



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.353 of 2013
and
Cross Objection No.38 of 2013
and
M.P.No.1 of 2013

C.M.A.No.353 of 2013:

The United India Insurance Company Limited,
No.42, Gee Gee Complex, 2nd Floor,
Next to Shanthi or Anna Theatre,
Anna Salai,
Chennai - 600 002.

.. Appellant/2nd Respondent

Vs.

1.M.Rajeswari
2.M.Nathiya
3.Minor. M.Sasikala
4.Minor. M.Bhoopalan
(Minor respondents 3 & 4 are
represented by their mother and
next friend, M.Rajeswari, 1st
respondent herein)
5.Anjalaiaammal
6.R.Dilli Naicker

... Respondents 1 to 6/Petitioner

7.Perinba Raja Ramesh

..7th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.06.2012 made in M.C.O.P.No.784 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.D.Bhaskaran

For RR 1 to 6 : Mr.K.Varadha Kamaraj
for Mr.V.Mohan Choudary

For R7 : No appearance



Cross Objection No.38 of 2013:

1.M.Rajeswari

2.M.Nathiya

3.Minor. M.Sasikala

4.Minor. M.Bhoopalan

(Minor appellants 3 & 4 are represented by their mother and next friend, M.Rajeswari, 1st appellant herein)

5.Anjalaiammal

6.R.Dilli Naicker

.. Cross Appellants/Petitioner

Vs.

1.Perinba Raja Ramesh

2.The United India Insurance Company Limited,

No.42, Gee Gee Complex, 2nd Floor,

Next to Shanthi or Anna Theatre,

Anna Salai,

Chennai - 600 002.

.. Respondents/Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 29.06.2012 made in M.C.O.P.No.784 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Cross Appellants: Mr.K.Varadha Kamaraj
for Mr.V.Mohan Choudary

For R1 : No appearance

For R2 : Mr.D.Bhaskaran

C O M M O N 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 29.06.2012 made in M.C.O.P.No.784 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

3.The Cross-Objection has been filed by the claimant in M.C.O.P.No.784 of 2008 seeking enhancement of compensation granted by the Tribunal in the award dated 29.06.2012 made in M.C.O.P.No.784 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.



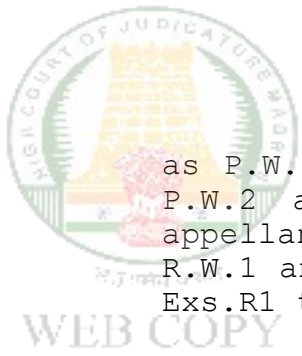
4.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.784 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. The respondents 1 to 6 filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one D.Marimuthu, who died in the accident that took place on 31.03.2007.

5.According to the respondents 1 to 6, on 31.03.2007 at about 15.30 hours, while the deceased was riding his motorcycle bearing Registration No.TN 22 J 5459 on Mambakkam road (Kovilancherry road) from Medavakkam towards Kovilancherry, opposite to Suganthi Manson Water Company, the driver of the lorry bearing Registration No.TN 04 P 6345 belonging to 7th respondent came rash and negligently from Suganthi Manson Water Company in the reverse direction and knocked down the deceased and caused the accident. In the accident, the said D.Marimuthu sustained fatal injuries and died on the spot. Therefore, the respondents 1 to 6 filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation against the 7th respondent and appellant-Insurance Company, being the owner and insurer of the lorry respectively.

6.The 7th respondent - owner of the lorry remained exparte before the Tribunal.

7.The appellant-Insurance Company, insurer of the lorry belonging to 7th respondent filed counter statement and denied all the averments made by the respondents 1 to 6. According to appellant, the accident has not occurred as alleged by the respondents 1 to 6. According to the appellant, the deceased only rode his motorcycle in a drunken mood in a zig-zag manner, went to the mud road, dashed against the stationed lorry and invited the accident. Therefore, contributory negligence has to be fixed on the part of the deceased and the accident has occurred only due to negligence on the part of the deceased and hence, the appellant is not liable to pay any compensation to the respondents 1 to 6. The deceased rode the motorcycle without valid driving license at the time of accident. Further, the case registered against the driver of the lorry belonging to 7th respondent was closed as mistake of fact. The driver of the 7th respondent's lorry was not possessing driving license at the time of accident. Hence, the appellant is not liable to pay the compensation to the respondents 1 to 6. The respondents 1 to 6 have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 6 is highly excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st respondent examined herself



as P.W.1, one Dilli, eyewitness to the accident was examined as P.W.2 and four documents were marked as Exs.P1 to P4. The appellant-Insurance Company examined one Gandhi, Assistant as R.W.1 and one Karunanidhi as R.W.2 and marked three documents as Exs.R1 to R3.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the lorry belonging to 7th respondent and directed the appellant-Insurance Company to pay a sum of Rs.6,06,500/- as compensation to the respondents 1 to 6.

10.Against the said award dated 29.06.2012 made in M.C.O.P.No.784 of 2008, the appellant-Insurance Company has come out with the present appeal and not being satisfied with the amounts awarded by the Tribunal, the respondents 1 to 6 have come out with the present cross objection for enhancement of compensation.

11.The learned counsel appearing for the appellant-Insurance Company contended that the accident has occurred only due to rash and negligent riding by the deceased. The deceased himself was a tortfeasor and claim petition filed under the provisions of Motor Vehicles Act is not maintainable. The appellant is not liable to pay any compensation. The Tribunal failed to note that under Section 166 of the Motor Vehicles Act, the claimants have to prove the involvement of the vehicle in question in the alleged accident and the driver was negligent in driving the vehicle in causing the accident. The Tribunal failed to consider the rough sketch properly which shows that lorry was stationed on the mud road and there is no necessity for the deceased to go to the mud road from Highway. The learned counsel appearing for the appellant further submitted that after investigation, the Police filed final report dropping the charges as abated as accident has occurred only due to negligence on the part of the deceased. The Tribunal failed to appreciate the materials properly and erroneously fixed negligence on the part of the driver of the lorry insured with appellant and prayed for setting aside the award of the Tribunal and for allowing the appeal.

