

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1048 and 1049 of 2014
and
M.P.Nos.1 and 1 of 2014

United India Insurance Co. Ltd.,
Mayiladuthurai, having office at
No.123-A, No.2 Road,
Mayiladuthurai Taluk and Town
Nagai District. ...Appellant/2nd Respondent in both C.M.A's

Vs

1.Savithiri
2. Selvarani
3. Dhavamani
4. Raja1 to 4 Respondents/Petitioners in
C.M.A.No.1048 of 2014
5.Jayabal ...5th Respondent/1st Respondent

1. Panneerselvam
2.Kaliyammal
3. Minor Sudha
4.Minor Prabakaran
5. Minor Surya
6.Minor Suresh
7. Jayabal Respondents in C.M.A.No.1049 of 2014

COMMON PRAYER: These Civil Miscellaneous Appeals have been filed against the award and decree dated 22.03.2012 made in M.C.O.P.Nos.205 and 215 of 2008 on the file of The Motor Accidents claims Tribunal, Principal Sub Judge, Mayiladuthurai.
(For both the C.M.A's)

For appellant : Mr. S. Arun Kumar

For respondents 1 to 4 : Mr. Gopi for
in CMA No.1048/2014 M/s Royan Law Associates

For R5 : Notice Served, Name Printed,
No Appearance

For RR1 to 6 : Mr.Gopi for
Mr/s. Royan Law Associates

For R7 : Served, Name Printed
No Appearance

J U D G M E N T

These petitions have been filed against the Judgment and Decree dated 22.03.2012 made against M.C.O.P.Nos.205 and 215 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Mayiladuthurai.

2. The brief facts of the case is as follows:

On 21.08.2007 the rider of the two wheeler (selvam) and pillion rider Sudhakar was proceeding in a motor cycle bearing Registration No. TN-51-T-7643, at that time a lorry bearing Registration No: 51-1461 was parked at Serkudi Main Road (opposite to the house of Panneerselvam) without adhering to the traffic rules and the rider of the two wheeler came and hit the two wheeler against the lorry. Due to the impact the rider as well as the pillion rider fell down and sustained injuries. The rider of the two wheeler (Selvam) died on the spot itself and the pillon rider (Sudhakar) was admitted in Sirkali Government Hospital and for better treatment he was taken to Raja Muttiah Hospital. Inspite of better treatment he died in the hospital. Therefore, the legal heirs of the deceased Selvam and Sudhakar filed seperate claim petitions before the Tribunal seeking compensation.

3. The Tribunal after analyzing the evidences and documents awarded Rs.6,98,000/- and Rs.6,57,000/- in the respective M.C.O.P.Nos.

4. Challenging the award the Appellant/Insurance Company has come up with these appeals. In both the appeals the dispute is with regard to Negligence aspect and not with regard to quantum.

5. The learned counsel for the appellant/Insurance company contended that the fault is on the rider of the two wheeler and not on the driver of the lorry. He would further contend that in the Hospital it was stated that the rider of the two wheeler skidded from the seat, in the impact the pillion rider (deceased) fell down. Hence, the Tribunal ought to have fixed contributory negligence on the part of the rider of the two wheeler.

6. Per contra, the learned counsel for the Claimants in both the appeals submitted that the accident occurred due to the negligent attitude on the part of the lorry driver, who parked the vehicle in the road.

7. With regard to negligence aspect, the learned Judge in both the appeals has determined three points and discussed in detail and the said points are as follows:

a. On whose negligence aspect the accident has taken place?

b. Whether the Insurance Company is liable to compensation the claimants?

c. Whether the claimants are entitled to compensation if so how much compensation?

The Tribunal observed that the lorry was parked in the road without any signal, hence the rider of the two wheeler dashed against the lorry. F.I.R clearly reveals the fact that Panner Selvan (father of the deceased selvan/first respondent in M.C.O.P.No.1049/2014) lodged a complaint and stated that a lorry was parked on the opposite of his house and after hearing alarming sound, he went to the place of occurrence and saw the Sudhakar/pillion rider had sustained injuries and hence he called his brother over phone and sent him to Hospital for further treatment. Based on the evidence of P.W.1 and F.I.R the Tribunal concluded that the driver of the lorry is the tortfeasor of the accident.

8. This Court while re-appreciating the evidence and materials available on record found that the contributory negligence aspect has to be fixed towards the rider as well as the pillion rider of the two wheeler and thereby 20% is fixed as contributory negligence against them.

