

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2450 of 2007
and Cross Objection No. 28 of 2019

C.M.A. No. 2450 of 2007

1.S. Umadevi
2.The Oriental Insurance Co. Ltd.,
Andhrapradesh. ... Appellants /2nd & 3rd
Respondents

Vs.

1.R. Ranganayakar
2.R. Rangammal
3.R. Jeyammal
4.Minor R. Rajendran
5.Minor Rangaraj
6.Minor Roja ...1 to 6 Respondents/
Claimants
7.S. Narasimha ...7th Respondents/1st Respondent
(Minor respondents 4 to 6 are rep. By their
next friend and mother, 3rd respondent)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.03.2003, made in M.C.O.P. No. 332 of 2001, on the file of the Sub Court, (Motor Accident Claims Tribunal), Bhavani.

For Appellants : Mr. S. Arunkumar

For Respondents : No appearance (For R1)

Mr. Ma.P. Thangavel (For R2 to R6)
R7-Exparte

Cross Objection No. 28 of 2019

R. Ranganayakar (Died)
1.R. Rangammal
2.R. Jeyammal
3.Minor R. Rajendran
4.Minor Rangaraj
5.Minor Roja
(Minor respondents 3 to 5 are rep. By their
next friend and mother, 2nd respondent) .. Cross objectors

Vs.

1.S. Umadevi
2.The Oriental Insurance Co. Ltd.,
Andhrapradesh.
3.S. Narasimha

.. Respondents

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C to enhance the award granted by the Judgment and Decree dated 21.03.2003, made in M.C.O.P. No. 332 of 2001, on the file of the Sub Court, (Motor Accident Claims Tribunal), Bhavani.

For Cross objectors: Mr. Ma.P. Thangavel

For Respondents : Mr. S. Arunkumar (For R1 & R2)

C O M M O N J U D G M E N T

C.M.A. No. 2450 of 2007 is filed against the award dated 21.03.2003, made in M.C.O.P. No. 332 of 2001, on the file of the Sub Court, (Motor Accident Claims Tribunal), Bhavani.

Cross Objection No. 28 of 2019 is filed seeking enhancement of the compensation granted by the award dated 21.03.2003, made in M.C.O.P. No. 332 of 2001, on the file of the Sub Court, (Motor Accident Claims Tribunal), Bhavani.

2.The appellants are the respondents 2 and 3 in M.C.O.P. No. 332 of 2001, on the file of the Sub Court, (Motor Accident Claims Tribunal), Bhavani. The respondents 1 to 6 who are the claimants filed the said claim petition, claiming a sum of Rs.14,00,000/- as compensation for the death of one R. Radha, who died in the accident that took place on 03.05.2001.

3.According to the respondents 1 to 6, on 03.05.2001, at about 00.30 hours, while the deceased was travelling as Conductor of the Transport Corporation Bus bearing Registration No. TN-33-N-0887 from Coimbatore to Erode, the 7th respondent, driver of the Lorry bearing Registration No. PY-04-3434 belonging to the 1st appellant, coming from East towards West in a rash and negligent manner, dashed against the Bus in which the deceased travelled. Due to the said impact, the passengers in the said Bus sustained multiple grievous injuries and the deceased succumbed to injuries. The respondents 1 to 6 who are the parents, wife and children of the deceased filed the claim petition, claiming compensation against the appellants, as owner and insurer of the Lorry respectively and 7th respondent as driver of the Lorry.

4.The 1st appellant and 7th respondent remained exparte before the Tribunal.

5.The 2nd appellant- Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 6 in the claim petition. According to the 2nd appellant, the accident occurred involving two vehicles viz., the Transport Corporation Bus and Lorry belonging to the 1st appellant. The claim petition is bad for non-joinder of the owner and driver of the Transport Corporation Bus. The accident occurred due to contributory negligence of the driver of the Bus in which the deceased travelled. The 7th respondent, driver of the Lorry did not possess valid driving license at the time of the accident and the vehicle was not insured with them. The 2nd appellant denied the age, avocation and income of the deceased. In any event, the total compensation claimed by the respondents 1 to 6 are excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and examined one witness as P.W.2 and marked 10 documents as Exs.P1 to P10. The appellants did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the 7th respondent, driver of the Lorry belonging to the 1st appellant and directed the appellants to jointly and severally pay a sum of Rs.11,49,776/- as compensation to the respondents 1 to 6. The Tribunal dismissed the claim petition as against the 7th respondent.

8.Against the award dated 21.03.2003, made in M.C.O.P. No. 332 of 2001, the appellants have filed C.M.A. No. 2450 of 2007 and not being satisfied with the amounts awarded by the Tribunal, the respondents 1 to 6 have filed Cross Objection No. 28 of 2019, seeking enhancement of the compensation.

