

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3613 of 2013

1.R. Mala

2.B. Ravi

.. Appellants/Petitioners

Vs.

1.P. Ayyanar

2.R. Selvam

3.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
Nos.45 & 46, Whites Road,
Chennai 600 014.

4.Poovalagan

5.ICICI Lombard General Insurance Co. Ltd.,
1st Floor, Arihant Plaza,
No.84/85, Wall Tax Road,
Chennai 600 003.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.01.2013, made in M.C.Q.P. No.692 of 2008, on the file of the XVII Additional District & Sessions Judge, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr. E.Om. Prakash Senior counsel
for M/s. Ramalingam and Associates

For Respondent : No appearance (For R1)

Mr.E. Ragadurai (For R3)
for M/s. N. Vijayaraghavan
Mrs. R. Sreevidhya (For R5)
RR2, 4 not ready in notice

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the award dated 07.01.2013, made in M.C.O.P. No.692 of 2008, on the file of the XVII Additional District & Sessions Judge, (Motor Accident Claims Tribunal), Chennai.

2.The appellants filed M.C.O.P. No.692 of 2008, on the file of the XVII Additional District & Sessions Judge, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.16,00,000/- as compensation for the death of one Suresh who died in the accident that took place on 02.11.2007.

3.According to the appellants, on the date of accident, when the deceased was driving his Hyundai Accent Car bearing Registration No.TN-09-AF-3232 belonging to the 4th respondent, proceeding from North to South, at Karur-Dindigul main road, NH-7 Easanatham Division North, Velmapadi village, Karur District, the 2nd respondent, driver of the Ashok Leyland Lorry bearing Registration No.TN-30-Z-6888 belonging to the 1st respondent driven the same in a rash and negligent manner and dashed on the Car and caused the accident. In the accident, the Car was crushed entirely and deceased succumbed to fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Lorry belonging to the 1st respondent and hence, the appellants filed the claim petition claiming compensation against the respondents 1 to 3 as owner, driver and insurer of the Lorry and respondents 4 and 5 as owner and insurer of the Car.

4.The respondents 1, 2 and 4 remained exparte before the Tribunal.

5.The 3rd respondent-Insurance Company, insurer of the Lorry, filed counter statement and denied all the averments made by the appellants in the claim petition. According to the 3rd respondent, the accident did not occur due to negligence on the part the 2nd respondent, driver of the Lorry belonging to the 1st respondent. The appellants have to prove the manner of accident, alleged damages caused to the property, death of the deceased is only due to the injuries sustained in the accident and also age, avocation and income of the deceased, to claim compensation. In any event, the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.The 5th respondent-Insurance Company, insurer of the Car, filed counter statement and denied all the averments made by the appellants in the claim petition. According to the 5th

respondent, the 1st respondent, alleged owner of the Car bearing Registration No. TN-09-AF-3232 did not report the accident to the 5th respondent and did not submit the claim form and details regarding registration certificate, driving license and insurance. Hence, the involvement of the said Car in the accident is denied. After investigation, the charges were framed against the 2nd respondent, driver of the Lorry belonging to the 1st respondent. Hence, the accident occurred only due to the rash and negligent driving by the 2nd respondent, driver of the Lorry. In any event, the appellants have to prove the manner of accident, to claim compensation. In any event, the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st appellant examined herself as P.W.3, examined Doctor as P.W.4 and marked 37 documents as Exs.P1 to P37. The respondents examined its Official as R.W.1 and marked 1 document as Ex.R1.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to composite negligence of both the vehicles viz., Car and Lorry and both the drivers are joint tort-feasors and apportioned negligence in the ratio of 70% on the driver of the Lorry and 30% on the driver of the Car. The Tribunal awarded a sum of Rs.4,65,000/- as compensation and directed the respondents 1 and 3 as owner and insurer of the Lorry, to jointly and severally pay a sum of Rs.3,25,500/- being 70% of the award amount, as compensation to the appellants. The Tribunal dismissed the claim petition as against the respondents 2, 4 and 5.

9. Challenging the contributory negligence fixed on the deceased and not being satisfied with the amounts granted by the award dated 07.01.2013, made in M.C.O.P. No.692 of 2008, the appellants have come out with the present appeal.

10. The learned counsel appearing for the appellants contended that the accident has occurred only due to the negligence on the part of the 2nd respondent, driver of the Lorry insured with the 3rd respondent. The Tribunal without taking into consideration the oral and documentary evidence let in by the appellants, came to the wrong conclusion that the deceased also contributed negligence and fixed 30% contributory negligence on the part of the deceased and directed the respondents 1 and 3 to jointly and severally pay only 70% of the compensation awarded. The Tribunal fixed 30% negligence on the deceased/driver of the Car, contrary to the evidence let in by the appellants. The 3rd respondent has not let in any evidence to hold that the driver of the Car also was responsible for the accident. The Tribunal

failed to consider that the respondents 1 to 3 have not let in any evidence to prove that the deceased, driver of the Car, also contributed to the accident and prayed for setting aside the 30% negligence fixed on the driver of the Car.

11.The learned counsel appearing for the appellants further contended that the deceased was carrying on business as Flower Trader and was earning a sum of Rs.15,000/- per month. He is an Income Tax assessee. The appellants filed SARAL form and PAN card to prove the same. The Tribunal erroneously fixed meagre amount of Rs.4,500/- per month as notional income. The Tribunal ought to have accepted Ex.P30 - SARAL form and Ex.P31 - salary certificate and fixed the income as claimed by the appellants. The deceased was aged 21 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The amounts granted by the Tribunal towards loss of love and affection and funeral expenses are meagre. The Tribunal failed to award any amount for loss of estate. The Tribunal erred in reducing 30% of the compensation, holding that son of the appellants is tort-feasor to accident and prayed for setting aside the 30% negligence fixed on the deceased and prayed for enhancement of the compensation.

