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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3211 of 2008

1.Parvatham

2.N.Palanisamy @ Kulandaippan ... Appellants/Claimants

Vs.

1.P.Ramamoorthy

2.P.Kumravelusamy

3.The New India Assurance Company Limited

No.490, Avinashi road

Peelamedu, Coimbatore-4.

... Respondents/Respondents

(R1 & R2 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.10.2004 made in M.C.O.P.No.111 of 2004 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.III, Dharapuram, Erode District.

For Appellants : Mr.M.Lokesh
for Mr.MA.P.Thangavel

For R3 : Mrs.R.Sreevidhya

J U D G M E N T

The matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 25% contributory negligence on the part of the deceased as well as for enhancement of compensation granted by the Tribunal in the award dated 18.10.2004 made in M.C.O.P.No.111 of 2004 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.III, Dharapuram, Erode District.



2.The appellants are claimants in M.C.O.P.No.111 of 2004 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.III, Dharapuram, Erode District. They filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of one Lakshmanasamy, who died in the accident that took place on 20.05.2001.

3.According to the appellants, on the date of accident, i.e., on 20.05.2001 at about 10.00 p.m., while the deceased Lakshmanasamy was proceeding in a TVS-50 near Mettusalai, Venkupalayam from North to South direction at the extreme left side from Dharapuram to Tirupur main road, the car, which came from the opposite direction, belonging to the 2nd respondent driven by the 1st respondent in a rash and negligent manner, dashed against the deceased and caused the accident. In the accident, the deceased sustained grievous injuries and died in the hospital after two days. Therefore, the appellants filed the above claim petition claiming compensation against the respondents.

4.The respondents 1 and 2, driver and owner of the car, remained exparte before the Tribunal.

5.The 3rd respondent/Insurance company filed counter statement denying the averments made by the appellants and stated that the appellants have to prove that both the 1st respondent, driver of the car as well as the deceased was possessing valid driving license to drive their vehicles, at the time of accident. The 3rd respondent has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition as against the 3rd respondent.

6.Before the Tribunal, the 1st appellant, mother of the deceased examined herself as P.W.1, one Rathinasamy, eye-witness to the accident, was examined as P.W.2, one P.R.Barathirajan, employer of the deceased was examined as P.W.3 and marked seven documents as Exs.P1 to P7. The 3rd respondent/Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the car belonging to the 2nd respondent, fixed 75% negligence on the part of the 1st respondent and 25% negligence on the part of the deceased for not possessing valid driving license at the time of accident, awarded a sum of Rs.2,98,000/- as compensation to the



appellants and directed the 3rd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.2,23,500/- being 75% of the award amount as compensation to the appellants.

8. Challenging the portion of the award fixing 25% contributory negligence on the part of the deceased as well as for enhancement of compensation, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the Tribunal considering the evidence of P.W.2 has held that the accident has occurred only due to rash and negligent driving by the 1st respondent, driver of the car belonging to the 2nd respondent. Once it is held that the accident has occurred due to rash and negligent driving by the 1st respondent, the question of production of driving license of the deceased does not arise. The Tribunal erred in fixing 25% contributory negligence on the part of the deceased and holding that the appellants are entitled only to 75% of the compensation is not correct. The deceased was working as a cutting master in a Banian company at Tirupur and was earning a sum of Rs.4,000/- per month. The appellants have produced Ex.P7/salary certificate to prove the monthly income of the deceased. The deceased was aged 27 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 25% contributory negligence on the part of the deceased and for enhancement of compensation.

10. Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that at the time of accident, the deceased did not possess driving license. In the cross-examination, the mother of the deceased admitted that the deceased did not possess driving license. The appellants have failed to produce the driving license of the deceased. The Tribunal, considering the same, has rightly fixed 25% contributory negligence on the part of the deceased and the same is valid. The appellants did not mention the name of the company in which the deceased was working as a cutting master and was earning a sum of Rs.4,000/- per month. Failure on the part of the appellants to mention the name of the company, the Tribunal did not accept the evidence of P.W.3, employer of the deceased and Ex.P7/salary certificate and the Tribunal has given the reason for the same. The monthly income fixed by the Tribunal is not meagre. The deceased was a bachelor at the time of accident. The Tribunal erred in deducting 1/3rd instead of 50% towards personal expenses. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

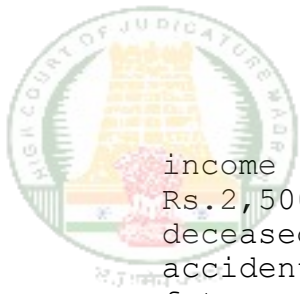


11. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd respondent and perused the entire materials on record.

