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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CIVIL MISCELLANEOUS APPEAL NO.1672 OF 2020
& C.M.A.12390 OF 2020

The Divisional Manager,
Divisional Office (Third Party Hub),
The New India Assurance Co. Ltd.,
No.30, Second Floor,
Jawaharlal Nehru Street,
Pondichery-01.

... Appellant/2nd Respondent

-Versus-

1.Govindhammal
2.Aashwini
3.Anitha
4.Akhila
5.Minor Anusuya
6.Minor Aswathi

[Minor respondents 5 & 6 are represented by
their Natural Guardian and Mother, 1st respondent]

7.Seenuvasan

... Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 18.03.2020 made in M.C.O.P.No.135 of 2015 by the Motor Accidents Claims Tribunal (Court of Subordinate Judge), Gingee, Villupuram District.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.M.Santhana Raman for RR1
to 6

No Appearance for R7

JUDGEMENT

Challenging the award passed by the Motor Accidents Claims Tribunal (Court of Subordinate Judge), Gingee, Villupuram District, dated 18.03.2020 in M.C.O.P.NO.135 of 2015, the 2nd respondent insurance company has come forward with this Civil Miscellaneous Appeal.



2. It is a fatal accident case. The 1st appellant is the wife of one Annadurai, who died in a road accident and the respondents 2 to 6 are his daughters of whom the respondents 5 and 6 were minors on the date of claim petition. The 2nd respondent is the mother of the deceased. She died pending claim petition.

3. It is the case of the respondents/claimants that on 01.02.2015 at about 06.50 p.m. the deceased Annadurai was riding on his motor cycle on Thiruvannamalai - Villupuram Road to go to his native village. While so, at Adukkam village, near one Eluamalai's land, a Tractor, with a Trailer attached to it, belonged to the 7th respondent and insured with the appellant insurance company, was suddenly reversed by its driver without any signal as a result of which the tractor hit against the motor cycle and the deceased sustained multiple injuries and died on the spot. The deceased was a rice and paddy Merchant. At the time of accident, he was 45 years old and was earning a sum of Rs.15,000/- per month by selling rice and paddy. There are seven dependents of the deceased. Hence, claiming a sum of Rs.40,00,000/- as compensation, the dependents of the deceased filed the claim petition.

4. The 7th respondent/owner of the tractor was remained absent before the tribunal and therefore, he was set ex parte. The appellant/1st respondent insurance company contested the claim petition contending that the accident was taken place only due to the rash and negligent riding of the two wheeler by the deceased. He only dashed against the parked tractor from its behind and hence, no negligence could be fixed on the driver of the tractor. The 2nd respondent also disputed the avocation and the monthly income of the deceased.

5. Before the tribunal, in order to prove their case, the respondents 1 to 6 examined the 1st respondent as P.W.1 and one Arumugam as P.W.2 and marked as many as 11 documents as Exs.P.1 to P.11. On the other side, one Mr.Rajamannar, the then Special Sub Inspector of Police was examined as R.W.1 while one Mr.Yuvaraj was examined as R.W.2 and only one document namely, a copy of the final report in the criminal case was marked as Ex.R.1.

6. On considering the materials, which were placed on record, the tribunal found that the accident was taken place due to the negligent parking of the tractor, on the main road without following the traffic rules and regulations and therefore, the driver of the tractor alone was responsible for the accident and the appellant being the insurer of the vehicle, is liable to compensate the dependents of the deceased. So far as the quantum of compensation is concerned, the tribunal fixed



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the monthly income of the deceased as Rs.5,000/- and by adding a benefit of 25% towards future prospects, the tribunal fixed the notional income of the deceased as Rs.6,250/-. Thereafter, considering the fact that there are six dependents, the tribunal proceeded to deduct 1/5th of the income towards personal expenses of the deceased had he been alive and calculate the notional annual contribution of the deceased as Rs.60,000/-. Then, adopting the multiplier of 14, the tribunal assessed the loss of dependency at Rs.8,40,000/- and in addition to the above, the tribunal awarded a sum of Rs.15,000/- towards funeral expenses, a sum of Rs.15,000/- towards loss of estate and a sum of Rs.40,000/- towards loss of consortium to the 1st respondent and in all the tribunal awarded a sum of Rs.9,10,000/- as compensation. Challenging the compensation granted by the tribunal, the insurer has come forward with the instant appeal.

