

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.1177 OF 2018 AND 131 OF 2020

C.M.A.No.1177 of 2018:

United India Insurance Company Limited,
146-N, II Floor, Kumar Complex,
Anna Salai, Tiruchengode. .. Appellant/2nd Respondent

Vs.

1.Perumayee
2.Satheeshkumar
3.Sathya .. Respondents 1 to 3/
Claimants

4.Ganeshmal ... Respondent/1st Respondent

C.M.A.No.131 of 2020:

1.Perumayee
2.Satheeshkumar
3.Sathya .. Appellants/Claimants

Vs.

1. Ganeshmal
2. United India Insurance Company Limited,
146-N, II Floor, Kumar Complex,
Anna Salai, Tiruchengode. .. Respondents/Respondents

COMMON PRAYER:

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 15.12.2017 made in M.C.O.P.No.170 of 2016 on the file of the Motor Accidents Claims Tribunal, First Additional District Court, Erode.

In C.M.A.No.1177 of 2018

For Appellant	: Mr.A.Dhiraviyanathan
For R1 to R3	: Mr.T.S.Arthanareeswaran
R4	: No Appearance

In C.M.A.No.131 of 2020

For Appellants	: Mr.T.S.Arthanareeswaran
For R2	: Mr.A.Dhiraviyanathan
R1	: No Appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the award dated 15.12.2017 made in M.C.O.P.No.170 of 2016 on the file of the Motor Accidents Claims Tribunal, First Additional District Court, Erode.

2.Both the appeals arise out of the same accident and same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

3.The appellant in C.M.A.No.1177 of 2018 is the 2nd respondent in M.C.O.P.No.170 of 2016 on the file of the Motor Accidents Claims Tribunal, First Additional District Court, Erode. The respondents 1 to 3/claimants filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Palanivel (husband of the 1st appellant and father of the 2nd and 3rd appellants) in C.M.A.No.131 of 2020 who died in the motor vehicle accident that took place on 13.12.2015.

4.According to the claimants, while the deceased Palanivel was riding in his TVS XL Super moped bearing Regn.No.TN-34-Q-0945 from South to North on the Thiruchengode to Salem Main Road, near Chinnathambipalayam bus stop. At that time, the driver of the TATA ACE bearing Regn.No.TN-39-AQ-4845 belonging to the 1st respondent drove the same in a rash and negligent manner and hit against the vehicle which was driven by the deceased. Due to the said impact, the deceased sustained grievous head injuries and injuries all over the body. Immediately he was taken to the Government Hospital, Tiruchengode through 108 Ambulance and first aid was given. But, he died while he was taken to Erode for further treatment. Therefore, the legal heirs of the deceased have filed the above claim petition claiming compensation against the respondents 1 and 2.

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

6.The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident had occurred only due to collision of both the vehicles and thereby, drivers of both the vehicles are responsible for the accident and hence, there is contributory negligence on the part of the deceased. It is further contended that the owner of the offending vehicle has handed over the vehicle to the driver, who was not possessing valid licence and he is an unauthorized person and thereby, committed default. Hence, the 2nd respondent is not liable to pay the compensation. The 2nd respondent also disputed the income of the deceased. In any event, the compensation claimed by the claimants are highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, 1st claimant/wife of the deceased was examined as P.W.1, one eyewitness namely Perumal was examined as P.W.2, one Murugesan was examined as P.W.3 and marked thirteen documents as Exs.P1 to P13. On the side of the 2nd respondent, one Naveen Kumar was examined as R.W.1 and Chandrasekaran was examined as R.W.2 and marked four documents as Exs.R1 to R4.

8.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.9,74,740/- as compensation to the claimants.

9.Against the said award dated 15.12.2017 made in M.C.O.P.No.170 of 2016, the 2nd respondent-Insurance Company has filed C.M.A.No.1177 of 2018 for setting aside the award of the Tribunal, while the claimants have filed C.M.A.No.131 of 2020 for enhancement of the compensation.

10.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal without considering the contentions raised in the counter statement has fixed the negligence on the part of the 1st respondent based on the F.I.R without examining the author of the document. The Tribunal failed to consider the evidence of R.W.1 and R.W.2. The accident has occurred in the middle of the road and both the driver of 1st respondent and deceased are responsible for the accident. The Tribunal ought to have fixed contributory negligence on the part of the deceased. At the time of accident, the driver of 1st respondent was possessing only learner's driving licence and he was not authorized to drive the goods vehicle and thereby he violated the policy norms. For violating the policy conditions, the 2nd respondent/Insurance Company is

not liable to pay any compensation to the claimants. The total compensation awarded by the Tribunal under different heads are excessive. The claimants have not made out any case for enhancement of compensation and prayed for setting aside the award of the Tribunal and dismissing the appeal filed by the claimants.

