

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2851 of 2013

1.Parvathi

2.Minor. Jothi

3.Minor. Sangari

4.Minor. Karthika

(Minor appellants 2 to 4 are represented
by their next friend and mother, Parvathi)

5.Vijaya .. Appellants/Claimants

Vs.

1.R.T.Rajendran

2.The Divisional Manager,
National Insurance Company Limited,
JN Street,
Pondicherry - 605 001.

.. Respondents/Respondents
(R1 is an unnecessary party. Hence, given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.08.2010 made in M.C.O.P.No.1229 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellants : Mrs.Ramya V.Rao
for Mr.A.N.Viswanathan

For R2 : Mr.S.Vadivel

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 06.08.2010 made in M.C.O.P.No.1229 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

3.The appellants are the claimants in M.C.O.P.No.1229 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore. They filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Ekambaram, who died in the accident that took place on 15.03.2005.

4.According to the appellants, on 15.03.2005 at about 11.30 A.M., while the deceased Ekambaram was walking on the extreme left side of the Bharathi road, opposite to B.P.Hotel, Cuddalore, the driver of the jeep belonging to the 1st respondent drove the same in a rash and negligent manner and hit the said Ekambaram from behind. In the accident, the said Ekambaram sustained fatal injuries and took first aid treatment at Government Head Quarters Hospital, Cuddalore and then he was referred to Government General Hospital, Pondicherry and thereafter he was referred to Government General Hospital, Chennai. In spite of treatment, the said Ekambaram succumbed to injuries on 22.04.2005. Therefore, the appellants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the respondents, being the owner and insurer of the jeep respectively.

5.The 1st respondent-owner of the jeep remained exparte before the Tribunal.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants. The 2nd respondent denied the manner of accident. According to the 2nd respondent, the driver of the jeep belonging to 1st respondent drove the same in a moderate speed observing all traffic rules and the deceased who was in a drunken mood, fell before the vehicle by jumping on the road, invited the accident and sustained only simple injuries. The accident has occurred only due to negligence on the part of the deceased only. The case has been closed as mistake of fact and served the 'referred charge sheet' on the wife of the deceased. Hence, the 2nd respondent-Insurance Company is not liable to pay any compensation to the appellants. The fatal injuries sustained by the deceased was by some other manner and in some other place.

The driver of the 1st respondent's jeep was not possessing valid driving license at the time of accident. This respondent also denied that the 1st respondent's van was insured with them and the appellants have to prove the same by producing valid documents. This respondent has not received any claim form or vehicular documents from the 1st respondent. The appellants have to prove the age, avocation, income, nature of fatal injuries and period of treatment taken by producing valid documents. In any event, the quantum of compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st appellant examined herself as P.W.1 and one Arimuthu, who is an eye-witness to the accident was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. On behalf of the 2nd respondent-Insurance Company, one Murugan, who is working as Senior Assistant in 2nd respondent-Insurance Company was examined as R.W.1 and two documents were marked as Exs.R1 and R2.

8. The Tribunal considering the pleadings, oral and documentary evidence dismissed the claim petition on the ground that the appellants failed to prove that the accident has occurred involving the 1st respondent's jeep.

9. Against the said order of dismissal dated 06.08.2010 made in M.C.O.P.No.1229 of 2005, the appellants have come out with the present appeal for granting compensation.

10. The learned counsel appearing for the appellants contended that complaint was lodged by the driver of the jeep stating that the deceased fell before his jeep and sustained injuries. If really the jeep did not hit the deceased, there is no necessity for the driver to give a complaint to the Police. The Tribunal erred in relying on Ex.R2/charge sheet to come to the conclusion that there is no proof for rash and negligent driving by driver of the jeep. The Tribunal failed to consider the postmortem report, where it was stated that the deceased would have died due to the cervical spine injury. The learned counsel appearing for appellants further made submissions with regard to treatment taken, avocation and income of the deceased as claimed in the claim petition and prayed for setting aside the award of the Tribunal, for allowing the appeal and for granting compensation.

11. Per contra, Mr.S.Vadivel, learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident occurred only due to negligence on the part of the deceased, when the deceased in a drunken mood, jumped over the centre median and fell before the jeep belonging to the 1st respondent. The accident did not occur due to rash and negligent driving by the driver of the jeep belonging to 1st respondent. In the Accident Register, it has been stated that the deceased was injured when he crossed the road and fell down before the jeep. The driver of the jeep gave a complaint narrating as to how the deceased got injured by falling down from centre median. The Police after investigation, closed the case and referred charge sheet was served on the 1st appellant. She did not take any further steps. The Tribunal considering the above materials has rightly dismissed the claim petition by giving cogent and valid reason and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