7. I have heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 7 and also perused the records carefully.

8. The learned counsel for the appellant vehemently contended that the deceased himself dashed his two wheeler against the parked vehicle from behind. The evidence of R.W.1, the then Special Sub Inspector of Police, who was the investigating officer, in the criminal case and the evidence of R.W.2, the investigator of the insurance company is to the effect that tractor with a trailer was parked on the road side and it was only the deceased who rode the motor cycle in a rash and negligent manner dashed against the tractor from its behind and sustained injuries. Therefore, according to the learned counsel, when there is sufficient evidence to show that the tractor was parked on the road side by following all traffic rules and regulations, no negligence could be fixed on the driver of the driver of the tractor.

9. So far as the quantum of compensation is concerned, according to the learned counsel for the 2nd respondent, the tribunal, without any valid evidence, fixed the income of the deceased notionally at Rs.5,000/- which resulted in granting higher compensation.

10. Per contra, the learned counsel for the respondents 1 to 7 contended that the tribunal based on the available evidence concluded that the accident was occurred due to the negligent parking of the tractor on the middle of the road with a trailer, without any indication and without following the precautionary measures. Had the driver of the tractor followed the traffic rules and regulations, the death of the deceased could have been avoided. Therefore, according to the learned counsel, when there is sufficient evidence to show that the tractor was



parked on the road without following all traffic rules and regulations and the accident was taken place due to the negligence of driver of the offending tractor in all preponderance of probabilities, no infirmity could be found in the finding of the tribunal with regard to the happening of the accident positively in favour of the claimants.

11. The learned counsel for the respondents 1 to 7 further submitted that though the respondents 1 to 7 led evidence to the effect that the deceased was getting a sum of Rs.15,000/-, the tribunal has failed to consider the same and instead fixed the income of the deceased notionally at Rs.5,000/- which is very low. So far as the compensation under conventional heads are concerned, the tribunal awarded a sum of Rs.40,000/- towards loss of consortium to the 1st respondent, the widow of the deceased alone and it did not award any compensation towards loss of love and affection to the children of the deceased of whom 5 and 6th respondents were minor at that point of time. Therefore, the learned counsel submitted that at any rate, the compensation awarded by the tribunal is on the lower side and it is to be enhanced adequately.

12. I have considered the rival submissions carefully.

13. The Government of India has framed regulations with regard to parking of vehicles known as Road Regulations, 1989. Regulation 15 of the said Regulations, deals with parking of vehicles, which reads as follows:

"15. Parking of the vehicle.-

(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and if the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle-

(i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;

(ii) on a foot-path;

(iii) near a traffic light or pedestrian crossing;

(iv) on a main road or one carrying fast traffic;



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(v) opposite another parked vehicle or as obstruction to other vehicle;

(vi) along side another parked vehicle;

(vii) on roads or at places or roads where there is a continuous white line with or without a broken line;

(viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;

(ix) on the wrong side of the road;

(x) where parking is prohibited;

(xi) away from the edge of the footpath..."

14. The factum of death of the deceased in the accident is not in dispute. The issue is as to whether the tractor was parked on the road side with all precautions and safety measures or on the middle of the road without following the traffic rules and regulations. R.W.1, the then Special Sub Inspector of Police, who investigated the criminal case deposed to the effect that the accident was taken place on the southern side of the road and not on the right side. He relied upon the rough sketch drawn by the police during investigation of the criminal case. He was the witness examined by the insurance company. The tribunal after considering the materials available on record including the MV Report and the evidence of R.W.1 has come to a conclusion that the tractor was parked on the middle of the road without any proper signal or indication and therefore, fixed the negligent on the driver of the tractor. As rightly concluded by the tribunal, there is no evidence to show that the driver of the tractor parked the vehicle on the road side by observing the traffic rules and regulations and by putting the parking light switch on. On a careful perusal of the order and the materials placed on the record and in the absence of any contrary evidence, this court does not want to interfere with the finding of the tribunal in this regard.

15. So far as the quantum of compensation is concerned, at the time of accident, the deceased was 45 years old. The 1st respondent is the widow of the deceased and the respondents 2 to 6 are daughters, of whom respondents 5 and 6 are minor daughters of the deceased. The accident was taken place in 2015. The tribunal fixed the monthly income of the deceased as Rs.5,000/- and added the benefit of 25% towards future prospects. Thereafter, applying the guidelines issued by the Hon'ble Supreme Court in Sarala Verma v. Delhi Transport Corporation, (2009) 6 SCC 121 and National Insurance Company Limited v.



