

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.08.2020

Pronounced on: 13.08.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1402 of 2016

Krishnamurthy

...Appellant / Petitioner

/versus/

1.S.Govindhan

2.The Branch Manager,
Reliance General Insurance,
No.89, 100 Feet Road, Vivyan Plaza,
Ground Floor, Mudaliarpeta,
Puducherry-605 004.

...Respondents/ Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 24.10.2014 made M.C.O.P.No.350 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Puducherry.

For Appellant : Mr.R.Sreedhar
For M/s.Sreethi Law Firm
For R2 : Ms.C.Bhuvana Sundari
For R1 : No appearance

J U D G M E N T

(The case has been heard through video conference)

This is a claimant appeal, filed for enhancement of compensation.

2. The unmarried son of the appellant died on 16/05/2011, the day after he met with the motor accident while driving a two wheeler Bajaj CT 100 bearing registration No. PY-01-AE-0421. The appellant filed the claim petition for Rs.10 lakhs stating that his son was 18 years old at the time of accident. While he was driving the two wheeler Bajaj CT 100 with one Bharat in the pillion, a goods carrier vehicle TATA TIPPER LORRY bearing registration No. TN 32-D- 6994 dashed the motor cycle and knocked down the rider and pillion rider. The son of the appellant who was driving the two wheeler sustained crush injuries and succumbed to the injury in the hospital. At the time of accident, the deceased was earning R.700/- per day as JCB operator. The Claim Petition filed for Rs.10 lakhs under different heads as below:-

Compensation for loss of love and affection Rs.2,00,000/-
Compensation for the loss to the estate of the deceased Rs.7,80,000/-
Funeral expenses Rs. 10,000/-
Transport expenses Rs. 10,000/-
TotalRs. 10,00,000/-

3. The Insurance Company filed its counter and contested the claim. Specifically, it was pleaded that the claimant has not impleaded the two wheeler owner and if insured, the insurer of the motor cycle driven by the deceased. They are necessary parties since the deceased is the tort-feasor. The deceased did not possess a valid driving license and the two wheeler Bajaj CT 100 he drove was not insured. The age and income of the deceased as stated in the petition denied as false and exaggerated.

4. Before the Tribunal, the claimant and one Thangarasu witness to the accident were examined as PW-1 and PW-2. Ex.P.1 to Ex.P.12 were marked in support of the claim. No evidence on behalf of the respondent let in.

5. The Tribunal, considering the evidence of PW-1, PW-2 and Ex P-1 the First Information Report viewed that the rash and negligent driving of the first respondent (driver of the lorry) is the cause for the accident. The first respondent possess valid driving license and the lorry is validly insured with the second respondent insurance company. Therefore the 2nd respondent is liable to pay the compensation to the claimant who is the father of the deceased.

6. Regarding the quantum of compensation, the Tribunal taking note of the fact that the deceased just attained 18 years and had no document to show his income and considering the fact that his mother pre deceased him and his father was 42 years old, living with his second wife and children born through her, awarded a consolidated sum of Rs 3,50,000/- with interest at the rate of 7.5%.

7. In the appeal, it is canvassed by the learned counsel for the appellant that the Tribunal failed to consider the claim that the daily income of the deceased was Rs.700/- as JCB operator. The Tribunal ought to have fixed his income notationally at the rate of Rs.6,600/- and should have applied the multiplier method adding 40% for the future prospect. The consolidated award of Rs.3,50,000/- is very low and to be enhanced.

8. The learned counsel for the respondent Insurance Company submitted, that, the deceased was hardly 18 years and 2 months at the time of accident as per the birth certificate Ex.P-9. He had no educational qualification or other skill to earn for living. No documents produced to show he is trained to operate JCB and effectively employed as JCB operator. Therefore the Tribunal has rightly held that there is no material evidence to infer the gainful employment of the deceased. Therefore in the given facts and circumstances, the Court awarded lump sum compensation of Rs.3,50,000/-. In case, if the Court decide to apply multiplier, then the negligence on the part of the deceased driving the un insured vehicle without driving license should be taken note and 50% of the award should be deducted for his contributory negligence.

9. The very fact that the deceased was driving a motorcycle without license is a thing which speaks for itself. Pleading to that effect is sufficient and no further proof is required, if no contra evidence available. Further, the learned counsel also submitted that in the absence of legal heir certificate, the appellant right to claim compensation as dependant of the deceased is questionable since he have two children through his second wife.

10. Heard the rival contentions. Records perused.

11. As per the birth certificate of the deceased (Ex.P-9), the deceased was born on 26/03/1993. In the birth certificate the name of the appellant is shown as his father. In the family ration card (Ex.P-10) the deceased is shown as son of the appellant. Therefore failure to produce legal heir certificate is not fatal to the claim petition. At the time of death, (16/05/2011) the deceased had just completed 18 years and was running 19 years. No document produced to show his education or skill to earn a livelihood on his own. Though the appellant contents that the deceased was JCB driver, the fact remains that the deceased did not even possess a valid driving license to drive even LMV. If any notional income to be fixed, it can only be Rs.3,000/- per month considering the age and year of accident.

