IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.10.2020
CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.888 of 2015

1.Sornam

2.Minor Gobinath
Rep. by next friend & mother Sornam

3.Pavathal
...Claimants/Appellants
/versus/

1.G.V.Raja
2.A.Sridhar
3.The New India Assurance Co. Ltd.,
12, New Hospital Road,
Gobi Taluk, Erode District.
...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Judgement and Decree dated 06.09.2010 in M.C.O.P.No.414 of 2008 on the file of the Motor Accident Claims Tribunal, Erode - cum - Principal Sub Court, Erode.

For Appellant : M/s.K.Ponmani
for Mr.T.Murugamanickam

For Respondents : Mr.K.Padmanabhan for R3
R1, R2 - exparte

J U D G M E N T
(The case has been heard through video conference)

Heard the learned counsel for the appellants and the third respondent.

2. This appeal is filed by the claimants/appellants for enhancement of compensation. The case of the claimants/appellants is that the deceased Periyasamy while riding his two wheeler was hit by the lorry insured under the third respondent herein. The records indicate that the accident has occurred on 04.09.2008 when the lorry bearing Registration No.TN 27 T 8109 came in a rash and negligent manner and dashed against the two wheeler. In the said impact, the deceased

Periyasamy died and a case was registered against the lorry driver. At the time of accident, the deceased was 38 years old. He had agricultural land and earning around Rs.10,000/- per month. He was also earning Rs.5,000/- per month by selling milk.

3. The claim petition was contested by the Insurance Company on the ground that the accident was not due to the negligence of the lorry driver. The deceased did not follow the traffic rules and due to his negligence, he met with the accident. The accident occurred due to composite negligence. Further, the deceased had no valid driving licence to ride the motorcycle.

4. The Tribunal after considering the evidence placed before the Court, had observed that the accident could have been averted by the deceased, if he had followed the traffic rules and worn helmet. Hence there is contribution on the part of the deceased. Further, the Tribunal observed that the lorry driver came in a rash and negligent manner and at high speed and lost his control and dashed against the deceased is the major contributor for the accident. Therefore, the Tribunal fixed the contributory negligence between the lorry driver and the deceased at 75 : 25 ratio. The Tribunal fixed the loss at Rs.3,95,000/- and awarded Rs.2,96,250/- to the claimants after deducting 25% towards contributory negligence.

5. The appeal is filed on the ground that the Tribunal should have taken into consideration Ex.R1, Rough Sketch, which would go to show that the accident has occurred on the middle of a four lane junction and the deceased and the vehicle were found lying towards the left side of the road. This would clearly indicate that there was no negligence on the part of the deceased and it was the first respondent driving the vehicle in a rash and negligent manner and dashed the vehicle driven by the deceased.

6. The learned counsel submitted that the loss of income awarded by the Tribunal is very less, considering the earning capacity of the deceased. Further, the learned counsel for the claimants/appellants states that there was no compensation awarded for the loss of consortium to the first claimant, who lost her husband at her age of 35 years and became a widow.

7. On considering the material evidence placed before this Court, this Court finds that the deduction of 25% towards the contributory negligence for not wearing helmet appears to be excessive. No doubt, it is mandatory for the rider to wear helmet and the deceased was not wearing the helmet at the time of the accident. Though the deceased has contributed for the

accident, the accident is the cause and the death is the effect. The deceased had sustained injuries all over the body. His failure to wear helmet has aggravated the loss of life. Therefore, this Court is of the opinion that, 25 % contributory negligence on the part of the deceased fixed by the Tribunal is high. Therefore the contributory negligence is reduced to 10%.

8. Regarding the earning capacity of the deceased, it is seen that the accident took place on 04.09.2008 and the Tribunal has taken the notional income of the deceased as Rs.100/- per day, since the claimants did not produced any material evidence to show that the deceased had agricultural land or any other source of income, like selling milk, etc., However, taking note of the age of the deceased, this Court, fixes the annual income of the deceased as Rs.40,000/-, for which, future prospect of 40% is added, by following the dictum laid down in National Insurance Co. Ltd Vs Pranay's Sethi reported in 2017 (2) TNMAC 609 (SC) and as per the principle laid down in Sarla Varma case, the multiplier to be applied for 38 years old victim is 15 and 1/3 is deducted for his personal expenditure from Rs.56,000/-. the Loss of consortium for the first claimant is fixed at Rs.40,000; the Loss of love and affection for the claimants 2 and 3 together is fixed at Rs.15,000/- x 2 = Rs.30,000/-. A sum of Rs.15,000/- is awarded towards Funeral Expenses and Rs.15,000/- for Loss of estate. The total compensation payable to the claimants is enhanced from Rs.2,96,250/- to Rs.6,60,000/-, in which 10% is deducted towards contributory negligence and the compensation payable to the claimant is fixed at Rs.5,94,000/-.

9. The award of Rs.5.94,000/- with interest at 7.5% is payable from the date of numbering the claim petition till recovery, excluding the period from 15.02.2010 to 20.06.2010.

10. The Insurance Company is directed to deposit the award amount within a period of twelve weeks from the date of receipt of a copy of this order, less the amount if any already deposited. On such deposit, the award is apportioned as below;

(i) Rs.3,00,000/- for the first claimant.

(ii) Rs.2,00,000/- for the second claimant.

(iii)Rs.94,000/- for the third claimant along with proportionate interest.

11. The share of the minor shall be invested in an interest earning fixed deposit scheme in any nationalised Bank and the interest accrued shall be withdrawn by the first claimant once in 6 months to be utilized for the welfare of the minor Child.

12. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

kmm
To
1.The Motor Accident Claims Tribunal,
Erode - cum - Principal Sub Court, Erode.

Copy to
The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.V.Rajesh Advocate sr34425

C.M.A.No.888 of 2015

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