9.Learned counsel appearing for the appellants contended that the Tribunal erred in fixing negligence on the part of the 7th respondent/driver of the Lorry while the accident has occurred due to rash and negligent driving by the driver of the Transport Corporation Bus. The respondents 1 to 6 failed to implead the driver and owner of the Transport Corporation Bus, who are necessary and proper parties to the claim petition. The

Tribunal ought to have dismissed the claim petition for non-joinder of necessary parties. The learned counsel appearing for the appellants further contended that in one of the claim petition in M.C.O.P. No. 192 of 2002, filed in respect of the very same accident, by the award dated 20.08.2003, the Principal Subordinate Judge, (Motor Accident Claims Tribunal), Erode has fixed negligence equally on the part of the drivers of both the Transport Corporation Bus as well as the Lorry. The said award was confirmed by this Court by the judgment dated 24.11.2010 made in C.M.A. No. 3131 of 2004. Subsequently, this Court by the common judgment dated 26.08.2019 made in C.M.A. Nos. 2890 & 2958 of 2007, 2162 & 2163 of 2008, filed by the 2nd appellant-Insurance Company challenging the entire negligence fixed on the part of the driver of the Lorry and liability on them, in 4 claimant petitions viz., M.C.O.P. Nos.544, & 545 of 2006, 1521 and 1853 of 2001, following the earlier judgment of this Court dated 24.11.2010 made in C.M.A. No. 3131 of 2004, fixed 50% of the negligence on the driver of the Lorry and 50% negligence on the part of the driver of the Transport Corporation Bus. In view of the above judgments, only 50% negligence can be fixed on the driver of the Lorry and 50% liability on the 2nd appellant.

9(i) The learned counsel appearing for the appellants further contended that the Tribunal erred in fixing monthly income of the deceased at Rs.7,397/- and Rs.1,000/- as batta, relying on the evidence of P.W.2, in the absence of any material evidence. The multiplier adopted by the Tribunal is not correct. The Tribunal failed to deduct 1/3rd towards personal expenses of the deceased and prayed for allowing the appeal.

10. Per contra, learned counsel appearing for the respondents 1 to 6 contended that the Tribunal considering the materials on record and contents of the FIR, has rightly fixed entire negligence on the part of the 7th respondent, driver of the Lorry. The appellants have not examined the 7th respondent, driver of the Lorry or any independent eye-witness to prove their contention that the accident has occurred due to rash and negligent driving by the 7th respondent, driver of the Lorry as well as driver of the Bus. In C.M.A. No. 3131 of 2004, the Tribunal fixed negligence on the part of the driver of the Transport Corporation Bus based on the departmental proceedings initiated against the driver of the Transport Corporation Bus and not based on the examination of the driver of the Bus. The said reasoning is not applicable to the facts of the present case.

10(i) The learned counsel appearing for the respondents 1 to

6 further contended that the compensation awarded by the Tribunal is meagre. The deceased has taken treatment in Kovai Medical Centre Hospital and died after 7 days. The Tribunal ought to have awarded Rs.1,00,000/- towards medical expenses, Rs.50,000/- for transport, Rs.1,00,000/- towards loss of consortium to the 3rd respondent, Rs.1,00,000/- for loss of love and affection to the three minor children and parents, Rs.3,00,000/- for loss of estate and Rs.25,000/- for funeral expenses. The learned counsel appearing for the respondents 1 to 6 contended that subsequent to the award passed in the claim petition, the 1st respondent died and the respondents 2 to 6 have filed Cross Objection No. 28 of 2019, seeking enhancement of the compensation and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the respondents 2 to 6 and perused the materials available on record.

12. From the materials on record, it is seen that it is the contention of the respondents 1 to 6 that the accident occurred solely due to rash and negligent driving by the 7th respondent, driver of the Lorry. To substantiate this contention, the 1st respondent examined himself as P.W.1 and marked FIR as Ex.P1. They also examined Senior Assistant in Transport Department to prove the income of the deceased. The respondents 1 to 6 have not let in any evidence to prove their case. It is seen from the award of the Tribunal that no eye-witness was examined to depose as to how the accident has occurred. The respondents 1 to 6 have not examined the person who lodged the complaint or any of the passengers who travelled in the Bus. In the claim petition filed by some of the injured persons and legal heirs of the deceased person who got injured and died in the same accident, this Court in C.M.A. No. 3131 of 2004, confirmed the award of the Tribunal by judgment dated 24.11.2010, holding that both the drivers of the Transport Corporation Bus as well as the Lorry are equally responsible for the accident and fixed only 50% negligence on the part of the driver of the Lorry and 50% liability on the 2nd appellant-Insurance Company. The said judgment was followed by the subsequent common judgment dated 26.08.2019 made in C.M.A. Nos. 2890 & 2958 of 2007 and 2162 and 2163 of 2008.

