

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.765 of 2020

1.Saraswathy

2.Minor Yamuna Devi

3.Minor Umadevi

(Minors/appellants 2 and 3 rep. by their
next friend and mother/1st appellant)

4.Umadevi

.. Appellants/Petitioners

Vs.

1.Premkumar

2.The Divisional Manager

New India Assurance Company Ltd.

Divisional office, No.29

Paramathi road, Namakkal taluk

Namakkal District-637 001.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2019 made in M.C.O.P.No.3 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellants : Mr.A.Sathish Kumar

For R2 : Mr.J.Chandran

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J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 10% contributory negligence on the part of the deceased as well as for enhancement of compensation granted by the Tribunal in the award dated 05.07.2019 made in M.C.O.P.No.3 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.3 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Ramesh, who died in the accident that took place on 08.10.2014.

3.According to the appellants, on the date of accident i.e., on 08.10.2014 at about 7.10 p.m., while the deceased Ramesh was riding in his motorcycle on Namakkal to Trichy road, near Valayapatti power house, a tipper lorry, which came in the opposite direction, belonging to the 1st respondent, driven by its driver in a rash and negligent manner, dashed on the motorcycle and caused the accident. Due to the accident, the deceased Ramesh sustained grievous injuries and succumbed to his injuries on 15.10.2014. Therefore, the appellants filed the said claim petition claiming compensation against the respondents.

4.The 1st respondent, owner of the tipper lorry, remained exparte before the Tribunal.

5.The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the driver of the tipper lorry after noticing that the deceased Ramesh rode the motorcycle in a rash and negligent manner towards centre portion of the road, blown horn, applied brake suddenly and further swerved his vehicle to the extreme left side of the road to avoid the accident. The deceased Ramesh alone rode the motorcycle in the wrong side of the road and invited the accident. In the final report, it was stated that the deceased alone was responsible for the accident. The deceased was the tort-feasor and therefore, the appellants are not entitled to any compensation. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st appellant, wife of the deceased, examined herself as P.W.1 and one Karthikeyan, eye-witness to the accident, was examined as P.W.2 and marked 11 documents as Exs.P1 to P11. The appellant/Insurance Company examined one Vinoba, Assistant Manager, as R.W.1 and marked four documents as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the deceased as well as the driver of the tipper lorry belonging to the 1st respondent, fixed 10 : 90 contributory negligence on the part of the deceased as well as the driver of the tipper lorry respectively, awarded a

sum of Rs.19,72,600/- as compensation to the appellants and directed the 2nd respondent/Insurance Company being insurer of the said tipper lorry, to pay a sum of Rs.17,75,340/- i.e., 90% of the compensation to the appellants.

8.Challenging the portion of the award fixing 10% contributory negligence on the part of the deceased as well as for enhancement of compensation, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants contended that the Tribunal rightly accepted the evidence of P.W.2 and held that the accident has occurred only due to rash and negligent driving by the driver of the tipper lorry belonging to the 1st respondent. But the Tribunal erred in fixing 10% contributory negligence on the part of the deceased instead of fixing entire negligence on the part of the driver of the tipper lorry. The deceased was working as a lorry driver at the time of accident and was earning a sum of Rs.15,000/- per month & Rs.200/- as daily batta. The Hon'ble Apex Court fixed notional income of the deceased at Rs.12,000/- for the accident occurred in the year 2011. In the present case, the accident has occurred in the year 2014. The Tribunal ought to have fixed notional income of the deceased at Rs.15,000/- and granted 40% enhancement towards future prospects. The amounts awarded by the Tribunal towards transportation and loss of love & affection are meagre and prayed for setting aside the portion of the award fixing 10% contributory negligence on the part of the deceased and for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased drove the vehicle in a rash and negligent manner in the middle of the road and only due to his negligence, the accident has occurred. The 2nd respondent/Insurance Company has marked the final report as Ex.R2, wherein the Police after investigation, altered F.I.R. and closed the case as 'abated', as the negligence was on the part of the deceased. The 2nd respondent has marked the rough sketch as Ex.R3 to show the place of accident and that the accident has occurred due to negligence on the part of the deceased. The Tribunal ought to have fixed entire negligence on the part of the deceased instead of fixing 10%. The appellants failed to substantiate the contention with regard to the avocation and income of the deceased. In the absence of any material evidence, the Tribunal erred in fixing monthly income of the deceased at Rs.8,000/-, which is excessive. The total compensation awarded by the Tribunal is excessive and prayed for dismissal of the appeal.