12.Per contra, the learned counsel appearing for the respondents 1 to 6/cross appellants made submissions in support of the award with regard to negligence and submitted that at the time of accident the deceased was aged 45 years and was working as a Mason, earning a sum of Rs.300/- per day. The Tribunal has fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased and granted compensation. The Tribunal has not granted any enhancement towards future prospects of the deceased. The amounts awarded by the Tribunal towards loss of

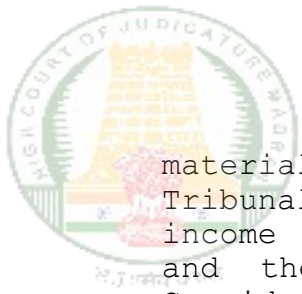


love and affection and funeral expenses are meagre. The Tribunal failed to award any amount towards loss of estate and prayed for enhancement of compensation.

13. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 6 and perused the entire materials on record.

14. From the materials available on record, it is seen that it is the contention of the respondents 1 to 6 that while the deceased was riding his motorcycle cautiously on the left hand side of the road, the driver of the lorry belonging to 7th respondent reversed the lorry in a rash and negligent manner and dashed against the motorcycle rode by the deceased and caused the accident. In the accident, the deceased sustained fatal injuries and died. To substantiate their case, the respondents 1 to 6 examined the 1st respondent as P.W.1 and one Dilli, eyewitness to the accident as P.W.2 and marked F.I.R. as Ex.P1, which was registered against the driver of the lorry. On the other hand, it is the case of the appellant that the lorry in question was stationed on the mud road and deceased in a drunken mood, rode the motorcycle in a rash and negligent manner and dashed on the backside of the lorry and caused the accident. The deceased is only tort feisor and claim petition filed under Section 166 of Motor Vehicles Act is not maintainable. In support of their case, they examined R.W.1 and R.W.2 and three documents were marked as Exs.R1 to R3. Both R.W.1 & R.W.2 are not eyewitnesses. The appellant has not examined the Author of final report and has not filed any documents to show that said final report was filed before the concerned Magistrate and the same was taken on file after issuing notice to the complainant. The appellant did not examine the driver of the lorry or any eyewitness in support of their case. P.W.2/eyewitness has stated that lorry dashed against the deceased. The Tribunal took note of contradiction in the evidence of P.W.2 and considering the evidence in its entirety and in the absence of any evidence to disprove the evidence of P.W.2 that lorry only dashed against the motorcycle rode by the deceased, held that accident has occurred only due to rash and negligent driving by the driver of the lorry. The Tribunal considering all the materials in proper perspective held that the accident has occurred only due to negligent driving by the driver of the lorry belonging to 7th respondent and directed the appellant to pay the compensation to the respondents 1 to 6. There is no error in the said finding of the Tribunal warranting interference by this Court.

15. As far as quantum of compensation is concerned, it is the claim of the respondents 1 to 6 that the deceased was working as a Mason and was earning a sum of Rs.300/- per day. They failed to prove the said contention. In the absence of



material evidence with regard to avocation and income the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident occurred in the year 2007 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the deceased a sum of Rs.6000/- per month is fixed as notional income of the deceased. The respondents 1 to 6 contended that the deceased was aged 45 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. They failed to prove the age of the deceased. The Tribunal considering Ex.P4/postmortem certificate, fixed the age of the deceased as 49 years as mentioned in Ex.P4/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 respondents 1 to 6 are entitled to 25% enhancement towards future prospects. The multiplier '13' adopted and 1/4th deduction towards personal expenses made by the Tribunal are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.8,77,500/- {Rs.7,500/- [Rs.6,000/- + Rs.1,500/- (25% of Rs.6,000/-)] X 12 X 13 X 3/4}. A meagre sum of Rs.10,000/- awarded by the Tribunal towards loss of consortium to 1st respondent is enhanced to Rs.40,000/-. 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	5,26,500/-	8,77,500/-	Enhanced
2.	Loss of love and affection	50,000/-	50,000/-	Confirmed
3.	Loss of consortium to 1 st respondent	10,000/-	40,000/-	Enhanced
4.	Funeral expenses	10,000/-	10,000/-	Confirmed
5.	Loss of expectation of life	10,000/-	10,000/-	Confirmed
	Total	Rs.6,06,500/-	Rs.9,87,500/- -	Enhanced by Rs.3,81,000/- -

16.The compensation awarded by the Tribunal at Rs.6,06,500/- is hereby enhanced to Rs.9,87,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is



directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount if any already deposited, 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.784 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. On such deposit, the respondents 1, 2, 5 & 6 are permitted to withdraw the respective share of the award amount now determined by this Court as per the ratio of apportionment made by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor respondents 3 and 4 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 3 and 4 attain majority. On such deposit, the 1st respondent, being the mother of the minor respondents 3 and 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 3 and 4.

17.In the result, the Civil Miscellaneous Appeal filed by the appellant-Insurance Company is dismissed and the Cross Objection filed by the respondents 1 to 6 is allowed in part. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+2cc to Mr.V.Mohan Choudary, Advocate, S.R.No. 42797

C.M.A.No.353 of 2013 and
Cross Objection No.38 of 2013

RSI (CO)
GN(11/08/2021)