

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 4600 of 2019

1.G. Ponnammal
2.G. Anandaraj
3.G. Umapathy
4.Kavitha
5.Raghupathi
6.Revathi ... Appellants /Petitioners

Vs.

1.G. Dhamotharan
2.Bharathi Axa General Insurance Co. Ltd.,
Flat No. 162, 2nd Floor,
Metro Plaza, Anna Salai,
Chennai 600 002. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.02.2018 made in M.C.O.P. No. 3209 of 2015 on the file of Court of the Chief Judge, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr. S. Ravikumar

For R2 : M/s. K. Poomalai

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 22.02.2018 made in M.C.O.P. No. 3209 of 2015 on the file of Court of the Chief Judge, (Motor Accidents Claims Tribunal), Chennai.

2.The appellants are claimants in M.C.O.P. No. 3209 of 2015 on the file of Court of the Chief Judge, (Motor Accidents Claims Tribunal), Chennai. They filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one K. Govindasamy, who died in the accident that took place on 13.02.2015.

3. According to the appellants, on the date of accident viz., 13.02.2015, when the deceased was walking along the road from South to North and proceeding to cross the road in the pedestrian cross opposite to Joseph & Co., Furniture Shop, the driver of the tipper Lorry bearing Registration No. TN-02-D-5275 belonging to the 1st respondent drove the vehicle in a rash and negligent manner in high speed and dashed against the deceased. The deceased succumbed to injuries. The accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and insured with the 2nd respondent. The appellants, who are the dependents of the deceased, filed the present claim petition, seeking compensation.

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

5. The 2nd respondent filed counter statement and denied all the averments made by the appellants. According to the 2nd respondent, the accident occurred only due to negligence on the part of the deceased, who crossed the road where there was a centre median. The appellants have to prove that the lorry belonging to the 1st respondent was insured with the 2nd respondent at the time of accident and the 1st respondent has valid insurance policy, fitness certificate and permit to ply the vehicle and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined herself as P.W.1, examined one Kalappan, eye-witness as P.W.2 and examined one Velayutham as P.W.3 and marked 22 documents as Exs.P1 to P22. On the side of the respondents, the Senior Executive Manager of the 2nd respondent-Insurance Company was examined as R.W.1 and rough sketch was marked as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, holding that the deceased crossed the centre median wall to cross the road and contributed to the accident, fixed 10% contributory negligence on the part of the deceased and 90% negligence on the part of the driver of the tipper Lorry belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.14,31,705/- as compensation to the appellants.

8. Challenging the portion of the award fixing 10% negligence on the part of the deceased and not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

8(a). The learned counsel appearing for the appellants contended that the deceased was working in Electricity Department of the Chennai Corporation and was earning a sum of

Rs.25,600/- per month. The Tribunal erred in adopting split multiplier method and ought to have fixed the sum of Rs.25,600/- as monthly income for the period of six years, instead of Rs.14,720/-. The accident occurred only due to rash and negligent driving by the driver of the tipper Lorry belonging to the 1st respondent. In the absence of any contra evidence on behalf of the 2nd respondent-Insurance Company, the Tribunal erred in fixing 10% contributory negligence on the part of the deceased and directing the 2nd respondent-Insurance Company to pay only 90% of the award amount. In any event, the total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and set aside the portion of the award fixing 10% negligence on the deceased.

9.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the deceased crossed the centre median wall and contributed to the negligence. The Tribunal ought to have fixed more percentage towards negligence on the part of the deceased. The Tribunal considering all the materials on record, applied split multiplier method and awarded compensation, which is not meagre. The compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellants as well as the second respondent-Insurance Company and perused the entire materials on record.

11.From the materials on record, it is seen that the Tribunal considering Ex.R1, rough sketch and place of occurrence which is a national highway and considering the fact that the deceased crossed the centre median wall and contributed to the accident, rightly fixed 10% contributory negligence on the part of the deceased and 90% negligence on the part of the driver of the tipper lorry belonging to the 1st respondent for the rash and negligent driving. The said reasoning is not erroneous, warranting interference by this Court.

12.As far as the quantum of compensation is concerned, it is seen that the deceased was aged 57 years at the time of accident and was working in Electricity Department of the Chennai Corporation and was earning a sum of Rs.25,600/- per month. The Tribunal considering the age of the deceased, rightly granted 15% enhancement towards future prospects of the deceased, applied the multiplier '9' and adopted the split multiplier method to grant 100% salary for 3 years and 50% of the salary for 6 years, to award compensation towards loss of dependency. There are six dependents of the deceased. The Tribunal erred in deducting 1/4th towards the personal expenses of the deceased,

instead of 1/5th. Hence, deducting 1/5th towards the personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.16,22,169/-, the calculation of which is derived as follows:

Deduction Calculation			
S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Salary	25,600/-	25,600/-
2.	15% added towards future prospects	25,600 + 3,840 = 29,440/-	25,600 + 3,840 = 29,440/-
3.	Annual income	29,400 x 12 = 3,53,280/-	29,400 x 12 = 3,53,280/-
4.	Taxable income [Annual income and income tax above Rs.2,00,000/-.	3,53,280 - 2,00,000 = 1,53,280/-	3,53,280 - 2,00,000 = 1,53,280/-
5.	Deduct 20% towards income tax	1,53,280 - 30,656 = 1,22,624/-	1,53,280 - 30,656 = 1,22,624/-
6.	Yearly income	2,00,000 + 1,22,624 = 3,22,624/-	2,00,000 + 1,22,624 = 3,22,624/-
7.	Deduction towards personal expenses of the deceased	3,22,624 - 80,656 (1/4 th) = 2,41,968/-	3,22,624 - 64,525 (1/5 th) = 2,58,099/-
8.	Compensation for 3 years	2,41,968 x 3 = 7,25,904/-	2,58,099 x 3 = 7,74,297/-
9.	Compensation after retirement [Pension] (29,440/2)	14,720/-	14,720/-
10.	Deduction towards personal expenses	14,720 - 3680 (1/4 th) = 11,040/-	14,720 - 2944 (1/5 th) = 11,776/-

11.	Compensation for 6 years	$11,040 \times 12 \times 6 = 7,94,880/-$	$11,776 \times 12 \times 6 = 8,47,872/-$
	Loss of dependency (S.No. 8 + S.No.11)	15,20,784/-	16,22,169/-

The Tribunal has not awarded any amount towards loss of love and affection to the appellants 2 to 6, who are the children of the deceased. The appellants 2 to 6, who have lost their father are entitled to a sum of Rs.10,000/- each towards loss of love and affection. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	15,20,784/-	16,22,169/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of consortium to the 1 st appellant	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection to the appellants 2 to 6	-	50,000/-	Granted
	Total	15,90,784/-	17,42,169/-	
	Less 10% negligence	14,31,705/-	15,67,952/-	Enhanced by Rs.1,36,247/-

13. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.14,31,705/- is enhanced to Rs.15,67,952/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 3209 of

2015. On such deposit, the appellants are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.1,36,247/-. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.1,36,247/-, enhanced by this Court as per the order of this Court dated 22.11.2019, made in C.M.P. No. 12188 of 2019 in C.M.A. SR. No. 68603 of 2019. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Chief Judge,
(Motor Accidents Claims Tribunal),
Chennai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Ravikumar, Advocate Sr.1563

+1cc to Mr.K.Poomalai, Advocate Sr.1751

C.M.A. No. 4600 of 2019

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