11.The learned counsel appearing for the claimants contended that the accident has occurred only due to rash and negligent driving by the driver of the 1st respondent. The claimants proved the same by examining the eyewitness and marking FIR which is registered against the driver of the 1st respondent. The driver of the 1st respondent as R.W.1 has admitted that the accident has occurred only due to his negligence. At the time of accident, the deceased was working as a Power Loom weaver and was earning a sum of Rs.20,000/- per month. The Tribunal fixed meagre sum of Rs.6,500/- per month towards income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for dismissal of the appeal filed by the 2nd respondent/Insurance Company and for enhancement of compensation.

12.Heard the learned counsel appearing for the claimants as well as 2nd respondent-Insurance Company and perused the materials available on record.

13.It is the contention of the claimants that the driver of the TATA ACE belonging to 1st respondent, drove the vehicle in a rash and negligent manner and dashed against the motorcycle driven by the deceased and caused the accident. Due to the injuries sustained in the accident, the deceased during the treatment, died. To substantiate the said averments, the claimants examined eyewitness PW.2 and marked FIR-Ex.P1 which was registered against the driver of the 1st respondent. On the other hand, it is the contention of the 2nd respondent that the accident occurred only due to rash and negligent driving by both the drivers of the vehicles. To substantiate the said contention they examined the driver of the 1st respondent as R.W.1. R.W.1 has deposed that he dashed against the motorcycle driven by the deceased by mistake. The contention of the learned counsel for the 2nd respondent that the accident has occurred in the middle of the road and therefore, contributory negligence has to be fixed on the deceased is contrary to the facts. The Tribunal has considered that accident has occurred on North to South road on the western side. The driver of the 1st respondent was driving his TATA ACE from North to South while the deceased was driving his motorcycle from South to North. The Tribunal verified the rough sketch and found that the accident has occurred on western side of the road which means that the driver of the 1st respondent has gone to the right hand side of the road and caused the accident. On Consideration of these facts, the

Tribunal held that the accident has occurred only due to the rash and negligent driving by the driver of the 1st respondent and directed the 2nd respondent/Insurance Company to pay the compensation. There is no error in the said finding warranting interference by this Court. The learner's driving licence issued by RTO is also considered as valid driving licence.

14.As far as the quantum of compensation is concerned, P.W.1/wife of the deceased has deposed before the Tribunal that at the time of accident, the deceased was working as a Power Loom weaver and was earning a sum of Rs.20,000/- per month. They failed to prove the income of the deceased by adducing documentary evidence. In the absence of any material evidence, the Tribunal fixed monthly income of the deceased at Rs.6,500/-. The Tribunal has not granted any enhancement for future prospects. The accident is of the year 2015 and the deceased was aged 49 years at the time of accident. In the considered opinion of this Court, the amount fixed by the Tribunal as monthly income of the deceased is meagre. Therefore, a sum of Rs.13,000/- per month is fixed as the notional income of the deceased. The claimants are entitled to 25% enhancement towards future prospects. Accordingly, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.16,90,000/- (Rs.13,000/- + Rs.3,250/- (25% of Rs.13,000/-) X 12 X 13 X 2/3). The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are confirmed.

15.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	8,44,740	16,90,000	enhanced
2.	Loss of love & affection	50,000	50,000	confirmed
3.	Loss of consortium	40,000	40,000	confirmed
4.	Funeral expenses	15,000	15,000	confirmed

5.	Transportation	10,000	10,000	confirmed
6.	Loss of estate	15,000	15,000	confirmed
	Total	Rs.9,74,740/-	Rs.18,20,000/-	Enhanced by Rs.8,45,260/-

16. In the result, C.M.A.No.1177 of 2018 filed by the 2nd respondent/Insurance Company is dismissed and C.M.A.No.131 of 2020 filed by the claimants is allowed and the total compensation of Rs.9,74,740/- awarded by the Tribunal is hereby enhanced to Rs.18,20,000/- 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 modified award amount now determined by this Court, 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, to the credit of M.C.O.P.No.170 of 2016. On such deposit, the claimants are permitted to withdraw their share of the award amount on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount already withdrawn if any. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gbi

To

The First Additional District Judge,
Motor Accidents Claims Tribunal,
Erode.

+1cc to Mr.C.Paraneedharan, Advocate, Sr.No.10943
+2cc to Mr.A.Dhiraviyanathan, Advocate, Sr.No.11257

C.M.A.Nos.1177 of 2018 and 131 of 2020

TM(CO)
CS/18/11/2020