



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CIVIL MISCELLANEOUS APPEAL NO.3415 OF 2019

R.Ranjitha

...Appellant / 1st petitioner

Versus

1.S.Prabha`karan

2.M.Chinnapaiyan

3.The Oriental Insurance Company Limited,
5/1144-B, Appusamy Street,
Mettur Main Road, Salem.
Having Regional Office at Hub,
3rd Party Claim, Cheran Towers,
4th Floor, Govt. Arts College Road,
Coimbatore.

...Respondents 1 to 3 / Respondents 1 to 3

4.E.Thirumaraj

5.T.Jayamani

...Respondents 4 to 5 / Respondents 4 to 5

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 20.03.2018 made in M.C.O.P.No.1183 of 2016 by the Motor Accidents Claims Tribunal (III Additional District and Sessions court), Coimbatore.

For Appellant : Mr.MA.P.Thangavel

For Respondents : Mr.G.Anandan for R3
Mr.M.Era Jasimhan for RR4 & 5
No Appearance for RR1 & 2

JUDGEMENT

The 1st appellant is the wife of one T.Anand Kumar, who died in a motor accident and the respondents 4 and 5 are the parents of the deceased. Feeling aggrieved by the inadequacy of the compensation awarded by the Motor Accidents Claims Tribunal (III Additional District & Sessions Judge), Coimbatore as well as the finding of the tribunal on the contributory negligence, the 1st claimant is before this court with this Civil Miscellaneous Appeal.



2. The case of the claimants before the tribunal is that the deceased was working as a Contract Labourer under the Tamil Nadu Generation of Electricity and Distribution Company. A Crane bearing Regn. No. TN 52 T 0304 belonging to the 2nd respondent, which was insured with the 3rd respondent, was engaged on contract by the TANGEDCO for the purpose of carrying electricity pole to the sites and erection of the same. On 06.06.2016, while the crane was involved in the job of carrying the electricity pole, the deceased was walking in front of the crane to clear the traffic on the road. At that time, the 1st respondent, who was driving the crane, while crossing over the speed breaker, driven the crane in a rash and negligent manner and in that process, the front of the crane knocked down the deceased and ran over him. The deceased succumbed to the injuries on the spot. At the time of accident, the deceased was aged 28 years. He was a contract labourer and getting a sum of Rs.750/- per day as wage. Hence, the claim petition came to be filed for compensation of Rs.25,00,000/-.

3. The respondents 1 and 2 contested the claim petition inter alia contending that the accident was taken place due to the negligence of the deceased. While the 1st respondent was driving the crane with due care and caution by observing the traffic rules, the deceased came into contact with crane and invited the accident. No negligence could be attributable to the driver of the crane.

4. The 3rd respondent insurance company contested the claim petition inter alia contending that the accident was taken place due to the negligence of the deceased. He being tortfeasor, no negligence could be fixed on the driver of the crane. Without prejudice to their contentions, the 2nd respondent insurance company disputed the income of the deceased.

5. Before the tribunal, in order to prove their case, the claimants examined the 1st claimant as P.W.1 and one Ms.Mahalakshmi, Assistant Engineer, TANGEDCO, was examined as P.W.2 and as many as 10 documents were marked as Exs.P.1 to P.10 on the side of the claimants. Neither any witness was examined nor any document was marked on the side of the respondents before the tribunal. After considering the materials available on record, the tribunal came to a conclusion that there is no clear evidence pinpointing the negligence on the part of the driver of the crane and the insurance company also did not produce any evidence showing the negligence on the part of the deceased and therefore, the tribunal has proceeded to hold that the negligence should be apportioned equally on the between the deceased and the 1st respondent (driver of the crane). So far as the quantum of compensation is concerned, the tribunal has taken the monthly income of the deceased as Rs.6,000/- and after



adding 50% towards future prospects of the deceased arrived at the notional income of the deceased as Rs.9,000/- and after deducting 1/3rd of the income towards personal expenses of the deceased had he been alive, the tribunal calculated the total loss of dependency as Rs.9,000 - 3000 x 12 x 17 = Rs.12,24,000/-. Apart from the above, under conventional heads, the tribunal awarded a sum of Rs.15,000/- towards loss of estate, Rs.40,000/- loss of consortium and Rs.15,000/- towards funeral expenses. However, since it was concluded that the deceased also contributed to the accident equally, the tribunal deducted 50% from the total compensation of Rs.12,94,00/- arrived at and awarded a sum of Rs.6,47,000/-. Questioning the contributory negligence decided against the deceased and the quantum of compensation, the claimants are before this court with the instant appeal.