9. With regard to quantum in M.C.O.P.No.205 of 2008 it is seen that the deceased was engaged in selling of fish and thereby earning Rs. Rs.10,000/- per month. But the Tribunal has taken only Rs.4,500/- per month and arrived Rs.54,000/- as annual income. After deducting his 1/3rd towards personal expenses Rs.36,000/- is arrived and considering the age of the deceased the Tribunal applied 18 multiplier and quantified Rs.6,12,000/- (Rs.36,000 x 17) as loss of income. First respondent lost his loveable son and the respondents 2 to 4 have lost their father in the accident. Hence, Rs.15,000/- is granted towards the first respondent and Rs.15,000/- (Rs.5,000/- each) is awarded towards the respondents 2 to 4 under the head love and affection. Apart from this Rs.5,000/- is awarded under the head funeral expenses and Rs.10,000/- is awarded towards Transport expenses. Thus, the award amount is quantified as Rs.6,57,000/-.

10. With regard to quantum in M.C.O.P.No.215 of 2008 it is seen that the deceased was engaged in selling of fish and

thereby earning Rs. Rs.10,000/- per month. But the Tribunal has taken Rs.4,500/- per month and arrived Rs.54,000/-(Rs.4,500 x 12) as annual income. (This Court observed that the Tribunal has inadvertently arrived the loss of income as Rs.48,000/- and the same is corrected). After deducting his personal expenses Rs.36,000/- is arrived and considering the age of the deceased the Tribunal applied '17' multiplier method and quantified Rs.6,12,000/- (Rs.36,000 x 17) as loss of income. Respondents 1 and 2 have lost their loveable son and the claimants 3 to 6 have lost their brother in the accident. Hence, Rs. 20,000/- is granted to the first and second Respondents and Rs.20,000/- is granted to the Respondents 3 to 6 towards the head love and affection. Apart from this Rs.5,000/- is awarded under the head funeral expenses and Rs.5,000/- is awarded towards Transport expenses. Thus, the award passed by the Tribunal is as follows:

Particulars	In M.C.O.P.No.205 of 2008	In M.C.O.P.No.215 of 2008
Loss of Income	Rs.6,12,000/-	Rs.6,12,000/-
Loss of love and affection	Rs.15,000/-	Rs.20,000/-
Loss of love and affection	Rs.15,000/-	Rs.20,000/-
Transport Expenses	Rs.10,000/-	Rs.5,000/-
Funeral expenses	Rs.5,000/-	Rs.5,000/-
Total	Rs.6,57,000/-	Rs.6,62,000/-

11.With regard to M.C.O.P.No.205 of 2008 the award amount is quantified to Rs.5,25,600/- after deducting the amount arrived with regard to negligence aspect and the calculation is as follows:

Award amount	: Rs.6,57,000/-
20% deducted towards negligence aspect	: Rs.1,31,400/-
Modified amount	: Rs.5,25,600/-

12.With regard to M.C.O.P.No.215 of 2008 the award amount is quantified to Rs.5,29,600/- after deducting the amount arrived with regard to negligence aspect and the calculation is as follows:

Award amount	: Rs.6,62,000/-
20% deducted towards negligence aspect	: Rs.1,32,400/-
Modified amount	: Rs.5,29,600/-

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13. In the result, these Civil Miscellaneous Appeal are partly allowed. The appellant-Insurance Company is directed to

deposit the modified award amount with interest at 7.5% p.m from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made the claimants are permitted to withdraw the modified award amount as per the ratio of apportionment fixed by the Tribunal less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petitions are closed.

14.The amount apportioned to Respondents 3 to 6 in C.M.A.No.1049 of 2014, who are minors shall be deposited in any one of the Nationalised Bank till they attain majority. The mother of the minor respondents/second respondent in C.M.A.No.1049 of 2014 is entitled to withdraw the accrued interest once in 3 months.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

smn

To

The Motor Accidents Claims Tribunal,
Principal Sub Judge, Mayiladuthurai.

Copy To

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

+2cc to M/s Royan Law Associates, Advocate SR.No.8692, 8693

+1cc to Mr.S.Arunkumar, Advocate SR.No.8684

C.M.A.Nos.1048 and 1049 of 2014
and
M.P.Nos.1 and 1 of 2014

GJ (CO)
GMY (13/05/2021)