

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3155 of 2013

1.Navamani
2.Minor Ratchana
3.Minor Harshita
(Appellants 2 and 3 rep. By their guardian/next friend 1st appellant) ... Appellants/Petitioners

Vs.

1.M.Thirugnanasambantham
2.The United India Insurance Co. Ltd.,
Branch Office III, 137 - D,
Cheri Road,
Salem 636 001. ... Respondents/Respondents

(R1 was set exparte before the Tribunal and hence, notice is dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.02.2013, made in M.C.O.P. No.262 of 2011, on the file of the Additional District Court - III, (Motor Accident Claims Tribunal), Dharapuram.

For Appellant : Mr. M. Lokesh
for M/s. MA. P. Thangavel

For Respondents: R.1- Exparte
Ms. I. Malar (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 13.02.2013, made in M.C.O.P. No.262 of 2011, on the file of the Additional District Court - III, (Motor Accident Claims Tribunal), Dharapuram.

2.The appellants/claimants filed M.C.O.P. No.262 of 2011, on the file of the Additional District Court - III, (Motor Accident Claims Tribunal), Dharapuram, claiming a sum of Rs.20,00,000/- as compensation for the death of one Jeganathan who died in the accident

that took place on 09.10.2010.

3. According to the appellants, on the date of accident, at about 8.30 hours, when he was travelling as a pillion rider in the Motorcycle bearing Registration No.TN-57-N-6955 driven by one Shanmugam slowly and carefully, observing all the rules in Kangeyam - Chennimalai Road, the 1st respondent drove the Car bearing Registration No.TN-30-B-6996 in a rash and negligent manner and dashed against the Motorcycle and caused accident. In the accident, the deceased sustained fatal injuries. The accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Car. The respondents, as owner cum driver and insurer of the offending vehicle are liable to pay compensation.

4. The 1st respondent remained exparte before the Tribunal.

5. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants. According to the 2nd respondent, the 1st respondent drove the Car slowly and carefully following all the rules of the road. The rider of the Motorcycle in which the deceased traveled, in a drunken mood, drove the vehicle in a rash and negligent manner, without seeing the on coming Car, dashed against the Car and caused the accident. The rider of the Motorcycle did not possess valid driving license at the time of accident. The appellants have to prove that the Car bearing Registration No.TN-30-B-6996 belonging to the 1st respondent was insured with the 2nd respondent at the time of accident, the Car had valid fitness certificate, registration certificate and permit to ply on road. Hence, contributory negligence has to be fixed on driver of both the vehicles. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle in which the deceased traveled. In any event, the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined himself as P.W.1 and examined one eye-witness as P.W.2 and marked 14 documents as Exs.P1 to P14. The respondents examined one Doctor as R.W.1 and marked two documents as Exs.R1 and R2.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that both the drivers of the Motorcycle as well as the Car are responsible for the accident, fixed 50% negligence on the driver of the Motorcycle and 50% on the 1st respondent/driver of the Car and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.4,05,250/- as compensation to the appellants.

8. Challenging the negligence fixed on the driver of the Motorcycle and not being satisfied with the quantum of compensation granted by the Tribunal in the award dated 13.02.2013, made in M.C.O.P. No.262 of 2011, the appellants have come out with the

present appeal.

9.The learned counsel appearing for the appellants contended that the Tribunal erroneously fixed 50% contributory negligence on the rider of the Motorcycle based on Exs.R1 and R2 - Accident Registers and evidence of R.W.1-Doctor. The Tribunal failed to see that no clinical test was conducted to ascertain the contents of alcohol in the body of the deceased. R.W.1 is not an expert to assess the contents of alcohol in the body of the deceased at the time of accident. The Tribunal failed to see that the accident has occurred only due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Car. The FIR was registered against the 1st respondent, driver of the Car and he was charge sheeted. When the entire negligence is on the part of the 1st respondent, driver-cum-owner of the Car, the Tribunal erred in fixing 50% contributory negligence on the deceased. The Tribunal failed to see that if injured person consumes medicine which has alcohol contents, the said person will be smelling alcohol. P.W.1 has admitted in the cross examination that the deceased was an Agriculturist owning 7 acres of land and was doing business of Paddy and was earning a sum of Rs.15,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The deceased was aged 40 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The amounts granted by the Tribunal under different heads are meager and prayed for setting aside 50% negligence fixed on the rider of the Motorcycle and for enhancement of the compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that at the time of accident, the rider of the Motorcycle and the deceased who was a pillion rider were under the influence of alcohol. Due to the negligent riding by the rider of the Motorcycle, the accident occurred. The Tribunal considered the evidence of R.W.1 and Exs.R1 and R2, has rightly fixed 50% contributory negligence on the part of the deceased. The appellants have not filed any documents to prove the avocation and income of the deceased. The title deeds produced are in the name of the father of the deceased. The notional income fixed by the Tribunal is not meagre. Considering the entire materials on record, the Tribunal granted compensation under different heads, which are not meagre and prayed for dismissal of the appeal.

