

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3134 of 2018

1.S.Suseela
2.S.Maduvanthi
3.Minor.S.Abisekkumar
(Minor rep.by his Guardian and
Mother S.Suseela)
4.Karuppathal ... Appellants/Petitioners

Vs.

1.V.Sachithanantha Ganesan
2.M/s.IFFCO-TOKIO General
Insurance Co.Ltd.,
202/24, J.H.Towers,
2nd Floor, L.I.C.Colony Road,
Salem - 4. ... Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.12.2017 made in M.C.O.P.No.294 of 2016 on the file of the Motor Accident Claims Tribunal, (Special District Court), Salem.

For Appellants : Mr.K.Varadhakamaraj

For Respondent : Ms.K.Saraswathi
No.2 for Ms.C.R.Krishnamoorthy

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 08.12.2017 made in M.C.O.P.No.294 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Court), Salem.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellants are the claimants in M.C.O.P.No. 294 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Court), Salem. They have filed the above claim petition

claiming a sum of Rs.35,00,000/- as compensation for the death of one Selvaraj, who died in the accident that took place on 27.09.2015. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving on the part of the driver of the motor cycle belonging to the first respondent and fixed 10% of contributing negligence on the part of the deceased and directed the second respondent to pay 90% of amount awarded by the Tribunal as compensation to the appellants.

4.Challenging the award passed by the Tribunal fixing 10% contributing negligence on the part of the deceased and for enhancement of compensation, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing 10% negligence on the part of the deceased for not having driving licence. When there is no negligent driving by the deceased, 10% negligence fixed on the deceased has to be set aside. The Tribunal erred in fixing notional income of the deceased at Rs.10,000/- per month, when the appellants have produced documentary evidence to prove that the deceased was earning a sum of Rs.15,000/- per month by examining PW.2 and marking Ex.P.20 series. The amounts awarded by the Tribunal for loss of consortium, funeral expenses and loss of estate are meagre. The Tribunal has not awarded any amount for loss of love and affection and prayed for enhancement of compensation and setting aside 10% contributing negligence fixed on the part of the deceased.

6.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellants have failed to prove the avocation and income of the deceased by acceptable evidence. PW.2's evidence and documents filed by the appellants did not substantiate the contention of the appellants with regard to the income of the deceased. The deceased did not possess driving licence at the time of accident and the Tribunal rightly held that the deceased contributed 10% negligence and the amounts awarded by the Tribunal are excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused the materials

8.From the materials available on record, it is seen that the appellants have claimed that the deceased was working as Manager in Hotel Classic Towers and was earning a sum of Rs.15,000/- per month, PW.2 deposed to that effect and marked documents. In the cross-examination, he admitted that he did not

know the nature of work done by the deceased and that, in the attendance Register maintained by the Hotel, the deceased signature was not found. In view of the same, the Tribunal rejected the evidence of PW.2. In Ex.P4, it was mentioned as the deceased was working as General Manager in Hotel Classic Tower. Considering Ex.P4, the Tribunal fixed notional income of the deceased at Rs.10,000/- per month. When the accident had occurred on 27.09.2015, the amount fixed by the Tribunal as notional income of the deceased at Rs.10,000/- is meagre and the same is enhanced to Rs.12,000/-. The amount awarded towards future prospects by the Tribunal, i.e. Rs.1000/- is also enhanced to Rs.1200/-. In view of the same, the amount awarded by the Tribunal for loss of income is modified as follows:

Rs.12,000/- +1200/- (10% of 12000) x 12 x 11 x 3/4 =13,06,800/-

Following the judgment of the Hon'ble Apex Court reported in National Insurance Company V. Pranay Sethi reported in 2017 (2) TNMAC 609 (SC), the Tribunal has awarded amounts under different heads, which are not meagre. Hence, the appellants are not entitled to get any enhancement under the other heads.

9.As far as 10% of contributory negligence fixed on the part of the deceased is concerned, from the materials available on record, there was no pleading with regard to the deceased for not possessing driving licence at the time of accident. In the absence of any pleadings, the Tribunal erred in holding that the appellants failed to prove that the deceased was possessing driving license and fixed 10% contributory negligence on the part of the deceased. The said finding is erroneous and the same is set aside. The appellants are entitled to get entire compensation amount and the second respondent/Insurance company is directed to pay the entire compensation amount to the appellants which as modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income & future prospects and less the 10% contributory negligence	9,80,100/-	13,06,800/-	enhanced
2.	Funeral expenses	15,000/-	15,000/-	confirmed

3.	Loss of estate	15,000	15,000	confirmed
4.	Loss of Consortium	40,000	40,000	confirmed
5.	Medical Bills as per Ex.12	9,28,172/-	9,28,172/-	confirmed
	Total	19,78,272/-	23,04,972/-	Enhanced by Rs.3,26,700/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,78,272/- is hereby enhanced to Rs.23,04,972/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants 1,2 and 4/claimants 1,2 and 4 are permitted to withdraw their respective share as per the apportionment made by the Tribunal, less the amount, if any already withdrawn. The share amount of the minor/third appellant is directed to be deposited in any one of the nationalised bank until she attains majority. The first claimant/first appellant/mother is permitted to withdraw the accrued interest once in three months. No costs.

Sd/-

Assistant Registrar (Insp.cell)

//True copy//

Sub Assistant Registrar

sms/rpl

To

The Special District Judge,
The Motor Accidents Claims Tribunal, Salem.

+1cc to Mr.C.R.Krishnamoorthy, Advocate SR.No.3727

+1cc to Mr.R.Thirunavukkarasu, Advocate SR.No.3744

C.M.A.No.3134 of 2018

VSN II (CO)

GMV (29/05/2019)