12.Per contra, the learned counsel appearing for the 3rd respondent, insurer of the Lorry contended that the accident occurred only due to the negligence on the part of the deceased who was the driver of the Car. The Tribunal erroneously fixed only 30% contributory negligence on the part of the deceased and dismissed the claim petition against the 5th respondent as deceased was tort-feasor. In any event, the accident occurred in the middle of the road. The Tribunal ought to have fixed negligence equally on both the driver of the Lorry as well as the deceased, driver of the Car. The appellants have produced Ex.P30 and Ex.P31 viz., SARAL form and salary certificate respectively. In Ex.P31, it has been mentioned that the deceased was receiving only Rs.5,000/- per month as salary. The appellants have failed to prove that the deceased was earning Rs.15,000/- per month. The Tribunal considering the contradiction in Exs.P30 and P31, did not accept Exs.P30 and P31 and fixed Rs.4,500/- per month as notional income, which is not meagre. The appellants have not made out any case for setting aside 30% contributory negligence fixed on the deceased and prayed for dismissal of the appeal against the 3rd respondent.

13.Mrs.R.Sreevidhya, learned counsel appearing for the 5th respondent- Insurance Company, insurer of the Car, contended that the deceased was tort-feasor and 5th respondent Insurance Company is not liable to pay any compensation. The Tribunal considering the materials placed before it, rightly exonerated the 5th respondent - Insurance Company and prayed for dismissal

of the appeal against the 5th respondent.

14. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

15. Heard the learned counsel appearing for the appellants, 3rd respondent as well as the 5th respondent and perused the materials available on record.

16. From the materials on record, it is seen that it is the contention of the appellants that the accident occurred due to rash and negligent driving by the 2nd respondent, driver of the Lorry belonging to the 1st respondent. To substantiate the said contention, the appellants examined P.W.2 who traveled in the Car and also injured in the accident. P.W.2 admitted in cross examination that only after hearing the noise of the impact, he came to know about the accident. In view of the same, the Tribunal did not accept the evidence of P.W.2, as he was not an eye witness. The respondents have not examined the driver of the Lorry or any eye witness to substantiate their contention that accident has occurred only due to negligence of the deceased. The Tribunal considering the fact that the accident occurred in the middle of the road, due to head on collision, held that both the drivers of the Lorry as well as the Car contributed negligence to the accident and fixed 70% negligence on the part of the driver of the Lorry, being the heavy vehicle and 30% negligence on the deceased, driver of the Car. There is no error in the said finding of the Tribunal, warranting interference by this Court.

17. As far as quantum of compensation is concerned, the appellants claimed that the deceased was self-employed and was doing the business as Flower Trader and was earning a sum of Rs.15,000/- per month. To substantiate their contention, the appellants filed Ex.P30 - SARAL form. At the same time, they have also filed Ex.P31 - salary certificate which shows that the deceased was paid consolidated sum of Rs.5,000/-. The Tribunal did not accept Ex.P30, as the same was not authenticated one and Ex.P31 as the author of the document was not examined and fixed Rs.4,500/- per month as notional income of the deceased. The accident occurred in the year 2007. Considering the date of accident, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. The deceased was aged 21 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects. The Tribunal applied multiplier '15' taking into consideration the

age of the 1st appellant who is the mother of the deceased. As per the judgment of the Hon'ble Apex Court referred to above, age of the deceased is basis for applying multiplier. Hence, the correct multiplier applicable is '18'. The deceased was a Bachelor at the time of accident. The Tribunal rightly deducted 50% towards personal expenses. By fixing notional income at Rs.6,500/-, granting 40% enhancement and applying multiplier '18' and deducting 50% towards personal expenses, the amounts awarded by the Tribunal towards loss of income is modified to Rs.9,82,800/-{[Rs.6,500/- + Rs.2,600/-(40% of Rs.6,500/-)] x 12 x 18 x 50%}. The Tribunal has granted a meagre sum of Rs.50,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. The appellants are entitled to Rs.40,000/- each towards loss of love and affection and Rs.15,000/- towards funeral expenses. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded under the said head. The amount granted by the Tribunal towards transportation is just and reasonable and hence, the same is 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 income	4,05,000/-	9,82,800/-	Enhanced
2.	Loss of love and affection	50,000/-	80,000/-	Enhanced
3.	Transportation	5,000/-	5,000/-	Confirmed
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	4,65,000/-	10,97,800/-	Enhanced by Rs.6,32,800/-
	70% of the award amount	3,25,500/-	7,68,460/-	Enhanced by 4,42,960/-

18. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,65,000/- is enhanced to Rs.10,97,800/- along with 7.5% interest per annum from the date of petition till the date of deposit. The respondents 1 and 3

are jointly and severally directed to deposit Rs.7,68,460/- being 70% of the award amount, now determined by this Court, along with interest and costs, less the amount 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.692 of 2008. On such deposit, the appellants are permitted to withdraw their share of the award amount, now determined by this Court, along with 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 appeal is dismissed as against the respondents 2, 4 and 5. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gsa

To

1.The (Motor Accident Claims Tribunal),
XVII Additional District & Sessions Judge,
Chennai.

copy to

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

+2 ccs to M/s.Ramalingam & Associates sr 40184

+1 cc to Mrs.R.Sreevidhya Advocate sr40129

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C.M.A.No.3613 of 2013

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