11.Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

12.From the materials on record, it is seen that it is the contention of the appellants that while the deceased was travelling as pillion rider in the Motorcycle driven by one Shanmugam, 1st respondent drove the Car in a rash and negligent manner and dashed against the Motorcycle and caused the accident. To prove this

contention, the appellants have examined P.W.2- eye witness who deposed that the accident has occurred only due to rash and negligent driving by the driver of the Car. The appellants marked Ex.P1 - FIR which was registered against the driver of the Car. The 1st respondent remained exparte. The 2nd respondent did not examine any witness rebutting the evidence of R.W.1, P.W.1 and contents of FIR-Ex.P1. The contention of the 2nd respondent is that both the deceased and rider of the Motorcycle were under the influence of alcohol and due to the negligence on the part of the rider of the Motorcycle only, the accident ha occurred. To prove that both the deceased and rider of the Motorcycle were under the influence of alcohol, the 2nd respondent examined R.W.1 and marked Exs.R1 and R2 - the Accident Register copy of the deceased and rider of the Motorcycle. R.W.1 - Doctor, based on Exs.R1 and R2, deposed that both the deceased and rider of the Motorcycle were smelling alcohol. Immediately after the accident on 09.10.2010, the deceased and rider of the Motorcycle were admitted in the Hospital. The deceased died on the next day, inspite of medical treatment.

13. From the materials on record, it is seen that no clinical test was conducted to ascertain the percentage of contents of alcohol in the body of the deceased. R.W.1- Doctor in the cross-examination, has admitted that when a person consumes medicine containing certain percentage of alcohol, he will be smelling alcohol. The Tribunal without properly considering the evidence of R.W.1 and the fact that no clinical test was conducted to ascertain the percentage of alcohol, erroneously held that evidence of R.W.1 and Exs.R1 and R2 are acceptable and erroneously fixed contributory negligence on the part of the deceased. From the materials, it is clear that the 2nd respondent has failed to prove that both the rider of the Motorcycle and deceased were under the influence of alcohol at the time of accident. For the above reason, the award of the Tribunal fixing 50% contributory negligence on the part of the deceased is liable to be set aside and is hereby set aside. The second respondent is liable to pay the entire compensation to the appellants.

14. As far as the quantum of compensation is concerned, it is the contention of the appellants that the deceased was doing Agricultural work and was earning a sum of Rs.15,000/- per month. To substantiate this contention, the appellants have produced Exs.P6 to P14. On consideration of Exs.P7 to P14 - sale deeds, the Tribunal found that the sale deeds are in the name of the father of the deceased. The appellants have not produced any document to show that the deceased was doing Paddy business. In view of the above, the Tribunal did not accept the contentions of the appellants that the deceased was earning Rs.15,000/- per month and fixed the notional income of the deceased at Rs.6,000/- per month. The accident is of the year 2010. The notional income fixed by the Tribunal is meagre and hence, a sum of Rs.7,000/- per month is fixed as notional income of the deceased. The deceased was aged 40 years at the time of

accident. The Tribunal rightly applied multiplier '15', but did not grant any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards future prospects. Considering the fact that there are 3 dependants of the deceased, Tribunal has rightly deducted 2/3rd towards personal expenses of the deceased. Thus, the amounts granted by the Tribunal towards loss of dependency is modified to Rs.10,50,000/- {[Rs.7,000/- x Rs.1,750/- (25% of Rs.7,000/-)] x 12 x 15 x 2/3}. The Tribunal has awarded a meagre sum of Rs.15,000/- towards loss of consortium to the 1st appellant and hence, the same is enhanced to Rs.40,000/-. The amount of Rs.60,000/- awarded towards loss of love and affection to the appellants 2 and 3 who are the children of the deceased is meagre. The appellants 2 and 3 are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The amount of Rs.10,000/- awarded by the Tribunal towards funeral expenses is meagre and the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	7,20,000/-	10,50,000/-	Enhanced
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Loss of consortium to the 1 st appellant	15,000/-	40,000/-	Enhanced
4.	Loss of love & affection to appellants 2 & 3	60,000/-	80,000/-	Enhanced
5.	Damages to clothes	500/-	500/-	Confirmed
6.	Funeral expenses	10,000/-	15,000/-	Enhanced
7.	Loss of estate	-	15,000/-	Granted
	Total	8,10,500/-	12,05,500/-	Enhanced
	50% of the award amount	4,05,250/-	-	by Rs.3,95,000/-

15. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,05,250/- (50% of the award amount viz., Rs.8,10,500/-) is enhanced to Rs.12,05,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined 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.262 of 2011. On such deposit, the 1st appellant is permitted to withdraw her share of the award amount alongwith proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.3,95,000/-. No costs.

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Assistant Registrar

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Sub Assistant Registrar

To

1. The Additional District Judge - III,
(Motor Accident Claims Tribunal),
Dharapuram.

2. The Section Officer,
V.R Section, High Court, Madras.
C.M.A. No.3155 of 2013

C.C. to Mr.MA.P.Thangavel, Advocate SR.NO.34257

C.C. to Mr.T.Ravichandran, Advocate SR.NO. 34519

C.M.A. No.3155 of 2013

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