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Pranay Sethi (2017) 16 SCC 680, the tribunal deducted 1/5th of the income towards personal expenses and thereby assessed the loss of dependency at Rs.8,40,000/- which in the considered opinion of this court is just and fair and does not call for any interference by this court.

16. Insofar as compensation in respect of loss of consortium and loss of love and affection are concerned, there were seven dependents of the deceased of whom the mother of the deceased died pending claim petition and the respondents 1 to 6 are the widow and daughters of the deceased. As already stated supra, the last two daughters were minor on the date of claim petition. As per the judgement in National Insurance Company Limited v. Pranay Sethi (2017) 16 SCC 680 and United India Insurance Co. Ltd v. Satinder Kaur @ Satwinder Kaur [Civil Appeal No.2705 of 2020 dated 30.06.2020], the respondents 2 to 6 are entitled to compensation towards loss of love and affection. But, the tribunal, without considering the law in this regard, awarded only a sum of Rs.40,0000/-towards loss of consortium to the widow of the deceased, the 1st respondent herein and no amount has been awarded by the tribunal to the daughters of the deceased towards loss of love and affection.

17. The provision in Section 166 of the Motor Vehicles Act, 1988 makes it clear that award must be just, which means that the compensation should be, to the extent possible, reasonable and based on the evidence on record. It is a benevolent provision aimed at consoling and compensating the victims of the accident. The court's approach should be humane in nature and not whittled down by technicalities. The powers of the court are wide enough to do complete justice.

18. The instant appeal is preferred by the insurance company and the claimant has not questioned the same in terms of quantum. Even though there is no appeal from the claimant for enhancement still, the court is under a duty and obligation to ensure that a fair and just compensation is granted and the said principle has been fortified by the Hon'ble Supreme Court in the case of Ramla v. National Insurance Company Limited, (2019 (2) SCC 192. The Hon'ble Supreme Court at para 5 of the judgement has held as follows:-

"5. Though the claimants had claimed a total compensation of Rs 25,00,000 in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or court under



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Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The courts are duty-bound to award just compensation. [See the judgments of this Court in (a) Nagappa v. Gurudayal Singh [Nagappa v. Gurudayal Singh, (2003) 2 SCC 274 : 2003 SCC (Cri) 523] , (b) Magma General Insurance Co. Ltd. v. Nanu Ram [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130] , (c) Ibrahim v. Raju [Ibrahim v. Raju, (2011) 10 SCC 634: (2012) 3 SCC (Civ) 1053 : (2012) 1 SCC (Cri) 120]].

19. Thus, in the light of the above said legal position having regard to the facts of the case, this court is inclined to grant a sum of Rs.90,000/- to the respondents 1 to 6 as compensation towards loss of love and affection in addition to the compensation granted by the tribunal which shall also carry interest at the same rate as directed by the tribunal.

20. For the foregoing discussions, the appeal deserves only to be dismissed, however, with a modification as indicated above.

In the result, this Civil Miscellaneous Appeal is dismissed, however with enhancement of compensation from Rs.9,10,000/- to Rs.10,00,000/- in favour of the respondents 2 to 6 together with interest at the rate of 7.5% per annum from the date of claim petition till date of award. The respondents 1 to 6 are directed to pay necessary Court fee on the enhanced compensation. The compensation determined herein above is directed to be apportioned in the same proportion as ordered by the tribunal. The appellant is directed to deposit the award amount directed above together with interest and costs in the claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The 5th respondent was claimed to be 14 years old at the time of accident. Now, we are in 2020 and the 5th respondent would have attained majority by this time.

Therefore, on being deposited the compensation with interest by the appellant, it will be open to the respondent 1 to 5 to approach the tribunal for appropriate orders on withdrawal. In so far as the share of the minor 6th respondent is concerned, the directions of the tribunal shall continue till she attains



majority. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Motor Accidents Claims Tribunal
(Court of Sub Judge),
Gingee, Villupuram District.
2. The Section Officer,
VR-Section, High Court,
Madras.

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.39438
+1cc to Mr.M.Santhana Raman, Advocate, S.R.No.39740

C.M.A.No.1672 of 2020

MG(CO)
HS(13/09/2021)