

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1377 of 2018

1. R.Santhi
2. R.Sowmiya
3. Minor R.Gowtham Raj
4. Sellammal
5. Pachamuthu
(Minor 3rd appellant Represented by
N/f Guardian/ Mother 1st appellant)

.. Appellants

Vs.

1. R.Gowtham
2. The New India Assurance Co., Ltd.,
Divisional Office, Gugai Main Road,
Near Rajasabari Theatre,
Gugai, Salem - 6.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.12.2017 made in M.C.O.P.No.1343 of 2016 on the file of the Motor Accidents Claims Tribunal, (Special Court), Salem.

For Appellant : M/s.S.Kalyanaraman
For R2 : Mr.S.Manivannan
For R1 : No appearance

J U D G M E N T

This appeal is preferred by the appellants/claimants against the award of a sum of Rs.11,01,562/- towards compensation for the death of one P.Raja in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 17.05.2016, the deceased P.Raja was proceeding in his lorry bearing registration No.TN 52 H 9293 on the Bangalore - Chitradurga Main Road. Another lorry bearing registration No. TN33 BK 8235 belonging to the first respondent and insured with the second respondent, was going in front of the lorry bearing Reg.No.TN-52-H-9293, on the extreme left side of the road in a rash and negligent manner. When the deceased was nearing Kolakal Village, the the driver of the preceding lorry, applied sudden brake, without any indication and due to the same, the lorry bearing

registration No.TN 52 H 9293 driven by the deceased, dashed on the back side of the preceding lorry. Due to the said impact, the deceased sustained grievous injuries and he later on, died in the hospital. The wife, daughter, son, mother and father of the deceased, being the surviving legal heirs, filed a claim petition before the Tribunal, seeking compensation of Rs.25,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.11,01,562/-, with interest at the rate of 7.5% per annum from the date of petition. Giving a finding that the accident had occurred due to the rash and negligent driving of the both the drivers of the vehicles, the Tribunal fixed the contributory negligence on the part of both the drivers at the ratio of 25:75 and directed the insurance company to pay 75% of the compensation to the claimants. Feeling aggrieved and being dissatisfied with the quantum of compensation so awarded, the appellants are before this Court with the present appeal seeking enhancement of compensation.

3.The learned counsel for the appellant/claimant has submitted that without considering the materials and evidence available on record, the Tribunal has erred in fixing 25% contributory negligence on the appellants/claimants. He further submitted that the compensation awarded by the Tribunal is on the lower side and it needs considerable enhancement.

4.Per Contra, the learned counsel for second respondent insurance company has submitted that the Tribunal, based on the materials and evidence available on record, has rightly rendered its findings on negligence and awarded the just compensation and hence, the same do not call for any interference by this Court.

5.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

6.It is seen that P.W.1-first claimant has deposed before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the lorry bearing registration No.TN33 BK 8235. Even as per Ex.P1- FIR, it is seen that the accident had occurred due to the rash and negligent driving of the driver of the lorry bearing registration No.TN33 BK 8235. P.W.2 deposed before the Tribunal that had the driver of the lorry bearing registration No.TN.52 H 9293 driven the vehicle at a moderate speed keeping distance, the accident could have been averted. Taking note of the materials and evidence available on record, the Tribunal has observed that had the drivers of both the lorries were diligent and careful in driving, the accident would not have occurred. Observing so, the Tribunal held that the accident had occurred due to the rash and negligent act on the part of the drivers of both the vehicles and accordingly, fixed the

contributory negligence at the rate of 25% on the part of the driver of the lorry bearing Reg.No.TN-52-H-9293 and 75% on the part of the driver of the lorry bearing Reg.No. TN33 BK 8235.

7. P.W.2 is the eye-witness to the accident. He clearly deposed before the Tribunal that only because of the negligence on the part of the lorry bearing Reg.No.TN33 BK 8235, the accident had occurred. He deposed that the driver of the said lorry drove it rashly and negligently and proceeded the lorry on the middle of the road and thereafter applied sudden brake. It is also his deposition that the place of accident is a slope and hence even though the deceased applied brakes, the lorry could not be controlled and it dashed on the back side of the preceding lorry. There is also evidence to the effect that had the deceased maintained 30 feet distance between his lorry and the preceding lorry, the accident could have been avoided. Taking note of the materials and evidence, this Court deems it fit to fix the contributory negligence at the rate of 10% on the part of the driver of the lorry bearing Reg.No.TN-52-H-9293 and 90% on the part of the driver of the lorry bearing Reg.No. TN33 BK 8235, and accordingly it is fixed.

8. With respect to the quantum of compensation, the Tribunal has awarded a sum of Rs.8,40,042/- towards loss of income. The said sum has been arrived at by taking the monthly income of the deceased at Rs.8,000/-, adding 25% of the amount towards future prospects, deducting $\frac{1}{3}$ rd of the income towards the personal expenses of the deceased and thereafter deducting 25% out of the resultant amount towards contributory negligence, and adopting the multiplier of 14. In this connection, considering the number of dependents, this Court is of the view that the Tribunal ought to have deducted $\frac{1}{4}$ th of the amount towards personal expenses of the deceased instead of $\frac{1}{3}$ rd. If $\frac{1}{4}$ th of the amount is deducted towards personal expenses of the deceased and 10% contributory negligence is taken, the loss of income works out to Rs.11,34,000/-. Accordingly, the amount awarded by the Tribunal towards loss of income stands modified to Rs.11,34,000/-. Rest of the amounts awarded by the Tribunal are confirmed. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of Income	11,34,000/-
Funnel expenses	15,000/-
Loss of estate	15,000/-
Loss of consortium to the 1st claimant	40,000/-
Medical expenses	1,91,520/-

TOTAL....	13,95,520/-
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Thus, the compensation awarded by the Tribunal stands modified to Rs.13,95,520/- with interest at the rate of 7.5% per annum from the date of petition.

9.In fine, this appeal is partly allowed. No costs. The second respondent Insurance company is directed to deposit the modified amount of compensation, along with interest and costs, after deducting the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. The third appellant would have attained majority by now. Hence, on such deposit being made, the Tribunal is directed to transfer the share of the appellants / claimants as per the ratio of apportionment made by it, to their respective Savings Bank Account, through RTGS, within a period of one week thereafter. It is made clear that the appellants/claimants have to pay appropriate Court fee in order to receive the awarded amount.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Special Court, Salem.

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

+1cc to Mr.S.Kalyanaraman , Advocate SR.No. 31234

C.M.A.No.1377 of 2018

A.SK(30.04.2021)