

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3739 of 2011

1. Pushpalatha
2. Minor. Abinaya
3. Minor. SowmiyaAppellants/Petitioners
(2 & 3 Minors are rep
by mother guardian 1st petitioner)

Vs.

1. G. Arumugam
2. The Branch Manager,
The Oriental Insurance co., Ltd.,
Vellore. Respondents/Respondents
(Respondent I-set exparte before the
trial court Hence, notice maybe
dispensed with)

PRAYER: Civil Miscellaneous Appeal filed to filed against to set
aside the Judgment and decree in MCOP No.349 of 2010 dated
26.07.2011 on the file of MACT/Additional District court (FTC),
Tirupattur, Vellore District.

For appellant : Mr.P.A. Sudesh Kumar
For Respondent-1 : Ex-parte
For Respondent-2 : Mr.M.Krishnamoorthy

J U D G M E N T

This appeal has been filed by the appellants/claimants
against the dismissal award passed in MCOP No.349 of 2010 dated
26.07.2011 on the file of MACT/Additional District court (FTC),
Tirupattur, Vellore District.

2.It is the case of the claimants that on 28.12.2007 at
about 09:30 hours, the driver of a lorry bearing Registration
No.TN-21-M-7957 parked the lorry without any sounding horn or

indicator and the head light was also not lightened. At that time, the deceased Balaji who is the husband of the 1st appellant and father of the appellant 2 and 3 was riding his two wheeler bearing Registration No:TN-23-P-7126 and dashed against the lorry. The accident occurred due to the negligence on the part of the driver of the lorry, who parked the vehicle on the road without any sounding horn. Due to the impact the said Balaji died on the spot itself. Hence, the legal heirs of the deceased filed a claim petition claiming Rs.5,00,000/- as compensation and the Tribunal dismissed the claim petition.

3. Aggrieved against the dismissal award passed by the Tribunal, the appellants have come forward with this appeal before this Court.

4. In order to prove the claim before the Tribunal, on the side of the appellant, three witnesses were examined viz., P.W.1 to P.W.3 and 8 documents viz., Ex.P1 to Ex.P8 were marked. On the side of the respondent one witness was examined viz., R.W.1 and one document was marked viz., Ex.R.1.

5. The 2nd respondent/Insurance Company filed a counter before the Tribunal and they have resisted their claim by stating that the accident occurred due to the negligent on the part of the motor cyclist. It has been further stated that the F.I.R was also registered against the deceased only and they also denied the manner of the accident. The 1st respondent was set ex-parte before the Tribunal as well as before this Court.

6. Heard both sides and perused the materials available on record.

7. From the impugned award passed by the Tribunal, with regard to negligence aspect it has been stated that even though the lorry was parked

on the road without any sounding horn, if the deceased would have been cautiously driven his two wheeler, he would have been avoided the accident. The Tribunal further observed in the road where the accident had taken place, there was a barrier, which divides the road. Hence, the plea taken by the learned counsel for the appellants that due to the head lights of the vehicle coming in the opposite direction, the deceased was not able to identify that a lorry was parked in the road was not acceptable by the learned Judge in the Court below. In view of the above the Court below fixed the entire negligence exits on the motor cyclist and dismissed the claim petition.

8.This Court accepts the findings rendered by the Tribunal, with regard to negligence aspect on the part of motor cyclist. On the other hand the Tribunal failed to note that the negligence on the part of the driver of the lorry also, who parked the vehicle in the road without any sounding horn. Hence, this Court has to adopt another parameter than the one arrived by the Tribunal to ascertain the negligence aspect, i.e the drivers while parking or driving the vehicle in a public place, there is a implicit duty cast upon them to see that their driving and parking does not endanger the users of the road. Hence, this Court is inclined to fix Contributory negligence on the part of the driver of the lorry at 50% and the remaining 50% on the part of the two wheeler.

9.With regard to quantum, based on the post mortem report, it is evident that the age of the deceased was 35. In the claim petition it has been stated that the deceased was earning Rs.5,000/- per month. Hence Rs.4,500/- is taken as his monthly income and by adding 40%(Rs.1,800/-) towards future prospects the monthly income comes to Rs.6,300/-. After deducting 1/3rd (Rs.2,100/-)towards personal expenses Rs.4,200/- is arrived and thereby calculated the annual income of the deceased as Rs.50,400/-(Rs.4,200 x 12). Considering the age of the deceased, the proper multiplier to be adopted is '15' as per the Judgment rendered in Sarla Verma & Others Vs. Delhi Transport Corporation & Another, reported in (2009) 6 SCC 121 and quantified Rs.7,56,000/-(Rs.50,400 x 15) as compensation under the head loss of income. The first appellant has lost her companion hence Rs.40,000/- is awarded towards the head loss of consortium. Second and third appellants lost their loveable father hence Rs.40,000/- each is awarded towards the head loss of love and affection. Apart from this Rs.15,000/- each is awarded towards the head funeral expenses and loss of estate. Thus, the total compensation is quantified at Rs.9,06,000/- which is tabulated hereunder:

S.No.	Particulars	Amount
1	Loss of income	Rs.7,56,000/-
2	Loss of consortium to the 1 st appellant	Rs.40,000/-
3	Loss of love and affection	Rs.80,000/-
4	Funeral expenses	Rs.15,000/-
5	Loss of estate	Rs.15,000/-
	Total	Rs.9,06,000/-

After deducting 50%(Rs.4,53,000/-) is fixed towards contributory negligence and the appellants are entitled for 50% of the compensation i.e Rs.4,53,000/-.

10. In the result, this Civil Miscellaneous Appeal is partly allowed. The second respondent-Insurance Company is directed to deposit Rs.4,53,000/- with interest at 7.5% p.a from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellants are permitted to withdraw the award amount, by making proper application before the Tribunal. No costs.

11.At this juncture, it is submitted that the second and third respondents would have attained majority by now. Hence, on such application being taken out, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the second and third respondents herein, within one week, through RTGS. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

smn

To

1. The Additional District court (FTC),
Tirupattur, Vellore District.

+1 cc to Mr.P.A.Sundeshkumar Advocate sr12158

+1 cc to Mr.M.Krishnamurthy ADvocate sr12123

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