for the accident and the Motor Vehicle Inspector's report also shows he was not having valid driving license on the date of accident. Therefore, he was charged for an offence punishable under Section 3 r/w 181 of Motor Vehicles Act 1988, apart from the charges under Sections 279 and 304(A) of Indian Penal Code.

7. The learned I Additional District Judge, Cuddalore, had concluded that since the rider of the two-wheeler bearing Registration No.PY- 01-AX-1714 (offending vehicle) was not possessed of a valid driving license on the date of accident, the Insurance Company should pay 50% of the Award amount (Rs.3,31,250/-) together with interest at 7.5% per annum to the claimants and then recover the same from the first respondent on the same cause of action.

8. The Tribunal mainly fixed contributory negligence on the part of the deceased on the premise that, had he been careful while driving his two-wheeler, he would have avoided the accident. When the evidence of eyewitness and the police reports clearly show that the rider of the two-wheeler bearing Registration No.PY-01-AX-1714 was responsible for the

accident and also he rode his vehicle without any valid driving license on the date of accident, the Tribunal should not have fixed the contributory negligence on the part of the deceased. There is nothing on record to show that the deceased rode his two-wheeler either with a high speed or rashly and negligently. Therefore, the Tribunal was wrong in fixing contributory negligence on the part of the deceased. As far as the quantum of the compensation is concerned, the Tribunal has fixed the monthly income of the deceased as Rs.4,500/-. The contention of the claimants is that the deceased was aged 35 years and was earning Rs.25,000/- per month as a Building Contractor and employee of Ponds Company, Pondicherry. However, no proof is filed before the Tribunal to show the actual income received by the deceased. However, he was aged 35 years on the date of accident and he would have definitely earned a minimum sum of Rs.7,500/- per month. Since there are four claimants, 1/4th is deducted towards personal expenses of the deceased. The Tribunal did not also add future prospects to the income of the deceased. As per the decision rendered in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601 (SC), since the deceased was a self-employee, 40% should be added to future prospects. The proper multiplier to be adopted in the instant case is 16 as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,500/-
40% Future Prospects = Rs.3,000/-
Total = Rs.7,500/- + Rs.3,000/- = Rs.10,500/-
After 1/4th deduction = Rs.7875/-

Loss of dependency:

= Rs.7875/- x 12 x 16
= Rs.15,12,000/-

9. 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. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.15,12,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.15,82,000/-

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,31,250/- to Rs.15,82,000/-.

11. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.3,31,250/- to Rs.15,82,000/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent, National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.15,82,000/- (less the amount already deposited) 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.514 of 2011 on the file of the Motor Accident Claims Tribunal / I Additional District Court, Cuddalore within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the apportionment made by the Tribunal and after following due process of law.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The I Additional District and Sessions Judge,
The Motor Accidents Claims Tribunal,
The I Additional District Court,
Cuddalore.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.M.Malar, Advocate, S.R.No. 78830

CMA.No.396 of 2014

EV(CO)
GN(31/12/2019)