

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.08.2020

PRONOUNCED ON : 27.08.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1858 of 2016
(Heard through video conferencing)

1.P.Kalaiselvi,
W/o Late Perumal.

2.Minor P.Priyanka,
D/o Late Perumal,
Rep. By NF Mother P.Kalaiselvi,

3.K.Subbulakshmi
W/o Late Kandasamy

All are residing at
103/6, Kottur Road,
Pollachi,
Coimbatore District.

...Appellants/Claimants

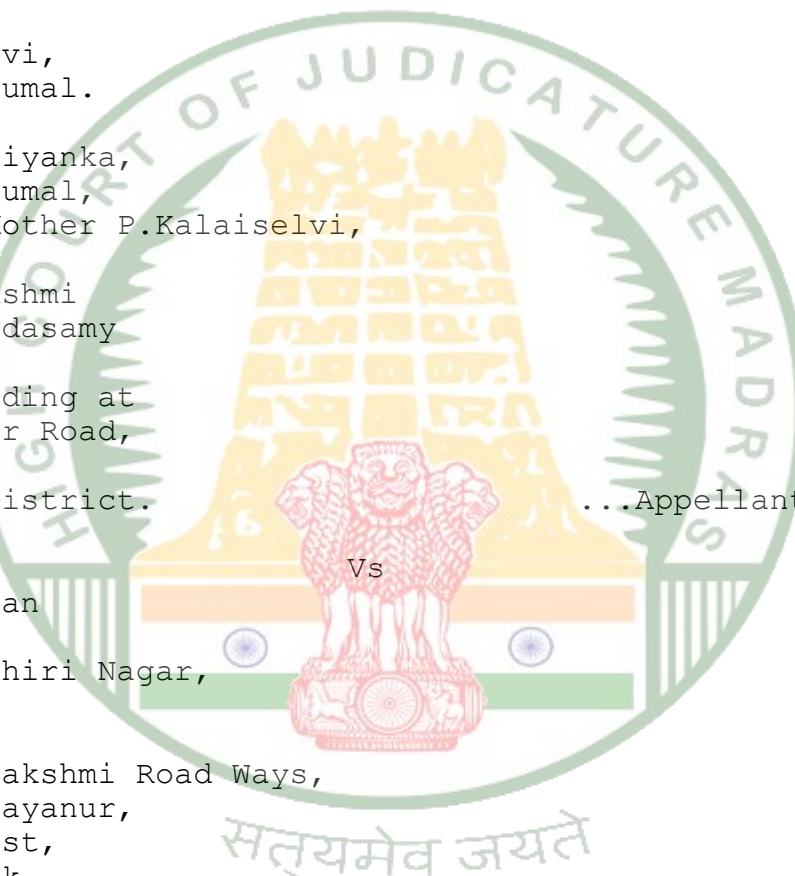
Vs

1.G.Chinnappan
S/o Gopal,
No.250, Sasthiri Nagar,
Erode.

2.M/s.Dhanalakshmi Road Ways,
No.7/54, Malayanur,
Thangayur Post,
Edapadi Taluk.

3.The New India Assurance Company Ltd.,
No.1360, Amman Complex,
E.V.N.Road,
Erode - 638 011.

4.K.Santhakumar,
S/o Late Kandasamy,
103/6, Kottur Road,
Pollachi.



5.National Insurance Company Ltd.,
Office Code No.650 102,
Coimbatore Road,
Pollachi.

...

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 04.01.2007 made in M.C.O.P.No.159 of 2005 on the file of the Motor Accidents Claims Tribunal (Principal District Judge, Erode District) .

For Appellant

:Mr.C.Veeraraghavan

For RR.1 & 2

: No Appearance

For R.3

:Mr.Elveera Ravindran

For R.4

:Mr.S.Vijayakumar

For R.5

:Mr.J.Chandran

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant for enhancement of compensation as against the award passed in M.C.O.P.No.159 of 2005 on the file of the Motor Accidents Claims Tribunal (Principal District Judge, Erode District).

2.On 31/12/2004 at about 1.05 pm, a Mahendra Van bearing registration No. TN 38 3233 and a passenger Bus bearing registration No. TN-30-Y-2828 colluded near Saralai, Peurndurai to Kovai NH 47 Main Road. The Driver of the Mahendra van Mr. Perumal aged about 42 years died. On 10/02/2005 claim petition filed by the dependants of the deceased Perumal (his wife, minor daughter and mother) seeking compensation of Rs.10,00,000/- against the Driver, the owner and the Insurer of the passenger Bus (respondents 1 to 3 herein) and the owner and the insurer of the Mahendra van.(respondents 4 and 5 herein) .

3.On 04/01/2007 the Motor Accident Claims Tribunal, Erode passed the impugned award. It held that both the Drivers are equally responsible for the accident. As a result, 50% of the total compensation Rs.3,85,000/- deducted for the contributory negligence of the deceased Van driver. Compensation of Rs.1,92,500/- was awarded to the claimants. The respondents 1, 2 and 3 herein jointly and severally were directed by the Tribunal to pay Rs.96,250 with 7.5.% interest. Respondents 4 and 5 herein were jointly and severally directed to pay the Rs.96,250/- with 7.5% interest. The award amount was apportioned among the claimants 1 to 3 (wife, daughter and mother) in the ratio of 50%, 30% and 20%.

4. On 29/06/2011 the appeal under consideration was filed with delay of 1523 days. The delay was condoned by this Court vide order dated 18/08/2016.