12. At this juncture, it is also necessary to record that there can be no two opinion that, the beneficial legislation has to be interpreted liberally and the victims should be given a helping hand by just and fair compensation. At the same time it should not be a premium for tort-feasors and

motor vehicle act violators. Driving without license endangering others by their incompetency to drive or drunken driving many times become menace to the disciplined road users. No one is supposed to drive motor vehicle without valid license. If any one drive vehicle without license, negligence on his part has to be presumed. Unless the violators are deprived of compensation it is difficult to bring road discipline. In this case, as pleaded by the learned counsel for the Insurance Company, the deceased who had driven the motorcycle without driving license has contributed to the accident and for his act of contributory negligence, 10% from the loss of income is liable to be deducted.

13. Accordingly the award of the Tribunal is modified as below:-

In the absence of acceptable evidence to prove the income or earning capacity of the deceased, notional income at the rate of Rs.3,000/- per month is fixed. Being a bachelor 50% is deducted for his personal expenses. After adding 40% towards future prospect as per Pranay Sathi judgment, it comes to Rs. 2,100/- per month. The deceased died at the age of 18. So, multiplier 18 is applied to arrive at the total loss of income as $(Rs.3,000 + Rs.1,200 (40\% \text{ in } Rs.3,000)) \times 1/2 \times 12 \times 18 = Rs.4,53,600/-$ less 10% towards contributory negligence for driving the motor vehicle without license. Thus, the loss of income is fixed as Rs.4,08,240/- . In addition, Rs.30,000/- for loss of love and affection, Rs.5,000/- for funeral expenses is granted. In total, the compensation is fixed as Rs.4,43,240/ rounded to Rs 4,45,000/-.

14. In the result, the compensation of Rs.3,50,000/- awarded by the Tribunal is enhanced to Rs 4,45,000/- with interest at the rate of 7.5% from the date of petition (30/05/2011) till the date of realisation. The award amount as enhanced shall be deposited within 8 weeks from today. On such deposit, the appellant shall be entitled to withdraw the money on filing appropriate application.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed with costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpl/jbm

To

1.The Motor Accident Claims Tribunal, Principal District Judge,
Puducherry.

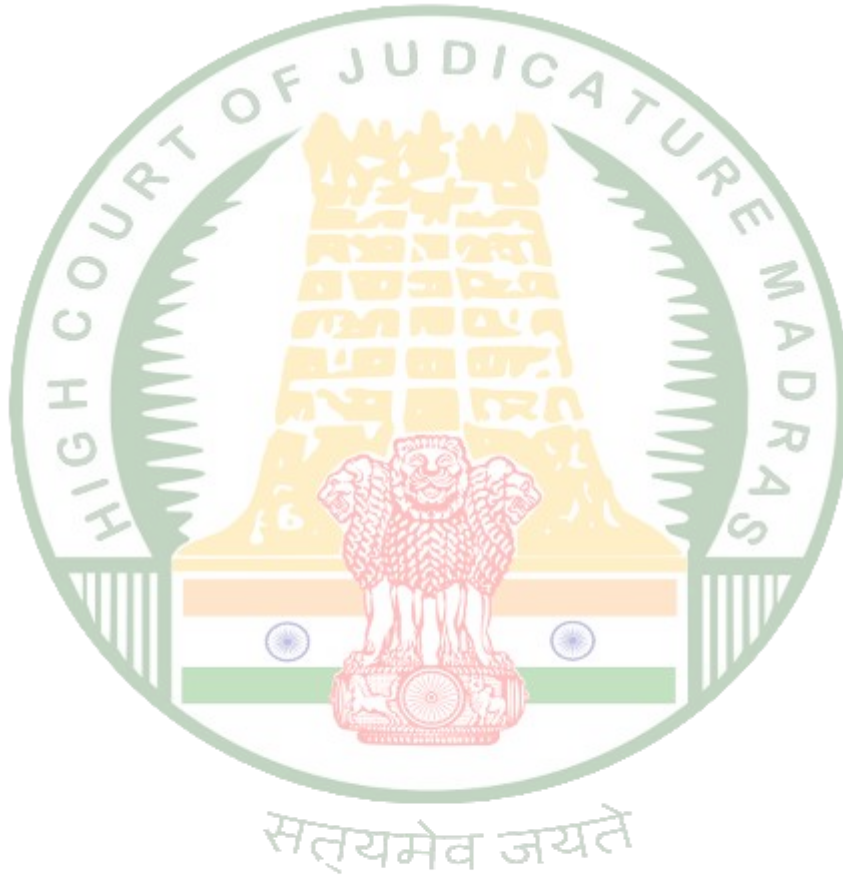
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The Section Officer, VR Section, High Court, Madras.

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