

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2020

CORAM:

THE HONOURABLE Mrs Justice V.BHAVANI SUBBAROYAN

C.M.A.No.3091 of 2012

1.M/s.Sree Sabari Constructions
D.No.142, N.G.N. Buildings,
New Sidhapudur, Coimbatore.

2.The New India Assurance Co. Ltd.,
863, Big Bazaar Street,
Coimbatore-641 001.

...Appellants/2 and 3rd Respondent

Vs

1.P.Balasubramaniam (died)

2.Manimaran (given up)

3.R.Mahalakshmi

4.Minor B.Dinesh

5.P.Maragatham

[R3 to R5 brought on record as
Lrs of the deceased R1 viz., P.Balasubramaniam
vide Court order dated 29.08.2019 made
in CMP.No.6854 of 2016
in CMA.3091 of 2012 (RMDJ)]

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (I Additional District Judge), Coimbatore in M.C.O.P.No.622 of 2009 dated 31.01.2012.

For Appellants : Mr.M.Krishnamoorthy

For Respondent : Mr.A.Tamilarasan
Nos.3 to 5 for Mr.J.Prakasam

R2 : Given Up

JUDGMENT

As against the finding of the Motor Accident Claims Tribunal (I Additional District Judge), Coimbatore in M.C.O.P.No.622 of 2009 dated 31.01.2012, in fixing contributory negligence on the appellants at 40% and for the quantum arrived at, the present appeal has been filed by the appellants.

2.The brief facts leading to the filing of the present appeal is as follows:

a)On 01.12.2008, at about 21.30 hours, when P.Balasubramaniam/claimant (deceased) was driving his Maruthi Omni car bearing Registration No.TN-37-AV 3655 along with his friend, at Coimbatore-Trichy Road, a lorry driven by the driver/second respondent of the first appellant herein bearing registration No.TN-38-AH-2030 insured with the second appellant which came from the opposite direction, driven in a rash and negligent manner dashed against the Car, due to which the deceased sustained grievous injuries on his left legs and right hand.

b)The Tribunal, after analysing the oral and documentary evidence, has held that the accident had occurred due to the rash and negligent driving of both the drivers and fixed the liability at 60% on the part of the deceased who has contributed to the accident by deviating the track in order to avoid hitting the stray dogs and directed the Insurance Company to pay 40% of the compensation amount, on the ground that if the lorry driver of the appellant could have been caution, the accident would have not happened.

c)The learned I Additional District Judge (MACT) Coimbatore had passed the following award on 31.01.2012:-

Heads	Amount awarded
Loss of future income	Rs.4,39,680
Medical expenses	Rs.7,905/-
Pain and Sufferings	Rs.15,000/-
Extra nourishment	Rs.5,000
Total	Rs.4,67,585/-

Thus, directing the appellants herein to pay the claimant a sum of Rs.4,67,585/- together with interest at 9% from the date of claim till the date of realization as compensation.

3.Aggrieved by fixation of 40% liability on the appellants and quantum of compensation awarded by the Tribunal, the present appeal has been filed.

4. Heard Mr.M.Krishnamoorthy, learned Counsel for the appellants and Mr.A.Tamilarasan, learned Counsel appearing on behalf of the respondents 3 to 5.

5. According to the learned counsel for the appellants, the Tribunal under the impugned award has erroneously assessed only 60% contributory negligence on the driver of the omni car who drove it in a rash and negligent manner under the influence of alcohol and deviated from its track and given way for the accident to occur.

6. The learned counsel for the appellants further contended that the amount awarded by the Tribunal towards loss of future income by adopting multiplier method is erroneous, as the claimant continued to work in the same job.

7. Per contra, the learned counsel for the respondents 3 to 5 submitted that consumption of alcohol during the time of accident has not been proved as stated by the appellants which is evident from the reports of Doctor and A.R. copy. He further submitted that in order to avoid hitting the stray dogs, the claimant had deviated from his track, which led to the accident and if the lorry driver was cautious, he would have prevented the accident. Hence, the compensation awarded by the Tribunal is just and reasonable and warrants no interference.

8. Considering the materials available on record, having examined the impugned award and having heard the submissions of the respective counsels, this Court is of the view that as the claimant had only deviated the track to avoid hitting the stray dogs and consumption of alcohol at the time of accident has not been proved as contended by the appellants, the contributory negligence of 60% fixed by the Tribunal is reduced to 50% on the part of the claimant (deceased). It is evident that right hand of the claimant was amputated, hence the amount awarded under pain and suffering warrants interference and the same has been enhanced to Rs.25,000/- from Rs.15,000/-. Since no amount has been awarded towards transportation and attendant benefits, a sum of Rs.5000/- are granted under the said heads. Since 50% contributory negligence has been fixed by this Court, the claimant is entitled to Rs.9881/- towards medical bills and a sum of Rs.5,49,600/- towards loss of future income. Thus, the amount awarded by the Tribunal has been modified to the following effect:

Heads	Amount Awarded by the Tribunal	Amount Awarded by this Court	Award confirmed or granted or enhanced
Loss of future income	Rs.4,39680	Rs.5,49,600 (11450x12x50/100/2=34,350x16)	enhanced
Extra Nourishment	Rs.5,000	-	confirmed
Transportation	-	Rs.5,000	granted
Medical Expenses	Rs.7,905	Rs.9881	enhanced
Attendant Benefits	-	Rs.5000	granted
Pain sufferings and	Rs.15,000	Rs.25,000	enhanced
Total	Rs.4,67,585/-	Rs.5,99,481/-	Rs.1,31,896/-

9. In the result, the Civil Miscellaneous Appeal is dismissed. However, in view of the foregoing reasons, the award dated 31.01.2012 passed by the Motor Accident Claims Tribunal (I Additional District Judge), Coimbatore in M.C.O.P.No.622 of 2009, is hereby modified from Rs.4,67,585/- to Rs.5,99,481/- and that by fixing the liability at 50% from 60% on the deceased/claimant, the appellants are directed to pay the claimants/respondents 3 to 5, a sum of Rs.5,99,481/- instead of Rs.4,67,585/-. The appellants are directed to deposit the award amount to the credit of M.C.O.P.No.622 of 2009, on the file of the Motor Accident Claims Tribunal (I Additional District Judge), Coimbatore together with interest 7.5% per annum from the date of claim till the date of deposit less the amount deposited if any, within a period of four weeks from the date of receipt of this order. The third respondent/wife is entitled to receive a sum of Rs.2,99,481/- and fifth respondent/mother of the deceased is entitled to a sum of Rs.1,25,000/- and fourth respondent being minor, his share amount of Rs.1,75,000/- shall be in fixed deposit in any one of the nationalised bank till he

attains majority and in the meanwhile, the third respondent is entitled to withdraw the accrued interest on every three months. On such deposit being made, the respondents 3 to 5 are permitted to withdraw their proportionate share amount together with interest by filing an appropriate application. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

DP
To

1.The Motor Accident Claims Tribunal,
(I Additional District Judge),
Coimbatore.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.J.Prakasam , Advocate SR.No. 10193

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No. 10335

C.M.A.No.3091 of 2012

svi co
A.SK(23.04.2021)

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