5. The learned counsel for the appellants/claimants would submit that the Tribunal erred in fixing 50% contribution on the deceased Van Driver. The rough sketch prepared by the Police to show the scene of accident indicates that the offending vehicle was the passenger Bus and not the Van, which was driven by the deceased. The Motor Vehicle Inspector report - Ex P-4, show that the left side of the Bus was damaged and not the front side of the Bus. Likewise, the right side of the Van got damaged as per - Ex P-5. This proves that it was not a head on collision as observed by the Tribunal. In the absence of contra evidence, based on Ex P-10 - salary certificate of the deceased and the evidence of PW-2, the Tribunal ought to have fixed the salary as Rs 5000/- pm. The compensation of Rs.10,000/- awarded by the Tribunal for loss of consortium and Rs.5,000/- each for loss of estate and funeral expenses are very low. Further, the learned counsel for the claimants would submit that, the Tribunal ought to have considered the future prospect and ought to have awarded fair and just compensation.

6. Per contra, the learned counsels representing the Insurance companies (respondents 3 and 5 respectively) would submit that, the Tribunal on proper consideration of the evidence has held that the accident occurred due to the negligence of both the vehicle Drivers. The Tribunal in its award at paragraph No.6 has explained and recorded the reasons as to why it has arrived at the said conclusion. PW-2 who claims to have travelled in the Van and witnessed the accident, did not inspire the confidence of the Tribunal because, he was not the first informant to the Police. His version of evidence is contrary to the observation mahazar Ex A-3. As per Exs.A-4 and A-5, the damage to the vehicles clearly show that both the vehicles were on wrong side and driven negligently. During the year 2004, private Drivers were paid only around Rs.3,000/ pm-. The evidence of PW-2 (owner of the Van) that he was paying Rs.5,000/-pm to the deceased not corroborated by payment register. During the relevant period, no additional compensation was awarded under future prospect for self employed /fixed salary injured persons. The learned counsels would further submit that, the appeal was filed after delay of more than 5 years. If at all any enhancement is made, the Insurance companies should not be mulcted with interest for the said period of delay.

7. The scene of accident place is a national highways. The road width is about 30 feet. The Motor Vehicle Inspector in his reports - Ex P-4 and P-5 had noted down the damages on both the vehicles. Ex.A-2 - site plan and Ex A-3 - observation mahazar, indicate the accident has occurred on the middle of the road and

the vehicles have turned direction after the impact. The Tribunal on considering these evidences has come to the right conclusion that the accident has occurred due to the rash and negligent driving of both the Driver of the bus and the Driver of the Van. There is no other evidence which could provide material to overrule this finding. Hence, this Court confirms, the finding of the Tribunal regarding the cause for accident.

8.The deceased died while driving the Van. Hence, there can be no doubt about his avocation. Ex.A-9 is the driving license of the deceased. As per the claim petition, the victim at the time his death was 42 years old. PW-2 who is the employee of the deceased had deposed before the Tribunal that the salary of the deceased was Rs.5,000/- pm. The Tribunal has fixed the monthly salary notionally at Rs.3,000/-pm. As pointed out by the learned counsel for the appellants/claimants, when there is oral and documentary evidence to show the deceased was earning Rs.5,000/- as a Van Driver and the accident itself occurred while he was driving the Van, neither regarding his avocation nor his income as pleaded by the claimants need be suspected.

9.The Tribunal has not awarded any compensation towards future prospects. It is correct that during the year 2004, the concept of granting future prospects was under evolution. Only in the year 2017, after the judgment of the Hon'ble Supreme Court in National Insurance Co.Ltd., Vs. Pranay Sethi and others (2017 (2) TN MAC 609 (SC)), the conflicting views came to end on standardizing the percentage of additional income towards future prospects. Therefore, the compensation standardized by Courts, 15 or 20 years after the accident cannot be strictly applied at this point of time. However, in view of the deceased proven avocation, no one can say that the deceased had no prospects of earning more in future. Therefore, this Court holds that the claimants are entitled for future prospects at 25%.

10.The age of the victim at the time of his death was 42 years. The multiplicand for victims between 41 to 45 years is 14. Therefore, the loss of dependance is fixed as (Rs.5,000 + Rs.1250 (25% of FP) = Rs.6250) $\times 12 \times 14 \times \frac{2}{3}$ (personal expenses) = Rs.7,00,000/-. For loss of consortium to the wife of the deceased (1st appellant herein) Rs.25,000/-. Loss of love and affection to the daughter and mother of the deceased is awarded Rs.10,000/- (2nd and 3rd appellant herein each Rs.5,000/-). For funeral expenses, Rs.5,000/- is awarded. Totally, the estimated compensation is fixed as Rs.7,40,000/-. After deducting 50% for the contributory negligence, the compensation payable by the respondents is Rs.3,70,000/- with interest at the rate of 7.5% pa from 10/02/2005 till the date of deposit. The claimants shall not be entitled for interest for the delay period 1523 days as per the order of this court dated 18/08/2016, passed while condoning the delay in filing the appeal. The time for deposit of the award amount is eight weeks.

11. Accordingly , the award of Rs 1,92,500/- passed the Tribunal is enhanced to Rs.3,70,000/-. The respondents 1 to 3 are jointly and severally liable to pay Rs.1,85,000/- with 7.5% interest per annum and the respondents 4 and 5 are jointly and severally liable to pay Rs.1,85,000/- with 7.5% interest per annum. The award amount with interest as stated above shall be apportioned by the claimants in the ratio of 50%, 30% and 20% respectively.

12. In the result, the Civil Miscellaneous Appeal is partly allowed with costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

The Motor Accidents Claims Tribunal,
(Principal District Judge, Erode District).

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.C.Veeraraghavan, Advocate, S.R.No. 28239

C.M.A.No.1858 of 2016

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