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12. It is the contention of the appellants that the accident has occurred due to rash and negligent driving by the 1st respondent, driver of the car belonging to the 2nd respondent. The appellants examined P.W.2, eye-witness to the accident and marked Ex.P1 - F.I.R and proved their contention. The respondents have not let in any contra evidence to rebut the evidence let in by the appellants. The Tribunal considering the evidence of P.W.2 and F.I.R and in the absence of any contra evidence, held that the accident has occurred only due to rash and negligent driving by the 1st respondent. According to the 3rd respondent/Insurance Company, the deceased did not possess driving license at the time of accident. Except taking such a stand in the counter statement, the 3rd respondent has not let in any evidence to substantiate the said contention. The 3rd respondent has not examined anybody from the concerned RTO or issued notice to produce the driving license of the deceased. Only a suggestion was put to P.W.1 that the deceased did not possess driving license and did not know to ride the TVS 50, which was denied by the 1st respondent. When the 3rd respondent/Insurance Company has taken a specific stand that the deceased did not possess driving license at the time of accident, it is for the 3rd respondent to prove the same by letting any acceptable evidence. The 3rd respondent failed to do so. For the above reason, 25% contributory negligence fixed by the Tribunal on the part of the deceased for not possessing driving license is liable to be set aside and it is hereby set aside. The appellants are entitled to 100% compensation awarded and the 3rd respondent is liable to pay the entire compensation to the appellants.

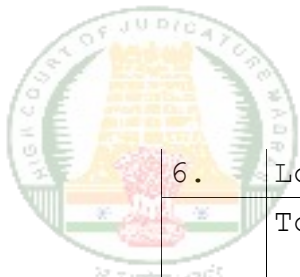
13. As far as quantum of compensation is concerned, it is the contention of the appellants that the deceased was working as a cutting master in a Banian company at Tirupur and was earning a sum of Rs.4,000/- per month. They examined P.W.3, employer of the deceased, who deposed that the deceased worked in his company as a Supervisor and was earning a sum of Rs.4,000/- per month. Ex.P7/salary certificate was marked to prove the same. The Tribunal rejected the evidence of P.W.3 as well as Ex.P7 as the appellants did not mention the name of the company, in which the deceased was working as there is contradiction in the evidence of P.W.3 and the pleadings. The reason given by the Tribunal for rejecting the evidence of P.W.3 and Ex.P7 is valid. The Tribunal after rejecting the evidence of P.W.3 and Ex.P7, fixed notional income of the deceased at Rs.1,875/- per month. The accident has occurred in the year 2001. The notional



income fixed by the Tribunal is meagre. Hence, a sum of Rs.2,500/- per month is fixed as notional income of the deceased. The deceased was aged 27 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal applied multiplier 18, which is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is only 17. The deceased was a bachelor at the time of accident. The Tribunal instead of deducting 50% erroneously deducted 1/3rd towards personal expenses. Considering the above materials, the loss of dependency is modified to Rs.3,57,000/- [Rs.2,500/- + 1000 (Rs.2,500/- X 40%) X 12 X 17 X 1/2]. The Tribunal has awarded a sum of Rs.5,000/- each towards loss of love and affection to the appellants and Rs.5,000/- towards funeral expenses, which are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. A sum of Rs.10,000/- awarded by the Tribunal towards pain and suffering is set aside. A sum of Rs.3,000/- awarded by the Tribunal towards transportation is just and reasonable and hence, the same is hereby confirmed.

14.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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 or reduced
1.	Loss of dependency	2,70,000	3,57,000	Enhanced
2.	Loss of love and affection to the appellants	10,000	40,000	Enhanced
3.	Transportation	3,000	3,000	Confirmed
4.	Funeral expenses	5,000	15,000	Enhanced
5.	Pain and suffering	10,000	-	Set aside



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6.	Loss of estate	-	15,000	Granted
	Total	2,98,000		
	75% of the award amount	2,23,500	4,30,000	Enhanced by Rs.2,06,500 /-

15. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,98,000/- is hereby enhanced to Rs.4,30,000/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.2,06,500/- enhanced by this Court as per the order of this Court dated 30.09.2008 made in M.P.No.1 of 2008 in C.M.A.SR.No.74703 of 2008. The 3rd respondent/Insurance Company is directed to deposit the entire enhanced award amount now determined by this Court along with interest 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 judgment. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
The Motor Accident Claims Tribunal,
Fast Track Court No.III, Dharapuram,
Erode District.



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

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+1cc to M/s.Ma.P.Thangavel, Advocate Sr.34259

C.M.A.No.3211 of 2008

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srg 19/08/2021