



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

C.M.A.No.61 of 2018

and

CMP.No.11043 of 2018

1. Saraswathi
2. Thangamuthu
3. Mythili

... Appellants/Petitioners

vs.

1. Arulmurugan
2. The Oriental Insurance Co. Ltd.,
Kumar Complex, 1st Floor,
146, West Car Street,
Tiruchengode & TK., Namakkal Dt.,
3. Baskar
4. United India Insurance Co., Ltd.,
No.2, Dr.Sankaran Road,
Namakkal.

... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.09.2017 made in M.C.O.P.No.466 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellants : Mr. C.Paraneedharan
For R-1 : Exparte
For R-2 : Mr.J.Chandran
For R-3 : No appearance
For R-4 : Mr.S.Arunkumar

J U D G M E N T

This appeal has been preferred by the claimants against the judgment and decree dated 08.09.2017 made in M.C.O.P.No.466 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

2.The case in brief, is as follows:

On the fateful day, ie. on 18.11.2013, at about 05.00 pm, the deceased Prakash was riding his TVS XL bearing registration No.TN 34-T-3064 on the Pallipalayam - Tiruchengode Main Road,



near Alamedu Thatha Poultry Farm. At that time, the lorry bearing Registration No.TN 28 Y 7209 belonging to the third respondent and insured with the fourth respondent, Insurance Company, was proceeding in front of the TVS-XL two-wheeler. At that time, the car bearing Registration No.TN 33 AL 4289 belonging to the first respondent and insured with the second respondent Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the deceased. Due to the said impact, the deceased was thrown away from his vehicle and consequently dashed against the lorry bearing Registration No.TN 28 Y 7209 which was proceeding in front, and sustained grievous injuries and he later on, died in the hospital. The mother, father and sister 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.6,61,000/- 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 both the drivers of the vehicles, the Tribunal fixed the contributory negligence on the part of both the rider of the two-wheeler, ie., the deceased and the driver of the car, at the ratio of 50:50 and directed the second respondent Insurance Company to pay 50% 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 appellants has submitted that the Tribunal has fixed 50% contributory negligence on the part of the deceased, without any basis. The Tribunal ought to have fixed the entire negligence on the part of the driver of the car when there is no contra evidence available to show that the deceased was at fault. It is further submitted that the compensation awarded by the Tribunal is on the lower side and hence, the same requires substantial enhancement.

4.Per contra, the learned counsel appearing for the second respondent Insurance Company has submitted that the Tribunal, after considering the materials and evidence available on record in proper perspective, has passed the impugned judgment and hence the same need not be interfered with by this Court.

5.With regard to contributory negligence, P.W.1- mother of the deceased/first claimant, deposed before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the car. The evidence of P.W.1 corroborates with the contents of the First Information Report. Further, a criminal case has been initiated against the driver of the car. But, as per the evidence of P.W.2-Rajaram, who is



the eye-witness to the accident, the deceased overtook the lorry and thus invited the accident. Taking note of the same and also the materials and evidence available on record in respect of the rashness and negligence on the part of the car driver, the Tribunal fixed the contributory negligence at the rate of 50:50, on the part of the rider of the motorcycle and the car driver. The Tribunal correctly came to the conclusion that the deceased also contributed to the accident to the extent of 50% and accordingly fixed the contributory negligence at the rate of 50:50, on the part of the rider of the motorcycle and the car driver, which factual finding does not require any interference by this Court.

6. Coming to compensation part, the following are the details of compensation awarded by the Tribunal:

HEADS	AMOUNT (Rs.)
Loss of income	6,48,000/-
Loss of Estate	1,000/-
Funeral Expenses	5,000/-
Loss of Love and affection	2,000/-
Transportation	5,000/-

TOTAL.....	6,61,000/- =====

Out of the above sum of Rs.6,61,000/-, 50% amount has been deducted towards contributory negligence on the part of the deceased and accordingly, the second respondent Insurance Company was directed to deposit a sum of Rs.3,30,500/- with interest at the rate of 7.5% per annum from the date of petition.

7. With regard to loss of income, taking note of the materials and evidence, the Tribunal has fixed the monthly income of the deceased at Rs.6,000/-, deducted 50% of the amount towards his personal expenses, arrived at the annual contribution of the deceased to the family at Rs.36,000/-, adopted the multiplier of 18 and arrived at the loss of income at Rs.6,48,000/-. Taking note of the age and avocation of the deceased, this Court deems it fit to enhance the monthly income of the deceased to Rs.9,000/- and to add 40% of the said amount towards future prospects, for arriving at the loss of income. If that is done, the loss of income works out to Rs.13,60,000/- ([Rs.9,000/- + Rs.3,600/- FP] x 12 x 18 - 50%) and accordingly it is modified. Further, it would be appropriate to award a sum of Rs.1,20,000/- (Rs.40,000 x 3), towards filial consortium to the appellants/ claimants, and accordingly it is awarded. Furthermore, the amounts awarded by the Tribunal towards loss of Estate and funeral expenses are enhanced to Rs.15,000/- and Rs.15,000/-, respectively and the amounts awarded towards loss of love and affection and transportation are hereby deleted.



Thus, the details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
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Loss of income	13,60,000/-
Filial consortium	1,20,000/-
Loss of Estate	15,000/-
Funeral expenses	15,000/-

TOTAL.....	15,10,000/-
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Since 50% contributory negligence has been fixed on the part of the deceased, the second respondent Insurance Company is liable to pay a sum of Rs.7,55,000/- with interest at the rate of 7.5% per annum from the date of petition.

8. Accordingly, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected Miscellaneous petition is closed. The second respondent Insurance Company is directed to deposit the modified compensation amount as ordered above, after deducting the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the same, as per the ratio of apportionment made by the Tribunal on making proper application before the Tribunal. It is made clear that the appellants/claimants have to pay the appropriate Court fee in order to receive the awarded amount.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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

+1cc to Mr.J.Chandran, Advocate SR.No.32271
+1cc to Mr.S.Arun Kumar, Advocate SR.No.32369

C.M.A.No.61 of 2018
and
CMP.No.11043 of 2018

PM(CO)
GMY(19/08/2021)