13. From the materials available on record, it is seen that it is the contention of the appellants that deceased while walking on the side of the road, the driver of the jeep belonging to 1st respondent drove the jeep in a rash and negligent manner and dashed against the deceased. Due to the injuries sustained in the accident, inspite of treatment in Government Hospital, Pondicherry and Chennai, the said Ekambaram died. To substantiate this contention, they examined first appellant as P.W.1 and P.W.2/eyewitness. P.W.2 deposed that accident has occurred only due to rash and negligent driving by the driver of jeep belonging to 1st respondent. No favourable point was elucidated in the cross examination of P.W.2 by the 2nd respondent-Insurance Company. On the other hand, it is the contention of the 2nd respondent that deceased jumped from the centre median to cross the road in a drunken mood, fell down before the jeep and got injured. To substantiate the said contention, the 2nd respondent relied on F.I.R., Accident Register and Charge Sheet. It is an admitted fact that F.I.R. was registered based on the complaint given by driver of the jeep. In the complaint, the driver of the jeep has stated that one Mohan, who was with him took the injured in the auto and admitted him in the Hospital. Accident Register was registered as per the information given by the said Mohan, who was with the driver of the jeep. In the Accident Register, it has been mentioned that the said Mohan was "Passerby". The 2nd respondent did not examine either the driver of the jeep or the said Mohan,

who said to have taken the injured to the Hospital. The 2nd respondent has not examined any eyewitness to substantiate their contention. On the other hand, they examined only an Official from the Insurance Company and marked Accident Register and charge sheet. The learned counsel appearing for the 2nd respondent relied on the statement in the charge sheet that complaint was closed as mistake of fact and first appellant was served with copy of the said report. The 2nd respondent has not examined the Inspector of Police, who investigated and closed the complaint. The 2nd respondent has not filed any material to show that the final report was filed before the competent Magistrate Court. The notice was issued to the first appellant and the Judicial Magistrate has accepted the same.

14. It is well settled that the contents in the F.I.R., charge sheet and criminal proceedings are not binding on the Tribunal. The Tribunal has to consider the materials on record and evidence let in before it to fix the negligence. In the present case, P.W.2 on oath has stated that accident has occurred due to rash and negligent driving by the driver of the 1st respondent's jeep, who drove the jeep in a rash and negligent manner and dashed against the deceased. The Tribunal having held that evidence of P.W.2 has not been discarded, erred in not relying on the said evidence, but relied on the F.I.R., charge sheet and Accident Register and erroneously dismissed the claim petition. In the absence of any contra evidence to the evidence of P.W.2, this Court is of the considered view that accident has occurred only due to rash and negligent driving by the driver of the jeep belonging to the 1st respondent. The 2nd respondent-Insurance Company has not denied the insurance policy for the vehicle at the time of accident. In view of the same, the 2nd respondent as insurer of the vehicle is liable to indemnify the 1st respondent. The 2nd respondent-Insurance Company is liable to pay the compensation to the appellants.

15. As far as quantum of compensation is concerned, it is the contention of the appellants that deceased was aged 42 years, working as Mason and was earning a sum of Rs.7,500/- per month. They have not produced any material evidence to prove the said contention. The accident occurred in the year 2005 and a sum of Rs.3,500/- per month is fixed as notional income of the deceased. The appellants have not filed any document to prove the age of the deceased. In Ex.P3/Postmortem Certificate, the age of the deceased was mentioned as 45 years. Hence, the age of the deceased is taken as 45 years as per Ex.P3/Postmortem Certificate. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are

entitled to 25% enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] the multiplier applicable is '14'. There are five dependants of the deceased and 1/4th has to be deducted towards personal expenses. After deducting 1/4th towards personal expenses, adopting multiplier '14' and granting 25% enhancement towards future prospects, the compensation towards loss of dependency comes to Rs.5,51,250/- {Rs.4,375/- [(Rs.3,500/- + Rs.875/- (25% of Rs.3,500/-)] X 12 X 14 X $\frac{3}{4}$ }. The first appellant who is the wife of the deceased had lost her husband at a young age. Therefore, a sum of Rs.40,000/- is awarded to the 1st appellant towards loss of consortium. The appellants 2 to 4, who are the minor children of the deceased are entitled to a sum of Rs.30,000/- each towards loss of love and affection. The 5th appellant, who is the mother of the deceased is entitled to a sum of Rs.25,000/- towards loss of love and affection. The appellants are entitled to a sum of Rs.15,000/- each towards funeral expenses and loss of estate respectively.

16. 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 this Court (Rs)
1.	Loss of dependency	5,51,250/-
2.	Loss of consortium	40,000/-
3.	Loss of love and affection to appellants 2 to 4	90,000/-
4.	Loss of love and affection to 5 th appellant	25,000/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
	Total	Rs.7,36,250/-

17. In the result, this Civil Miscellaneous Appeal is allowed and the appellants are entitled to a sum of Rs.7,36,250/- as compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the necessary Court fee on the excess amount now granted by this Court than the value of the appeal. The 2nd respondent-Insurance Company is directed to deposit the amount now awarded by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1229 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore. On such deposit, the appellants 1 and 5 are permitted to withdraw a sum of Rs.1,47,250/- each as their respective share of the award amount now determined by this Court, along with proportionate interest and costs, by making necessary applications before the Tribunal. The share of the minor appellants 2 to 4 (i.e., Rs.1,47,250/- each) are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 to 4 attains majority. On such deposit, the 1st appellant, being the mother of the minor appellants 2 to 4 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 to 4. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

Copy to

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

+1 CC to Mr.S.Vadivel, Advocate sr 36442.

C.M.A.No.2851 of 2013

NR(CO)
SP(04/12/2020)