

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1407 of 2013

1. M. Subbiah
2. S. Santhi Appellants /Petitioners

Vs.

1. Annadurai
2. The Divisional Manager,
M/s United India Insurance Co. Ltd.,
No.2 Dr. Sankaran Road,
Namakkal Taluk & District.Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.489 of 2011 on the file of Principal District Court/M.A.C.T, Namakkal, Namakkal District dated 28.09.2012 so far as restricting the award to Rs.2,28,000/- and enhance the compensation.

For Appellant : Mr.C. Ela Murugan
for M/s T. Ramadevi
For Respondent-2 : Mr.C. Paranthaman
For Respondent-1 : Served, name printed(No Appearance)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants against the award and decree dated 28.09.2012 made in M.C.O.P.No.489 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal District.

2. The appellants are the parents of the deceased. The first and second respondents are the owner and insurer of the alleged vehicle involved in the accident.

3. The case of the appellants are that on 18.02.2011 at about 2.15 p.m when their daughter, deceased S.Vijaya was proceeding in her bi-cycle, in Namakkal to Paramathi Road, near

Maharashtra Bank, a lorry bearing Registration No.TN-28-AB-0443 came behind the bicycle of the deceased and knocked her. Hence she fell down and crushed to death on the spot itself. The accident has taken place due to the rash and negligent on the part of the driver of the lorry. Hence, the legal heirs of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.5,00,000/- as compensation.

4. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent and insured with the second respondent and allowed the case in part and directed the second respondent/Insurance Company to pay a sum of Rs.2,28,000/- with 7.5% interest as compensation.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant would contend that the award passed by the Tribunal suffers from error in law. Therefore, he has approached this Court by filing this appeal for grant of just and reasonable compensation and to set aside the award of the Tribunal.

7.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the accident took place due to the negligence of the deceased. He would further contend that the driver of the offending vehicle is not impleaded as a respondent in this petition. However, the award passed by the Tribunal is reasonable and no interference is required.

8.Despite serving notice and name printed in the cause list, there is no representation for the first respondent. Hence, the main appeal itself is taken up for final disposal, since the disposal of the case will not affect the first respondent in any manner.

9. Heard both sides and also perused all the materials available on record.

10.On a perusal of the record, with regard to the negligence aspect, i.e. Whether the accident has occurred due to the rash and negligent driving of the driver of the lorry or the negligence of the deceased was disputed before the Tribunal and it was proved that the accident had occurred only due to the negligence of the driver of the lorry. Therefore, the Tribunal arrived at a conclusion that the second respondent/Insurance

Company, who is the insurer of the lorry is liable to pay compensation, which is in accordance with law and there is no infirmity and the same is confirmed as such. There was no valid rebuttal evidence on the side of the respondents before the Tribunal to challenge their negligence aspect.

11. With regard to quantum, the Tribunal fixed the monthly income of the deceased as Rs.3,000/- and arrived Rs.36,000/- (Rs.3,000x12) as annual income and after deducting 50%(Rs.36,000 x 50% = Rs.18,000/-) towards personal expenses and considering the age of the mother multiplier '11' is adopted and arrived Rs.1,98,000/-(Rs.18,000 x 11) as compensation towards loss of income. Apart from this a sum of Rs.20,000/- was awarded towards love and affection and Rs.10,000/- was awarded towards funeral expenses

12. In view of the above, this Court observed that the Tribunal erred in calculating the head loss of income by taking the multiplier with regard to the age of the mother, which warrants interference by this Court. This Court is inclined to consider the same amount awarded by the Tribunal viz, Rs.3,000/- as monthly income of the deceased and thereby the annual income of the deceased was arrived at Rs.36,000/- (Rs.3,000x12). The deceased was 19 years at the time of accident and she was pursuing her 3rd year B.A. Tamil in a college and definitely she would not have spent ½ of her income towards personal expenses, hence 1/3rd (Rs.36,000-Rs.12,000 =Rs.24,000/-) of the income was deducted towards her personal expenses and applied the multiplier '18' as per the judgment rendered in Sarla Verma & Others Vs. Delhi Transport Corporation & Another, reported in (2009) 6 SCC 121, taking into account of the age of the deceased and quantified Rs.4,32,000/-(Rs.24,000x18) as compensation towards the head loss of income. The amount awarded under other heads remains unchanged. Thus, the compensation amount is enhanced to Rs.4,62,000/- from Rs.2,28,000/- which is tabulated hereunder:

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of income	Rs.1,98,000/-	Rs.4,32,000/-
Loss of love and affection	Rs.20,000/-	Rs.20,000/-
Funeral Expenses	Rs.10,000/-	Rs.10,000/-
Total	Rs.2,28,000/-	Rs.4,62,000/-

13. The Compensation amount of Rs.2,28,000/- is enhanced to Rs.4,62,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The second respondent/Insurance Company is directed to deposit the amount awarded by this Court after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the same, on making proper application before the Tribunal. No Costs.

In the result, the order of Tribunal in MACTOP No.489 of 2011 is modified and this appeal is partly allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
Principal District Court,
Namakkal, Namakkal District.

Copy to

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

+2cc to Mr.C.Paranthaman, Advocate Sr.10654

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srg 24/11/2020

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