

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.542 of 2014

1. J.Sujitha
2. J.Vikram
3. J.Kishore
4. J.Jaikumar

.... Appellants / Petitioners

Vs.

1. Jaiganesh

2. National Insurance Co. Ltd.,
Leather Centre, II Floor,
No.35, Muthaiah, Periamet,
Chennai - 600 003.

.... Respondents / Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 26.12.2011 made in M.C.O.P.No.2365 of 2010 on the file of Motor Accident Claims Tribunal (Additional District and Sessions Judge), IV Fast Tract Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mrs.N.B.Surekha

R1-Served
No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 26.12.2011 made in M.C.O.P.No.2365 of 2010 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge (IV Fast Tract Court), Chennai.

2. The case of the appellants are that on 18.06.2009 at about 12.30 p.m., Mr.Jothi (deceased) who is the husband of the first appellant and father of the other appellants was travelling as passenger in Radhi Meena Bus bearing Registration No.PY-01-AP-4999 from Chennai to Thirukadaiyur, and the bus was stopped on ECR Road, Opposite to a hotel. At the time, when the Jothi was passing urine at the edge of the road, a private SVT

AIR bus bearing Registration No.TN-50-E-9555 driven in high speed in a rash and negligent manner, hit against him. In spite of the best treatment given, he died on 25.06.2009 at Government General Hospital. This accident occurred only due to rash and negligent driving of the first respondent's bus driver. Therefore, the wife and children of the deceased have filed a Claim Petition under Section 166 of Motor Vehicles Act, before the Motor Accident Claims Tribunal (Additional District and Sessions Judge), IV Fast Tract Court, Chennai, claiming Rs.6,00,000/- as compensation under various heads.

3. The respondents were absent during the trial and therefore, they were set exparte before the Tribunal. On the side of the claimants, the first petitioner herself examined as P.W.1 and filed the following documents i.e. Exs.P1 to P12.

- Ex.P1 : Copy of the F.I.R.
- Ex.P2 : Discharge slip issued by Pondicherry Government Hospital
- Ex.P3 : Discharge summary issued by Miot Hospital
- Ex.P4 : Discharge summary issued by Chettinadu Hospital
- Ex.P5 : Burial ground report
- Ex.P6 : Death Certificate of deceased Jothi
- Ex.P7 : Legal Heir Certificate
- Ex.P8 : Postmortem Report
- Ex.P9 : Sketch
- Ex.P10 : Charge Sheet
- Ex.P11 : Salary Certificate
- Ex.P12 : Xerox copy of the Ration card

One Mr.K.Sureshbabu was examined as P.W.2 on the side of the claimants. There was no oral or documentary evidence let in on the side of the respondents.

4. The Motor Accident Claims Tribunal, based on the evidence of the Suresh Babu who travelled with deceased Jothi, has come to the conclusion that the accident occurred only due to rash and negligent driving of the first respondent's SVT Air bus driver. After considering the oral and documentary evidence, the Tribunal has allowed the Claim Petition and awarded a sum of Rs.1,72,000/- as compensation to the claimants, including Funeral Expenses, Loss of Consortium and Loss of Estate. Aggrieved by the award, the appellants/claimants have filed this appeal before this Court.

5. The learned counsel for the appellants would submit that though proper evidences have been produced to prove that the deceased was earning Rs.4,800/- per month, the Tribunal has fixed the monthly income of the deceased as just Rs.4,000/-. Hence, it should be increased to atleast Rs.4,500/- per month.

6. It is seen from the materials on record that a salary certificate has been issued by authorised signatory of Bharat Marine Company stating that the deceased was given a salary of Rs.4,800/- per month. Considering the same, the monthly income of the deceased fixed by the Tribunal is increased by Rs.500/-. Accordingly, the income is fixed as Rs.4,500/- per month.

7. As per the case Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298, the deductions towards personal expenses of the deceased to be taken as 1/4 as the number of dependants are 4, and the multiplier to be adopted as 7 as the deceased was aged 62 years at the time of accident, whereas, the Tribunal has deducted 1/3 towards personal expenses and taken the multiplier as 5. The Tribunal has not awarded any amount towards Loss of Love and Affection, and the amount awarded towards Funeral Expenses, Loss of Consortium and Loss of Affection is also a meagre.

8. For the aforesaid reasons, this Court is of the considered view that the Award passed by the Tribunal shall be modified in the following manner :

Income to be taken	- Rs.4,500/-
Deductions of 1/4 share for personal expenses of the deceased (4500-1125/-)	- Rs.3375/-
Loss of Income of the claimants (3375x12x7)	- Rs.2,83,500/-
Funeral Expenses	- Rs.10,000/-
Loss of Consortium	- Rs.40,000/-
Loss of Estate	- Rs.10,000/-
Loss of Love and Affection	- Rs.10,000/-
	- Rs.3,53,500/-

9. This Court is of the considered view that Rs.3,53,500/- shall be awarded to the Appellants instead of Rs.1,72,000/- awarded by the Tribunal under the impugned Award. Since the Appellants have paid Court fee only for Rs.1,72,000/- in this appeal, this Court directs the the Appellants to pay the Court fee for the balance amount of Rs.1,81,500/- (Rs.3,53,500-Rs.1,72,000/-), which the Registry shall collect before drafting the decree.

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,72,000/- is hereby enhanced to Rs.3,53,500/- with interest

at the rate of 6% per annum from the date of petition till the date of deposit. The respondent insurance company is directed to deposit the enhanced award amount to the Credit of M.C.O.P.No.2365 of 2010 on the file of Motor Accident Claims Tribunal (Additional District and Sessions Judge), IV Fast Tract Court, Chennai, along with interest and costs as determined by this Court, 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 being made, the appellants are permitted to withdraw the said amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

raja

To

- 1) The Motor Accident Claims Tribunal
(Additional District and Sessions Judge),
IV Fast Tract Court, Chennai.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.N.B.Surekha, Advocate, S.R.No.51386

+1 cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.50422

C.M.A.No.542 of 2014

RSV(CO)
SSM(25/09/2019).

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