

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.332 of 2013
and M.P.No.1 of 2013

1.The Permanent Way Inspector
Southern Railway (North)
Salem Junction, Salem.

2.The Divisional Railway Manager
Divisional Office
Southern Railway, Salem Division.

3.The Union of India
Represented by General Manager
Southern Railway
Head Quarters, Chennai.

... Appellants/Respondents 2 to 4

Vs.

1.Boopathy

2.S.Thangavel ... Respondents/Petitioner/1st Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.07.2011 made in M.C.O.P.No.429 of 2008 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Coimbatore.

For Appellants : Mr.M.Vijay Anand

For R1 : Mr.T.Ganesan
for Mr.S.Manickam

J U D G M E N T

This matter is heard through "Video-conferencing".

This Civil Miscellaneous Appeal has been filed by the appellants challenging the award dated 27.07.2011 made in M.C.O.P.No.429 of 2008 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Coimbatore.

2.The appellants are the respondents 2 to 4 in

M.C.O.P.No.429 of 2008 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Coimbatore. The 1st respondent filed the said claim petition claiming a sum of Rs.11,00,000/- as compensation for the death of her son viz., R.Jeganathan, who died in the accident that took place on 19.06.2002.

3.According to the 1st respondent, on the date of accident i.e., on 19.06.2002, at about 07.15 a.m., while the deceased was riding in his TVS-50 moped along with milk barrels from Arisipalayam to sell milk to Chullimada Milk Producers Co-operative Society at Palghat Road from East to West direction, near Nagamarathumedu, the 2nd respondent, the driver of the lorry belonging to the appellants/Southern Railway, which was coming behind the TVS 50 moped in the same direction, hit the moped, which was driven by the deceased and caused the accident. Due to the accident, the deceased sustained fatal injuries and died on the spot. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent and the appellants.

4.The 2nd respondent, driver of the lorry filed counter statement denying the averments made in the claim petition and stated that he was previously employed in the Southern Railways as lorry driver. The deceased without giving any proper signal, rode the moped and the accident has occurred only due to rash and negligent riding by the deceased. The 2nd respondent has also denied the age, occupation and income of the deceased. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

5.The 2nd appellant filed counter statement, which was adopted by the appellants 1 and 3 denying the averments made by the 1st respondent and stated that while the 2nd respondent was driving the lorry from Coimbatore to Palakkad National Highways Road from East to West direction, the deceased rode the TVS-50 moped in the same direction, dashed on the left side of the back wheel of the lorry. At the time of accident, the deceased did not possess valid driving license to ride the TVS 50 moped. The accident has occurred only due to rash and negligent riding by the deceased. A case has been registered against the 2nd respondent and he was acquitted by the Criminal Court. The 2nd appellant has also denied the age, occupation and income of the deceased. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent, mother of the deceased examined herself as P.W.1, one Venkatachalapathi, eye-witness to the accident was examined as P.W.2, one R.Jagadeeshkumar, was examined as P.W.3 and seven documents were

marked as Exs.P1 to P7. The appellants examined one Mr.V.Ramadass, the Senior Section Engineer of Southern Railway, Salem Division as R.W.1 and marked two documents as Exs.R1 and R2. The Court documents were marked as Exs.X1 to X3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, the driver of the lorry belonging to the appellants/Southern Railway and directed the appellants to pay a sum of Rs.3,98,500/- as compensation to the 1st respondent.

8.Against the said award dated 27.07.2011 made in M.C.O.P.No.429 of 2008, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants contended that the deceased was riding in his TVS-50 moped with two big barrels of milk with heavy weight. TVS-50 moped is not meant for any commercial purpose. In violation of Motor Vehicles Act and Rules, the deceased used the said vehicle for commercial purpose. The deceased while riding in his TVS-50 moped, lost his balance and fell down in the rear side wheel of the lorry and invited the accident. The 2nd respondent, the driver of the lorry was acquitted in the criminal case as there is no negligence on his part. In the Motor Vehicle Inspector's Report of the lorry, it is stated that there is no damage to the lorry, but it is stated that there is damage in front fork and head light of TVS-50 moped. The learned counsel further contended that in Pre-litigation Lok Adalat Case, the 1st respondent herself has stated that the deceased was a milk vendor and was earning a sum of Rs.4,000/- per month. Contrary to the said averments, in the present claim petition, the 1st respondent, mother of the deceased has stated that the deceased was a milk producer and was earning a sum of Rs.20,000/- per month and his employer is the Secretary, Chullimada Milk Producers Co-operative Society Limited. The Tribunal having held that the deceased was only a milk vendor and not a milk producer, erred in fixing the income of the deceased as Rs.6,000/- per month. The Tribunal failed to see that the deceased did not possess valid driving license at the time of accident and the 1st respondent failed to produce any driving license before the Motor Vehicle Inspector. The 1st respondent has not produced any materials to prove the age of the deceased and failed to produce any materials to show her age. The Tribunal erroneously fixed her age as 57 years and applied multiplier '8'. The deceased was a bachelor at the time of accident and he would have spent more amount for his personal expenses. The Tribunal erroneously deducted 1/3rd towards personal expenses and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the 1st respondent made submissions in support of the award passed by the Tribunal with regard to negligence and contended that the deceased was aged 25 years at the time of accident. The Tribunal erroneously applied multiplier '8' taking into consideration the age of the mother of the deceased, the 1st respondent herein and granted meagre amount as compensation. The Tribunal failed to grant any enhancement towards future prospects. In view of the same, 1/3rd deduction made by the Tribunal towards personal expenses is correct and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