6. I have considered the rival submissions carefully.

7. So far as the finding of negligence is concerned, no eye witness was examined on either side. The Assistant Engineer, TANGEDCO for the deceased was working as contract labourer was examined as P.W.2. According to her, 10 minutes after the accident, she reached the scene of occurrence and on enquiry, she came to know that the crane was driven by 1st respondent - in a rash and negligent manner and when the crane was crossing over a speed breaker as a result of which the deceased, who was walking ahead the crane for clearing the traffic, was knocked down and run over by the crane and died on the spot. This evidence was not seriously disputed in the cross examination. That apart, it was P.W.2 who had given the first information to the police and a copy of the FIR which was marked as Ex.P.2 would show that the accident was taken place only due to the rash and negligent driving of the 1st respondent. Even though the respondents claimed that the accident was taken place due to the negligence of the deceased the tribunal went on to hold that they have not come forward to produce any evidence to substantiate their case that the deceased was also contributed to the accident. The tribunal further held that there was also no clear evidence pinpointing the negligence on the part of the deceased and therefore, ultimately held the both the deceased and the driver of the crane contributed to the accident equally and as such held that the insurance company would be liable to pay 50% of the compensation arrived at by the tribunal. The finding of the tribunal on contributory negligence is unsustainable in view of the uncontroverted testimony of P.W.2 and the other documentary evidence. A perusal of the available evidence would show that the accident was taken place only due to the negligent driving of the crane by the 1st respondent and there is not even an iota of evidence to show that the deceased was also contributed to the accident to some extent. Therefore,



the finding of the tribunal on contributory negligence is required interference and in the considered view of this court, the driver of the crane alone was fully responsible for the accident.

WEB COPY

8. Coming to the quantum of compensation, the deceased was working as a Contract Labourer. It is the case of the appellants that the deceased was getting a daily wage of Rs.750/-. Even though there is sufficient evidence to show that the deceased was working as Contract Labourer as claimed by the appellant, there is no evidence to show the wage of the deceased. Even assuming that the deceased was getting a sum of Rs.400/- per day as wage, by getting work for 20 days in a month, he would have easily earned a sum of Rs.8,000/- per month. Considering the age of the deceased, by adding the benefit of 40% towards future prospects, the notional monthly income could be calculated as Rs.11,200/-. Further considering the size of the family, if 1/3 income of the deceased is deducted towards personal expenses of the deceased, the deceased would have contributed at least a sum of Rs.7,450/- (rounded off from 2/3rd income of Rs.7,466.66) per month. Accordingly, by applying the multiplier of 17, the total loss of dependency could be calculated as Rs.7450 X 12 x 17 = Rs.15,19,800/-. Though the tribunal considered to award a compensation of Rs.40,000/- towards loss of consortium to the appellant, it has not awarded any compensation towards filial consortium to the respondents 4 and 5 and therefore, this court is inclined to award a sum of Rs.40,000/- each to the respondents 4 and 5 towards filial consortium. So far as the funeral expenses and the loss of estate are concerned, the compensation of Rs.15,000/- each awarded by the Tribunal under those heads are found to be just and reasonable and hence the same stand confirmed. The compensation awarded by the Tribunal under different heads are modified accordingly as follows:-

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Loss of Income (dependency)	12,24,000	15,19,800	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Loss of Consortium to the appellant	40,000	40,000	Confirmed
4.	Loss of Filial Consortium to the respondents 4 and 5 [Rs.40,000/- each]	-	80,000	Awarded



WEB COPY

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
5.	Funeral Expenses	15,000	15,000	Confirmed
	Total	12,94,000	16,69,800	Enhanced by Rs.3,75,800
	Rounded up to		16,70,000	Rs.3,76,000

9. As far apportionment is concerned, the tribunal has held that the appellant and the respondents 4 and 5 herein are entitled to 1/3rd share equally. Considering the fact that the appellant is a young widow, hardly 25 years of age, and the respondents 4 and 5, who are aged more than 60 years of age, this court is of the considered view that apportioning the compensation among the appellant and the respondents 4 and 5 as detailed below would be appropriate:-

(a) Appellant is entitled to a sum of Rs.10,70,000/- together with interest; and

(b) The respondents 4 and 5 are jointly entitled to a sum of Rs.6,00,000/- together with interest.

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.12,94,000/- awarded by the Tribunal is hereby enhanced to Rs.16,70,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent is directed to deposit the award amount directed above together with interest and costs as ordered by the tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is entitled to a sum of Rs.10,70,000/- together with interest and the respondents 4 and 5 are jointly entitled to a sum of Rs.6,00,000/- together with interest. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk



To

1.The III-Addl. District & Sessions Court,
(Motor Accidents Claims Tribunal),
Coimbatore.

2.The Section Officer,
VR-Section,
High Court, Madras.

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.37333

+1cc to Mr.G.Anandan, Advocate, S.R.No.37614

C.M.A.No.3415 of 2019

KJ(CO)
RVM9(08/10/2021)