

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.08.2020	Pronounced on: 20.08.2020
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CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.781 of 2016

1.Mrs.T.Shanthi Bai
2.Kaviarasu
3.Jayaraman
4.Kanagammal

...Appellants

/versus/

1.V.Murali Sankar
2.Sriram General Insurance Co.Ltd.,
C/o.Motor III Party Claims Office,
No.66, 2nd Floor, City Centre Complex,
Thirumalaipillai Road,
T.Nagar, Chennai-600 017.

...Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 23.06.2015 made in M.C.O.P.No.5287 of 2013 on the file of III Judge, Small Causes Court, Chennai.

For Appellants : Mr.T.G.Balachandran

For R2 : M/s.K.Poomalai

For R1 : No such person

J U D G M E N T

(The case has been heard through video conference)

This appeal is preferred by the claimants who lost their 17 years old son in the road traffic accident on 03/06/2013. Alleging inadequacy of compensation Rs.6,55,000/-, the present appeal is filed.

2. According to the claimants who the parents of the deceased, On 03/06/2013, when the deceased Tamlarasan was

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proceeding in the motor cycle bearing registration No.TN 22-CY-3954 along the Rajiv Gandhi Salai from north to south near Sri Srinivasa perumal Koil, Semmanacherri a TATA 407 van driven rashly and negligently from behind with flag iron mast in its carriage hit him on his neck resulting in his death. The deceased had completed 12th standard. For loss of estate, love and affection and funeral expenses a sum of Rs.10 lakhs was claimed as compensation.

3. The owner of the TATA tempo van and the Insurance Company denied their liability through their respective counters. Attributing negligence on the part of the victim, it is contended that the tempo van carrying flag post with necessary red indicators and red cloth proceeding in a moderate speed. The victim without following the traffic rules and without noticing the van proceeding with flag post hit behind the tempo and sustained injury. The accident occurred due to the unmindful act of the deceased. The claim petition is hit by non joinder of the two wheeler owner and its insurer. Being the offending vehicle, they are proper and necessary parties to answer the claim. The claim of Rs.10 lakhs is excessive and highly exorbitant. It does not bear any equitable, legal and reasonable basis. The deceased had no valid license to drive a motor vehicle.

4. Before the Tribunal in support of the claimants two witnesses were examined. 7 exhibits were marked. On the side of the respondents 4 exhibits were marked.

5. Based on the evidence of PW-2, who is the first informant to the Guindy Police Station in Cr.No. 415/S3/13, the Tribunal has held that the accident was due to the negligence of the van driver. Taking into consideration that the claimants have not produced any document to prove the earning capacity of their deceased son, fixed Rs.6,000/- pm as notional income. Deducting 50% towards personal expenditure and taking note of the age of the claimants the Tribunal has applied multiplier 15. Awarded a sum of Rs.5,40,000/- for loss of income and Rs.1,00,000/- for loss of love and affection. Rs. 15,000/- towards funeral expenses.

6. The learned counsel for the appellant submit that, the award passed by the Tribunal is very low. It should have taken note of future prospect of the boy. He was about to join a polytechnic college on completion of his higher secondary course. The loss of dependency and estate not been taken note by the Tribunal. For pain and suffering, loss of life expectation compensation has to be paid.

7. The learned counsel appearing for the respondent would submit that the award of the Tribunal is erroneous. It has failed to take note of the fact that the deceased was a minor and had no license to drive. The accident caused due to the rashness of the deceased. PW-2 is not a reliable witness. In any case the compensation as awarded by the Tribunal is excessive without any basis for fixing the notional income.

8. This court finds that the deceased was 17 years old. He had no driving license. Two motor vehicles are involved in the accident, but the claimants have not chosen to implead the owner of the two wheeler which was driven by the deceased without possessing a license to drive. The claimants neither pleaded nor proved the earning capacity of the deceased. However, the Tribunal had fixed the income as Rs.6,000/- pm notionally. The Tribunal without considering facts which are necessary to decide liability and quantum had generously awarded Rs.6,55,000/- for the death of a minor boy aged 17 years who has completed 12th standard and died in the motor accident while driving a motor cycle without license.

9. The Insurance Company, has thought fit not to file appeal against the above order of the Tribunal which lack reasoning and evidence for awarding Rs.6,55,000/-. That cannot be reason to entertain this appeal for enhancement of compensation. In view of this court, the compensation of Rs.6,55,000/- awarded by the Tribunal is adequate and just. Hence the appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

To

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

Copy to:
The Section Officer,
VR Section, High Court, Madras.

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