

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :26.08.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.757 of 2014

1. Karpagavalli
 2. Minor Brabu
 3. Minor Sathish Kumar
 4. Minor Aswini
- Appellants/Petitioners
(2 to 4 minors rep by NF & Mother Karpagavalli)

Vs.

1. Sri Devi Bus Transport,
No.20, Bharathi nagar,
Krishnagiri Main Road,
Hosur Town & Taluk,
Krishnagiri District
 2. The Oriental Insurance Co., Ltd,
Branch Office,
Siddaveerappa Chetty Street,
Dharmapuri town,
Dharmapuri Taluk and District
 3. Krishnaswamy
 4. The National Insurance Co., Ltd.,
Branch Office,
No.9, Jerom Building, 1st Floor,
Fort Station Road,
Thiruchirapalli Town,
Tiruchirapalli Taluk & District
- Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Decree and Judgment dated 29.07.2011 made in M.C.O.P.No.461 of 2009 on the file of the Learned Principal District Judge cum Motor Accident Claims Tribunal, Dharmapuri to enhance the amount.

For Appellants : Mr.M.Selvam

For R2 : Mr.S.Arunkumar
R1, R3 and R4 - Served
No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the Award dated 29.07.2011 passed in M.C.O.P.No. 461 of 2009 by the Learned Principal District Judge cum Motor Accident Claims Tribunal, Dharmapuri.

2. It is the case of the appellants that on 13.07.2008, the deceased Ramesh, [who is the husband of the 1st appellant and father of appellants 2 to 4] was travelling in a bus bearing registration No.TN 29 H 7349. When the said bus was reaching near Desathumariamman Kovil, on the opposite direction, one lorry bearing registration no.TN 45 Y 2639 was driven by its

driver in a rash and negligent manner and dashed against each other and due to head on collision of two vehicles, the said Ramesh had sustained fatal injuries all over his body. At the time of accident, he was aged 35 years, working as a Boiler Incharge in overseas Garments Private Ltd., and earning Rs.10,000/- per month. Since he died in the accident, his dependents, viz., wife and children, appellants herein, have filed a Claim Petition before the Learned Principal District Judge cum Motor Accident Claims Tribunal, Dharmapuri, against the owners of the lorry and bus and insurers of the lorry and bus / respondents herein, claiming Rs.40,00,000/- as compensation.

3. Denying the allegations of the appellants/claimants, the second respondent / Insurer company of the bus filed a counter affidavit before the Tribunal, stating that the accident happened only due to the rash and negligent driving of the lorry and that the driver of the bus drove the bus very slowly and therefore, 3rd respondent / driver of the lorry and 4th respondent / Insurer of the lorry is alone liable to pay the compensation to the appellants. However, he pleaded that the driver of the lorry did not possess valid driving licence at the time of accident. Hence, sought for dismissal of the petition with costs.

4. Per contra, the 4th respondent / Insurance company of the lorry, before the Tribunal, by way of counter, contended that due to over speed of the bus driver only, the accident had happened and that the 4th respondent is not at all liable to pay the compensation to the appellants and that there is no eye witness to the occurrence to establish this aspect, hence pleaded to dismiss the petition.

5. During the trial before the Tribunal, on the side of the claimants, Karpagavalli was examined as P.W.1, Anbu, who is the eye witness to the accident was examined as P.W.2 and he was

doing agricultural activities in the land and one Kausalaya, who is also an eye witness was examined as P.W.4. One Narayanasamy 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 MVI report
- Ex.P4 : Copy of MVI report lorry
- Ex.P5 : Copy of insurance police (Bus)
- Ex.P6 : Copy of insurance Policy(lorry)
- Ex.P7 : Copy of death certificate
- Ex.P8 : Copy of Legal Heir Certificate
- Ex.P9 : Original Identity card
- Ex.P.10 : Salary Certificate
- Ex.P.11 : Original Wound Certificate
- Ex.P.12 : Medical Bills

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

6. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded Rs.7,50,000/- as compensation to the claimants. Aggrieved by the award, the claimants have filed the present appeal before this Court.