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

12. It is the contention of the appellants that while the deceased was riding in his motorcycle on the left side of the road, driver of the tipper lorry, which came in the opposite direction in a rash and negligent manner, dashed against the motorcycle and caused the accident. To substantiate their case, the appellants examined the eye-witness to the accident as P.W.2, who deposed that the accident has occurred only due to rash and negligent driving by the driver of the tipper lorry belonging to the 1st respondent. The appellants have also marked the F.I.R. as Ex.P1, which was registered against the driver of the tipper lorry. On the other hand, it is the contention of the 2nd respondent/Insurance Company that the accident has occurred only due to rash and negligent riding of the motorcycle by the deceased in the middle of the road. The 2nd respondent did not examine any eye-witness to the accident or driver of the tipper lorry to substantiate their contention. On the other hand, they have marked the altered final report as Ex.R2, wherein the Police after investigation, closed the case as 'abated', as the accident has occurred only due to rash and negligent riding of the motorcycle by the deceased. The 2nd respondent also marked the rough sketch as Ex.R3 to prove their case. The Tribunal considering the evidence of P.W.2, Ex.R2/final report & Ex.R3/rough sketch, held that the accident has occurred only due to rash and negligent driving by both the deceased as well as the driver of the tipper lorry and fixed 10 : 90 contributory negligence on the part of the deceased as well as driver of the tipper lorry belonging to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

13. As far as quantum of compensation is concerned, the appellants have contended that the deceased was earning a sum of Rs.15,000/- per month and Rs.200/- as daily batta, by working as a lorry driver at the time of accident. The appellants have failed to prove the said contention. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2014 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. As per Ex.P9/driving license of the deceased, the deceased was aged 37 years at the time of accident. The Tribunal granted 40% enhancement towards future prospects, applied multiplier '15' and deducted 1/4th towards personal expenses and the same are correct. Thus, the compensation awarded by the Tribunal towards loss of dependency is enhanced to

Rs.22,68,000/- (Rs.12,000/- + 4800 [Rs.12,000/- X 40%] X 12 X 15 X 3/4). The Tribunal has not awarded any compensation towards loss of love & affection to the appellants 2 & 3, who are minor daughters of the deceased. Hence, a sum of Rs.40,000/- each is awarded towards loss of love & affection to the appellants 2 & 3. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are 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 or reduced
1.	Loss of dependency	15,12,000	22,68,000	Enhanced
2.	Loss of estate	15,000	15,000	Confirmed
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Loss of consortium to the 1 st appellant	40,000	40,000	Confirmed
5.	Medical expenses	3,85,576	3,85,576	Confirmed
6.	Transportation	5,000	5,000	Confirmed
7.	Loss of love and affection to the appellants 2 & 3	-	80,000	Granted
	Total	19,72,576 rounded off to 19,72,600	28,08,576 rounded off to 28,08,600	
	90% of the award amount	17,75,340	25,27,740	Enhanced by Rs.7,52,400/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,72,600/- is hereby enhanced to Rs.28,08,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed

to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit 90% of the enhanced award amount now determined by this Court i.e., Rs.25,27,740/- along with interest and costs, less the amount if any, already deposited by them, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 & 4 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share amounts of the minors/appellants 2 & 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant, being mother of the minors/appellants 2 & 3, is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge
The Motor Accident Claims Tribunal
Namakkal.

2.The Section Officer
V.R.Section
High Court, Chennai.

+2cc to Mr.A.Sathish Kumar, Advocate, S.R.No.17723

+1cc to Mr.J.Chandran, Advocate, S.R.No.17801

C.M.A.No.765 of 2020

SPD(CO)
CB(22/04/2021)

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