

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2248 of 2013

- 1.Malarvizhi
- 2.Minor Deepika Maragathanandhini
(Minor represented by Guardian,
Next friend mother Malarvizhi)

- 3.Swaranathal
- 4.Kandhasamy

.. Appellants/Claimants

Vs.

- 1.Ramalingam
- 2.Ramasamy
- 3.The United India Insurance Company Limited,
No.5, Big Bazaar Street,
Dharapuram.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.08.2012 made in M.C.O.P.No.156 of 2011 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai at Erode District.

For Appellants : Mr.M.Murugesan
For RR1 & 2 : Mr.K.Ramesh Kumar for
Mr.P.M.Duraiswamy
For R3 : Ms.I.Malar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 23.08.2012 made in M.C.O.P.No.156 of 2011 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai at Erode District.

2.The appellants are claimants in M.C.O.P.No.156 of 2011 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai at Erode District. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Balasubramaniam, who died in the accident that took place on 19.03.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent/driver of the Tractor belonging to the 2nd respondent, fixed 50% contributory negligence on the part of the deceased and awarded a sum of Rs.15,45,000/- as compensation and directed the respondents to jointly and severally, pay a sum of Rs.7,72,500/- i.e. 50% of Rs.15,45,000/- as compensation to the appellants.

4.Challenging the portion of the award fixing 50% contributory negligence on the part of the deceased as well as seeking enhancement of compensation, the appellants have come out with the present appeal

5.The learned counsel appearing for the appellants contended that the appellants have examined PW2 eyewitness who deposed that the driver of the tractor suddenly stopped the tractor without any signal and hence the deceased dashed on the back side of the tractor. The Tribunal ought to have accepted the evidence of PW2 and fixed entire negligence on the part of the driver of the tractor. The respondents have not let in any contra evidence to the evidence of PW2. The Tribunal erred in relying on FIR and fixed 50% negligence erroneously on the part of the deceased. The Tribunal having held that the respondents failed to prove that the driver of the tractor stopped the tractor with indicator, erred in fixing 50% negligence on the part of the deceased. No suggestion was put to PW2 by the 2nd respondent that the accident has occurred only due to negligent act of the deceased. The deceased was working as Manager in S.S.Brand Rice Mill, Kangayam and was earning a sum of Rs.25,000/- per month. The income fixed by the Tribunal at Rs.10,000/- per month is meagre. The total compensation awarded by the Tribunal are meagre and prayed for setting aside the portion of the award fixing 50% negligence on the part of the deceased and for enhancement of compensation.

6.Per contra, learned counsel appearing for the respondents 1 and 2 as well as the 3rd respondent separately contended that the accident has occurred due to rash and negligent act of the deceased. It is evident from the FIR that the deceased only drove the vehicle in a rash and negligent manner, dashed against the parked tractor and invited the accident. The police after investigation filed final report closing the case as abated as the accident has occurred due to negligence on the part of the deceased. There is no error in fixing 50% contributory negligence on the deceased. The total compensation awarded by the Tribunal is not meagre 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 respondents and perused all the materials available on record.

8. It is the contention of the appellants that the driver of the tractor going in front of the motorcycle driven by the deceased suddenly stopped the tractor without any signal, which resulted in the accident. To substantiate their contention, the appellants have examined PW2 eyewitness who was travelling in another vehicle behind the deceased at the time of accident. PW2 has categorically stated that driver of the tractor suddenly stopped without any signal and therefore the deceased dashed on the back side of the tractor. The respondents have not examined the driver of the tractor or any eyewitness to disprove the evidence of PW2. The 3rd respondent who contested the case before the Tribunal relied on the FIR and the evidence of RW1/Sub Inspector of Police. It is well settled that the contents in FIR and findings in the criminal case are not binding on the Tribunal and the Tribunal has to consider the evidence let in before it to come to the conclusion with regard to negligence independently.

9. In the present case, the FIR was registered against the deceased and case was closed as abated as the deceased was responsible for the accident. RW1 deposed to that effect. The Tribunal have not accepted the evidence of PW2 eyewitness and hence fixed 50% negligence on the part of the deceased and 50% negligence on the part of the 1st respondent, holding that the respondents failed to prove that the Tractor was parked with indicator.

10. From the evidence of PW2, it is clear that the driver of the tractor suddenly stopped the tractor without any signal. The 3rd respondent failed to prove their contention that only the deceased dashed on the back side on the parked tractor. For the above reason, the award of the Tribunal fixing 50% negligence on the part of the deceased is liable to be set aside and hence it is hereby set aside. At the same time, the deceased who was riding the motorcycle behind the tractor ought to have been cautious and kept safe distance so as to anticipate any eventuality to avoid the accident. For the above reason, 10% negligence is fixed on the part of the deceased. The 3rd respondent/Insurance Company is directed to pay 90% of the award on behalf of the respondents 1 & 2.

11. As far as quantum of compensation is concerned, the appellants have claimed that the deceased was working as a Manager in S.S.Brand Rice Mill, Kangayam and was earning a sum of Rs.25,000/- per month. The Tribunal considering Ex.P12/Income

Tax Return filed by the appellants, fixed monthly income as Rs.10,000/- which is proper. The deceased was aged 40 years at the time of accident. The Tribunal has not awarded any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards future prospects. The Tribunal applied multiplier '16' as per Second Schedule. As per judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (SarlaVerma vs. Delhi Transport Corporation), the multiplier applicable is '15'. The Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. In view of the same, the amounts awarded by the Tribunal towards loss of income is modified to Rs.16,87,500/- {(Rs.10,000/- + 2,500 (Rs.10,000/- of 25%) x 12 x 15 x 3/4)}. The amounts awarded by the Tribunal towards funeral expenses and loss of consortium are meagre and hence the same are hereby enhanced to Rs.15,000/- and Rs.40,000/- respectively. The amount awarded by the Tribunal towards loss of love & affection is just and reasonable and hence the same is hereby confirmed.

12.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 income	14,40,000	16,87,500	Enhanced
2.	Funeral expenses	5,000	15,000	Enhanced
3.	Loss of consortium	20,000	40,000	Enhanced
4.	Loss of love and affection	80,000	80,000	Confirmed
	Total	Rs.15,45,000/-	Rs.18,22,500/-	Enhanced by Rs.8,67,750/-
	50% contributory negligence	Rs.7,72,500/-	-	
	90% contributory negligence	-	Rs.16,40,250/-	

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,45,000/- is hereby enhanced to Rs.18,22,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are entitled to 90% of the award amount i.e. Rs.16,40,250/-. The 3rd respondent/Insurance Company is directed to deposit 90% of the enhanced award amount now determined by this Court i.e., Rs.16,40,250/- 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 1, 3 & 4 are permitted to withdraw their respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank till she attains majority. The 1st appellant being the mother of the 2nd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Motor Accident Claims Tribunal,
Subordinate Judge, Perundurai,
Erode District.

Copy To

The Section Officer
V.R.Section, High Court, Chennai-104.

- +1cc to Mr.T.Ravichandran, Advocate, S.R.No.21486
- +1cc to Mr.P.M.Duraiswamy, Advocate, S.R.No.22395
- +1cc to Mr.M.Murugesan, Advocate SR.No. 21542 (23.12.2020)

C.M.A.No.2248 of 2013

SJ(CO)
GSP(18/12/2020)