

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1086 of 2014

Rajamma

.. Appellant/Claimant

Vs.

1. Mr.C. Periyasamy

2. The Branch Manager,
Oriental Insurance Company Limited,
Branch Office, K.V.A. Complex,
90-A, Thuraiyur Road,
Namakkal, Tamil Nadu - 637 001 .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 31.10.2011 made in M.C.O.P.No.610 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri.

For Appellant : Mr.M.Sriram

For Respondent-2 : Mr.R. Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 31.10.2011 made in M.C.O.P.No.610 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri.

2. The appellant is the mother of the deceased and the first and second respondent are the owner and insurer of the alleged vehicle involved in the accident.

3. The case of the appellant is that on 17.04.2008 at about 16.30 hours, the deceased Chandrappa, who is the son of the appellant was walking on the left side of the road after getting down from the bus at ESI Hospital bus stop from Hosur. At that time a Lorry bearing Registration No. K.A.01.C.2624 being driven by its driver in a rash and negligent manner and knocked the said Chandrappa(deceased) and he fell down and the wheels of the lorry ran over him and he was crushed to death on the spot itself. The accident has taken place due to the rash and negligent on the part of the driver of the lorry. Hence, the mother of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.8,00,000/- as compensation.

4. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the lorry bearing Registration No. K.A.01.C.2624 belonging to the first respondent and insured with the second respondent and allowed the case in part and directed the second respondent/Insurance Company to pay a sum of Rs.3,15,000/- with 6% as compensation to the mother of the deceased.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the appellant would contend that the award passed by the Tribunal suffers from error in law. Therefore, he has approached this Court by filing this appeal for grant of just and reasonable compensation and to set aside the award of the Tribunal.

7. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the accident took place when the deceased was crossing the road. Hence, it must be due to negligent crossing of the road by the deceased and the appellant is not entitled for compensation even u/s 163 A of Motor Vehicles Act. He would further contend that the driver of the offending vehicle does not possess valid driving license at the time of accident and the Court below erred in fixing the liability on their part.

8. Heard the learned counsel appearing for the appellant as well as the second respondent/Insurance Company and also perused all the materials available on record.

9. On a perusal of the record, with regard to the negligence aspect, i.e. Whether the accident has occurred due to the rash and negligent driving of the driver of the lorry or the negligence of the deceased was disputed before the Tribunal and it was proved that the accident had occurred only due to the negligence of the driver of the lorry. Therefore, the Tribunal arrived at a conclusion that the second respondent/Insurance Company, who is the insurer of the lorry is liable to pay compensation, which is in accordance with law and there is no infirmity and the same is confirmed as such. There was no valid rebuttal evidence on the side of the respondents before the Tribunal to challenge their negligence aspect.

10. With regard to quantum, the Tribunal based on the decision rendered by the Hon'ble Supreme Court, in the case of "P.K. Malik and another ... Vs... Kiran Paul and others..." 2009

(1) TNMAC 93 (SC) has awarded a sum of Rs.1,60,000/- towards pecuniary loss for the children who died in harshness in the age group of 15 to 18 years and a sum of Rs.75,000/- was awarded towards non pecuniary loss and a sum of Rs.75,000/- was awarded towards loss of future prospects. Apart from this a sum of Rs.5,000/- is awarded towards funeral expenses. Thus in toto, quantified Rs.3,15,000/- as compensation.

11. In view of the above, this Court is inclined to apply the recent decision rendered by the Hon'ble Supreme Court in Kishan Gopal and Another Vs. Lala and others, (2014) 1 Supreme Court Cases 244 wherein notional income was fixed at Rs.30,000/- and considered the age of the mother (36) applied '15' multiplier and arrived Rs.4,50,000/- (Rs.30,000x15) towards conventional heads. Apart from this Rs.50,000/- was added towards the same head in relation to the death of the children between 10 to 15 years old. Thus, awarded a sum of Rs.5,00,000/- as compensation to the death of the minor child.

12. In this present case, the age of the mother is 45. Hence the proper multiplier to be adopted is '14' and Rs.4,20,000/- (Rs.30,000x14) is awarded towards conventional heads and further adding Rs.50,000/- towards the same head, the total amount was quantified to Rs.4,70,000/- Thus, the award amount is enhanced to Rs.4,70,000/- from Rs. 3,15,000/- and the claimant is entitled to interest at the rate of 6%.

13. In the result, the order of Tribunal in MACTOP No.610 of 2009 is modified and this appeal is partly allowed. No costs.

14. The Compensation amount of Rs.3,15,000/- is enhanced to Rs.4,70,000/- with interest at the rate of 6% per annum from the date of petition till the date of realization. The second respondent/Insurance Company is directed to deposit the enhanced award amount as ordered by this Court after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the same, on making proper application before the Tribunal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Additional District Judge, Krishnagiri.

2.The Section officer

VR Section

High Court, Madras 104.

+1 CC to Mr.R. Sivakumar, Advocate sr 5593.

+1 CC to Mr.Mukund R. Pandian, Advocate sr 6821.

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VBA (CO)
SP (31/08/2020)



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