7. On a perusal of the award dated 29.07.2011 made in M.C.O.P.No.461 of 2009 passed by the Learned Principal District Judge cum Motor Accident Claims Tribunal, Dharmapuri, it is seen that based on the evidences of eye-witness, viz., P.W.2 (in chief as well as cross), which corroborates with P.W.4 [another eye witness] and Ex.P.1, F.I.R., the Tribunal has come to the conclusion that the accident had happened due to the rash and negligent driving of the 1st respondent's driver as well as 3rd respondent's driver and to contradict the same there is no oral or documentary evidence were marked on the side of the respondents. Therefore, the Tribunal rightly concluded that the respondents 1 to 4 are jointly and severally liable to pay the compensation to the appellants. It is further seen that taking shelter of Ex.A.2, Postmortem certificate, Tribunal has fixed the age of the deceased as '35' and to disprove this aspect, the respondents have not adduced any rebuttal evidence.

8. On a perusal of the award dated 29.07.2011, it is further seen that the Tribunal has fixed the monthly income of the deceased as Rs.5,000/- which is not acceptable by this Court because of the reason the Tribunal has not considered the Original Identity Card of the deceased, which is marked as Ex.P.9 and a perusal of the same shows that the deceased was working as Boiler Incharge, further, the Tribunal erred in not taking into account the salary certificate, which is marked as Ex.A.10 and on perusal of the same, it shows that the deceased

was getting a salary of Rs.10,000/- and to contradict the same, no evidences were produced on behalf of the respondents. Therefore, this Court is of the view by taking note of the fact that even a vegetable vendor could earn Rs.6,500/- per month, the deceased, who was working as Boiler incharge, could have earned Rs.10,000/- as salary per month. The same was proved by the appellants by way of salary certificate issued by the Company and that there is no contradictory evidence produced on behalf of the respondents to disprove the same. Hence, the Tribunal ought to have fixed higher amount towards monthly income. Further, when the document, viz., salary certificate produced by the appellants was not proved as a bogus document by the respondents, this Court taking into account Ex.A.10, salary certificate, hereby fixes the monthly income of the deceased as Rs.7,500/-. Also, it is seen that no amount was awarded by the Tribunal towards future prospects and 40% is hereby awarded towards future prospects. Since the deceased was married at the time of accident, the Tribunal has rightly deducted 1/4th of the income for personal expenses of the deceased and balance 3/4th of the income was awarded for family expenses of the deceased.

9. Insofar as the amounts awarded by the Tribunal under the other heads, viz., Loss of consortium, loss of love and affection, funeral expenses and transport expenses remain unaltered.

10. 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 fixed by this Court	- Rs.7,500/-
Adding future prospects	- 40%
Income	- Rs.10,500/-
Deductions of 1/4 th for personal expenses of the deceased (10500-2625x12x16)	- Rs.15,12,000/-
Loss of consortium to the 1 st Appellant	- Rs.5,000/-
Loss of Love and affection for the Appellants 2 to 4 (each Rs.5,000)	- Rs.15,000/-
For Transportation	- Rs.5,000/-
For Funeral Expenses	- Rs.5,000/-
	Rs.15,42,000/-

11. This Court is of the considered view that Rs.15,42,000/- shall be awarded to the Appellants instead of Rs.7,50,000/- 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.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,50,000/- is hereby enhanced to Rs.15,42,000/- with interest at the rate of 6% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly or severally directed to deposit 50% of the enhanced award amount and the respondents 3 and 4 are jointly or severally directed to deposit 50% of the enhanced award amount to the Credit of M.C.O.P.No.461 of 2009 on the file of the Learned Principal District Judge cum Motor Accident Claims Tribunal, Dharmapuri, 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, as per the apportionment made by the Tribunal less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1.The Pirnicpal District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Selvam, Advocate SR.73310

C.M.A.No.757 of 2014

EV(CO)
CB(01/11/2019)