13. The accident is head on collision between two heavy vehicles. The claimants have not examined any eye-witness and Tribunal erred in fixing the entire negligence on the part of the driver of the Lorry belonging to the 1st appellant, relying on the contents of the FIR and evidence of P.W.1, who was not an eye-witness. The reasoning of the judgment of this Court made in

C.M.A. No. 3131 of 2004 dated 24.11.2010 is squarely applicable to the facts of this case also. For the above reason, award of the Tribunal fixing entire negligence on the part of the driver of the Lorry and liability on the appellants is set aside. 50% negligence is fixed on the 7th respondent, driver of the Lorry and 50% negligence is fixed on the driver of the Transport Corporation Bus. The appellants are jointly and severally liable to pay only 50% of the compensation.

14.As far as the quantum of compensation is concerned, the learned counsel appearing for the respondents 1 to 6 submitted that the deceased was admitted in Kovai Medical Centre Hospital and he died after 7 days of treatment and they have spent Rs.1,00,000/- towards medical expenses. The respondents 1 to 6 have not filed any document to prove the same. Hence, they are not entitled to any amount towards medical expenses. The contention of the learned counsel appearing for the respondents 1 to 6 that the Tribunal ought to have awarded a sum of Rs.50,000/- towards transportation, Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection, Rs.3,00,000/- towards loss of estate, Rs.25,000/- towards funeral expenses are contrary to the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]. The respondents 1 to 6 claimed that the deceased was working as Conductor of Bus in Transport Corporation, Erode Division and was earning a sum of Rs.7,500/- per month, including batta and filed Ex.P10, salary certificate to that effect. As per Ex.P10, the Tribunal fixed a sum of Rs.7,397/- per month as notional income. The deceased was aged 40 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The respondents 1 to 6 are entitled to 30% enhancement towards future prospects. As per II Schedule, the Tribunal has applied the correct multiplier '16'. Hence, after deducting 1/3rd towards personal expenses of the deceased and applying the multiplier '16', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.12,30,848/- {[Rs.7,397/- + Rs.2,219/- (30% of Rs.7,397/-)] x 12 x 16 x 2/3}. The amounts awarded by the Tribunal towards loss of consortium to the 3rd respondent, loss of love and affection to the respondents 1, 2, 4 to 6 and funeral expenses are meagre and hence, the same are enhanced to Rs.40,000/- Rs.40,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate to the respondents 2 to 6. The amounts awarded by the Tribunal towards transportation is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is 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 dependency	11,23,776/-	12,30,848/-	Enhanced
2.	Loss of consortium to the 3 rd respondent	10,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the respondents 2, 4 to 6	10,000/-	40,000/-	Enhanced
4.	Transportation	1,000/-	1,000/-	Confirmed
5.	Funeral expenses	5,000/-	10,000/-	Enhanced
6.	Loss of estate	-	15,000/-	Granted
	Total	11,49,776/-	13,36,848/-	
	50% of the compensation		6,68,424/-	Reduced by Rs.4,81,352/-

15. In the result, both the Civil Miscellaneous Appeal and Cross Objection are partly allowed and the amount awarded by the Tribunal at Rs.11,49,776/- is modified to Rs.6,68,424/- together with interest and costs. Out of the modified award amount, the respondents 2 & 4 to 6 are each entitled to Rs.1,00,000/- together with interest and costs and 3rd respondent is entitled to Rs.2,68,424/- together with interest and costs. The appellants are jointly and severally directed to deposit the enhanced award amount, now determined by this Court, 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. 332 of 2001. On such deposit, the respondents 2 and 3 are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, as per the apportionment fixed above, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor respondents 4 to 6 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. The 3rd respondent, mother of the minor respondents 4 to 6 is permitted to withdraw the

accrued interest, once in three months for the welfare of the minor respondents 4 to 6. The appellants are permitted to withdraw excess amount, if any, lying the credit of M.C.O.P. No. 332 of 2001, if the entire award amount has already been deposited. It is made clear that if the respondents 2 to 6 have already withdrawn the award amount, the appellants are not entitled to recover the same from them. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Bhavani.

Copy to :
The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.P.Thangavel, Advocate Sr.No. 22308

C.M.A. No. 2450 of 2007
and Cross Objection No. 28 of 2019

SSI (CO)
RMP (20/01/2021)

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