

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.616 of 2014

1. Bakthavachalam

2. B.Nirmala ... Appellants/Petitioner

Vs.

1. M/s Veram Tradings,
No.6/36, Ganga Avenue
Perumal Koil Street, Alapakkam,
Chennai - 16

2. Royal Sundaram Alliance Insurance Co., Ltd.,
No.1, Club House Road,
2nd Floor, Annasalai,
Chennai - 600 002 ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Decree and Judgment dated 05.11.2013 made in M.C.O.P.No.811 of 2012 on the file of the Motor Accident Claims Tribunal (III Additional District Court), Poonamallee to enhance the amount.

For Appellants : Mr.A.Radha Kamaraj

For R2 : Mr.N.Vijayaraghavan

R1 - Served
No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the Award dated 05.11.2013 passed in M.C.O.P.No.811 of 2012 by the Motor Accident Claims Tribunal (III Additional District Judge), Poonamallee.

2. It is the case of the appellants that on 14.11.2011 at about 10.00 a.m., while the deceased, who is the son of the appellants was riding his motor cycle bearing registration No.TN 20 BB 4852 towards Thiruvallur on Thiruvallur-Thiruthani

Road, after crossing Thirupachur, a tanker lorry bearing Regn. No.TN 20 BS 7916 came in a rash and negligent manner on the same direction and hit the motor cycle and thereby caused fatal injuries. At the time of accident, he was not married and he was working as a Sales Supervisor in a medical shop and was earning Rs.10,000/- (+ 1,000/- allowance) =Rs.11,000/- per month. Since he died in the accident, his parents, appellants herein, have filed a Claim Petition before the Motor Accident Claims Tribunal (III Additional District Judge, Poonamallee), Chennai, against the owner and insurer of the vehicle, respondents herein, claiming Rs.13,00,000/- as compensation.

3. Denying the allegations of the appellants/claimants, the second respondent insurance company filed a counter affidavit before the Tribunal, submitting that the accident happened only due to the negligent driving of the deceased. The deceased tried to overtake the insured vehicle on a curve and invited the accident. The age, dependency, place, date and time of accident are denied. Hence, sought for dismissal of the petition with costs.

4. During the trial before the Tribunal, on the side of the claimants, Bakthavachalam was examined as P.W.1, Ashok, who is working in the medical shop along with deceased was examined as P.W.2. Arinath, who is the eyewitness to the accident was examined as P.W.3 and the following documents were marked.

Ex.P1 : Copy of FIR
Ex.P2 : Copy of Postmortem Certificate
Ex.P3 : Copy of Legal Heir Certificate
Ex.P4 : Salary certificate
Ex.P5 : Copy of Driving License Driver of 1st respondent
Ex.P6 : Copy of Policy
Ex.P7 : Driving License Copy
Ex.P8 : Shop Registration Certificate
Ex.P9 : Salary Disbursement Particulars

None was examined on behalf of the respondents and no documents were marked on their side.

5. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded Rs.5,30,000/- as compensation to the claimants. Aggrieved by the award, the claimants have filed this appeal before this Court.

6. On perusal of the award 05.11.2013 passed by the Motor Accident Claims Tribunal (III Additional District Judge), Poonamallee, it is seen that based on the eye-witness of P.W.3,

which corroborates with P.W.2 and Ex.P.1, F.I.R., the Tribunal has come to the conclusion that the accident happened only due to the rash and negligent driving of the 1st respondent's driver and to contradict the same there is no oral or documentary evidence were marked on the side of the respondents. It is further seen that the Monthly Income Certificate of the deceased in the letter pad has been placed before the Tribunal to prove the income of the deceased and though the Tribunal has not accepted the same, however, has fixed the monthly income of the deceased as Rs.7,500/-. Since the deceased was a bachelor at the time of accident, the Tribunal has deducted 50% of the income i.e. Rs.3,750 for personal expenses of the deceased and 50% of the income for family expenses of the deceased.

7. As per the case of Sarla Verma and others vs Delhi Transport Corporation and another reported in 2009 ACJ 1298, the multiple to be adopted as 17, as the deceased was aged 29 years at the time of accident, whereas, the Tribunal has taken the multiplier as 11 in the impugned Award. The Tribunal erred in not awarding any amount towards future prospects and towards Loss of Estate. Insofar as the amounts awarded by the Tribunal under other heads, viz., for transportation and funeral expenses and loss of love and affection, remain unaltered.

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 as taken by the Tribunal	- Rs.7,500/-
Adding future prospects	- 40%
Income [7,500+3,000]	- Rs.10,500/-

Deductions of 50% for personal expenses
of the deceased (10500-5250x12x17) - Rs.10,71,000/-

For Transportation and
funeral expenses - Rs. 15,000/-

Loss of Love and Affection
- Rs. 20,000/-

Loss of Estate - Rs. 15,000/-

TOTAL Rs.11,21,000/-

9. This Court is of the considered view that Rs.11,21,000/- shall be awarded to the Appellants instead of Rs.5,30,000/-

awarded by the Tribunal under the impugned Award. This Court directs the Appellants to pay the Court fee for the enhanced amount (if not already paid) which the Registry shall collect before drafting the decree.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,30,000/- is hereby enhanced to Rs.11,21,000/- with interest at the rate of 6% per annum from the date of petition till the date of deposit. The 1st and 2nd respondents are jointly or severally directed to deposit the enhanced award amount to the Credit of M.C.O.P.No.811 of 2012 on the file of the Motor Accident Claims Tribunal (III Additional District Court), Poonamallee, 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 amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

ssd
To

1. Motor Accident Claims Tribunal
(III Additional District Court),
Poonamallee
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

+1 cc to Mr.P.Selvaraj Advocate sr64480
+1 cc to Mr.N.Vijayaraghavan Advocate sr65171

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