

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 4772 of 2019

1.M. Amutha
2.M. Udayakumar
3.M. Thanikasalam
4.Minor M. Vijaya Lakshmi
5.Padmavathy ... Appellants/Claimants

(4th appellant rep. By her mother, 1st appellant)

Vs.

1.G. Murugaiye
2.United India Insurance Co. Ltd.,
Motor Third Party Claims HUB,
Silingi Building, 4th Floor,
No. 134, Greams Road,
Chennai 600 006. ... Respondents/Respondents

(R1 remained exparte before the
Tribunal. Hence, notice is dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 15.02.2019, made in M.C.O.P.No.8022 of 2013, on the file of the II Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellants : M/s. A. Subadra

For Respondents: Mr. D. Bhaskaran (for R2)

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J U D G M E N T

This appeal has been filed against the award dated 15.02.2019, made in M.C.O.P.No.8022 of 2013, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellants are the claimants in M.C.O.P.No.8022 of

2013, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. They filed the said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one Mohan, who died in the accident that took place on 11.10.2013.

3. According to the appellants, on the date of accident, while the deceased was walking along the East to West direction at Thirutheri Pillaiyar Koil, the driver of the TATA Ace bearing Registration No. TN-22-BH-0637, belonging to the 1st respondent came in a rash and negligent manner and dashed against the deceased and caused the accident. The deceased succumbed to injuries. FIR was also registered against the driver of the TATA Ace belonging to the 1st respondent. The deceased was aged 42 years at the time of accident and working as a Mason and was earning a sum of Rs.16,500/- per month. As the accident occurred due to rash and negligent driving by the driver of the TATA Ace vehicle, the appellants as dependents of the deceased, filed claim petition against the respondents.

4. The 1st respondent remained ex-parte before the Tribunal.

5. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made in the claim petition. They deny the involvement of the TATA Ace vehicle in the accident. According to the 2nd respondent, the FIR was lodged belatedly with an ulterior motive to get compensation and the accident has occurred solely due to negligence on the part of the deceased. In any event, the total compensation claimed by the appellants is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined 4 witnesses as P.W.1 to P.W.4 and marked 9 documents as Exs.P1 to P9. The respondents did not let in any oral evidence, but marked one document as Ex.R1.

7. The Tribunal, considering the pleadings, oral and documentary evidence, fixed 75% negligence on the part of the driver of the TATA Ace vehicle belonging to the 1st respondent and 25% contributory negligence on the part of the deceased and directed the 2nd respondent-Insurance Company to pay a sum of Rs.15,85,000/- as compensation to the appellants.

8. Challenging the portion of the award dated 15.02.2019, made in M.C.O.P.No.8022 of 2013 fixing 25% contributory negligence on the part of the deceased and seeking to enhance the compensation awarded by the Tribunal, the appellants have come out with the present appeal.

9. Learned counsel appearing for the appellants contended

that the Tribunal erred in fixing 25% contributory negligence on the part of the deceased without properly appreciating the evidence of P.W.1 and P.W.2. There is no evidence to show the height of the centre median. The Tribunal erred in fixing 25% contributory negligence only on the ground that the deceased jumped centre median. The deceased was working as a Mason and was earning a sum of Rs.650/- per day. The appellants have examined Secretary of RMS Building Labour and Unorganized Labour Welfare Union as P.W.3 to prove that the deceased was a member of the said Union and earned Rs.650/- per day. The Tribunal erred in holding that Ex.P9 is a fabricated document and erred in fixing meagre sum of Rs.12,000/- per month as the notional income. The deceased was aged 42 years at the time of accident, but the Tribunal erred in fixing the age of the deceased as 45 years. The amounts awarded by the Tribunal towards loss of dependency, future prospects, loss of estate, loss of consortium, funeral expenses and loss of love and affection are meagre and prayed for enhancement of the compensation.

10.Per contra, Mr.D. Bhaskaran, learned counsel takes notice for the 2nd respondent-Insurance Company and contended that the deceased jumped over the centre median at the place which is not meant for crossing over and contributed negligence to the accident. The Tribunal considering the same, has rightly fixed 25% negligence on the part of the deceased and fixed 75% negligence on the part of the driver of the TATA Ace vehicle belonging to the 1st respondent for his rash and negligent driving. The Tribunal has rightly held that Ex.P9 - series of receipts for paying donations, is a fabricated document, since they are all continuous in serial number. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.12,000/- per month as notional income of the deceased and awarded just compensation towards pecuniary loss. In any event, the total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

12.It is the contention of the appellants that the accident has occurred due to rash and negligent driving by the driver of the TATA Ace belonging to the 1st respondent. On the other hand, it is the contention of the 2nd respondent that only the deceased invited the accident and driver of the TATA Ace belonging to the 1st respondent is not responsible for the accident. To substantiate their case, the appellants examined P.W.2, eye-witness. Ex.P1 - FIR was registered against the driver of the TATA Ace. In the cross-examination by the 2nd respondent-Insurance Company, P.W.2 admitted that the deceased jumped over

the centre median and there was no gap for crossing the road. Subsequently, the appellants re-called P.W.2 and he retracted his admission in the cross-examination. The Tribunal rejected the retraction of P.W.2 and based on the admission of P.W.2 that the deceased jumped over the centre median where there was no gap, fixed 25% contributory negligence on the part of the deceased. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as the quantum of compensation is concerned, the appellants have contended that the deceased was working as a Mason and was earning a sum of Rs.650/- per day. To prove the same, they have examined P.W.3 - Secretary of RMS Building Labour and Unorganized Labour Welfare Union, who deposed that the deceased was a member of the said Union and has paid Rs.100/- every month to the Union. To substantiate the said contention, the appellants have produced Ex.P9, series of receipts for paying donations to the Union. Ex.P9 are receipts bearing Serial Nos. 876 to 884 for donation being paid by the deceased from January 2013 to September 2013. The Tribunal considering the serial numbers of the receipts which are continuous in numbers and issued on the same day and other members have not paid any donation during that time, rejected Ex.P9, holding that the same is a fabricated document. The said finding is based on valid reason. The Tribunal considering the date of accident and age of the deceased, fixed the notional income at Rs.12,000/- per month. The accident is of the year 2013. The monthly income fixed by the Tribunal is not meagre. The learned counsel appearing for the appellants contended that the deceased was 42 years at the time of accident. The Tribunal considering the death certificate, fixed the age of the deceased as 45 years. According to the learned counsel for the appellant, the Tribunal has not adopted the correct multiplier. The said contention is not correct as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]. Whether the deceased was aged 42 years or 45 years, the multiplier applicable is only '14'. The Tribunal has granted 25% enhancement towards future prospects and granted compensation for loss of income. There are 5 dependants of the deceased. The contention of the learned counsel for the appellants that the Tribunal erred in deducting 1/4th towards personal expenses of the deceased when there are six dependants is not correct. From the claim petition as well as the present appeal, it is seen that there are only 5 claimants. Therefore, the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. The amounts awarded by the Tribunal under conventional heads are not meagre, but just compensation, which does not warrant interference by this Court.

14. In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.15,85,000/- along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.8022 of 2013. On such deposit, the appellants 1 to 3 & 5th appellant are permitted to withdraw their respective shares of the award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 4th appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 4th appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 4th appellant. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

gsa

Copy To

1. The II Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 106412

C.M.A.No. 4772 of 2019

SV (CO)
GN (25/08/2020)