12. From the materials on record, it is seen that it is the contention of the 1st respondent that while her son was riding in his TVS-50 moped with milk can to supply the milk to the Chullimada Milk Producers Co-operative Society at Palghat Road from East to West direction, near Nagamarathumedu, the lorry belonging to the appellants, dashed on the back side of the TVS-50 moped and caused the accident. In the accident, son of the 1st respondent sustained injuries and due to the injuries, he died. The 1st respondent has filed the claim petition claiming compensation for the death of her son. According to the 1st respondent, the accident has occurred due to rash and negligent driving by the 2nd respondent, the driver of the lorry belonging to the appellants. To substantiate her contention, the 1st respondent examined herself as P.W.1, examined the eye-witness as P.W.2 and one R.Jagadeesh Kumar as P.W.3 and marked F.I.R. which was registered against the driver of the lorry as Ex.P1.

13. On the other hand, it is the contention of the appellants that the deceased did not possess driving license, he did not know driving and due to carrying heavy milk can, he lost balance, fell down on the rear wheel of the lorry and invited the accident. The appellants did not examine the driver of the lorry, who is the best person to substantiate the contention of the appellants. The appellants have also not examined any eye-witness in support of their contention. On the other hand, the appellants relied on Ex.R2/judgment of the Criminal Court, where the driver of the lorry, the 2nd respondent herein, was acquitted. The Tribunal considered Ex.R2 and found that the 2nd respondent was acquitted as the prosecution failed to prove the charges beyond reasonable doubt. In any event, the judgment of the Criminal Court is not binding on the Tribunal and the Tribunal has to fix the negligence based on the evidence let in before it. In the present case, the 1st respondent examined herself as P.W.1, examined P.W.2, eye-witness, marked F.I.R. and proved that the accident has occurred due to rash and negligent

driving by the 2nd respondent, the driver of the lorry belonging to the appellants. The Tribunal considering the fact that the appellants have not let in any evidence to disprove the evidence let in by the 1st respondent, has held that the accident has occurred only due to rash and negligent driving by the 2nd respondent, the driver of the lorry belonging to the appellants. There is no error in the said finding of the Tribunal warranting interference by this Court.

14. As far as quantum of compensation is concerned, the learned counsel appearing for the appellants contended that the 1st respondent in Pre-Litigation Claim before the Lok Adalat stated that her deceased son was only a milk vendor and was earning a sum of Rs.4,000/- per month. Contrary to the said fact, the 1st respondent in the claim petition has claimed that her son was a milk producer and was earning a sum of Rs.20,000/- per month. From the materials on record, it is seen that the 1st respondent has marked Ex.X2 pass book of the society for supplying the milk to the Chullimada Milk Producers Co-operative Society by the deceased. The Tribunal considering Ex.X2 held that the deceased collected milk from various milk vendors, supplied milk to the society and he was not a milk producer, fixed notional income of the deceased at Rs.6,000/- per month. It is the contention of the learned counsel appearing for the appellants that the deceased was a bachelor at the time of accident and the Tribunal ought to have deducted more than 1/3rd from the income of the deceased towards his personal expenses.

15. From the materials on record, it is seen that the Tribunal has fixed the age of the 1st respondent, the mother of the deceased as 57 years and applied multiplier '8' to grant compensation for loss of dependency. According to the 1st respondent, the deceased was aged 25 years. The Tribunal failed to fix the age of the deceased and apply multiplier according to the age of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the age of the deceased is basis for applying multiplier. In the present case, the Tribunal erroneously taking into consideration the age of the mother of the deceased, awarded compensation by applying multiplier '8'. As per the II Schedule of the Motor Vehicles Act, the multiplier applicable for the age of 25 years is 18. The Tribunal also failed to grant any enhancement towards future prospects. In view of the above, the notional income of the deceased fixed by the Tribunal at Rs.6,000/- and 1/3rd deduction towards personal expenses are not interfered with. The amounts awarded by the Tribunal under other heads are not excessive warranting interference by this Court.

16. In the result, this Civil Miscellaneous Appeal is

dismissed and the sum of Rs.3,98,500/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The appellants are directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

kj

To

1.II Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.

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

+1cc to Mr.M.Vijay Anand, Advocate, S.R.No. 40511

C.M.A.No.332 of 2013
and M.P.No.1 of 2013

AJS (CO)
GN (06/05/2021)

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