

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4847 of 2019

1.Pichaiyammal
2.Minor. Senthamizhselvi
3.Minor. Vishvaraj
4.Saroja .. Appellants/Claimants
(Minor appellants 2 & 3 are represented
by their Mother/Guardian, Pichaiyammal, 1st appellant)

Vs.

1.Venkatesan
2.Royal Sundaram Alliance Insurance Company Limited,
No.113/114, Sri Theyagarajan Road,
4th Floor, Meena Kampala Arcade,
T.Nagar, Chennai - 600 017. ... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.02.2019 made in M.C.O.P.No.139 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Ariyalur.

For Appellants : Mr.P.Parthi Kannan

For R2 : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging 15% of contributory negligence fixed on the part of the deceased as well as for enhancement of compensation granted by the award dated 04.02.2019 made in M.C.O.P.No.139 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Ariyalur.

2. By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3. According to appellants/claimants, on 16.08.2015 at about 10.30 P.M., while the deceased was riding in his motorcycle on Jayankondam - Trichy main road, the driver of the lorry belonging to the 1st respondent came in a rash and negligent manner and dashed against the deceased and caused the accident. Due to the said accident, the deceased sustained fatal injuries and died on the spot. Therefore the appellants/claimants filed claim petition claiming a sum of Rs.30,00,000/- as compensation against the respondents, being the owner and insurer of the lorry respectively.

4. The 1st respondent, owner of the lorry remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company filed counter statement and denied all the averments made by the appellants/claimants. According to 2nd respondent/Insurance Company, the lorry belonging to the 1st respondent was not insured with them. The deceased only came in a rash and negligent manner and invited the accident. The accident has not occurred as alleged by the appellants. The appellants have to prove the age, avocation and income of the deceased by valid documents. The appellants have to prove that the lorry belonging to the 1st respondent possess RC Book, valid permit, insurance coverage and the driver of the lorry was having valid driving license at the time of accident. The appellants have to prove that they are the dependants of the deceased. In any event, the quantum of compensation claimed by the appellants/claimants is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, on behalf of the appellants/claimants, the first appellant examined herself as P.W.1 and Ashok Kumar, eye-witness, who lodged the complaint was examined as P.W.2 and 16 documents were marked as Exs.P1 to P16. On behalf of the respondents, one Lakshmi was examined as R.W.1 and the driver of the lorry was examined as R.W.2 and marked one document as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the 1st respondent and fixed 15% negligence on the part of the deceased for not wearing helmet at the time of accident and 85% negligence on the part of the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.12,12,400/- towards 85% of the total compensation to the appellant.

8. Not being satisfied with the amounts awarded by the Tribunal and for setting aside the portion of the award fixing 15% contributory negligence on the part of the deceased, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that though the Tribunal has held that the accident has occurred only due to the rash and negligent driving by the driver of the 1st respondent, the Tribunal erred in fixing 15% contributory negligence on the part of the deceased. The Tribunal ought to have fixed entire negligence on the part of the driver of the 1st respondent. The Tribunal erred in not accepting the evidence of P.W.2, an eye-witness to the accident who had deposed that the accident occurred only due to rash and negligent driving by the driver of the 1st respondent's lorry. The deceased was a driver and was earning a sum of Rs.20,000/- per month. But the Tribunal fixed a meagre sum of Rs.7,500/- per month as notional income of the deceased and awarded meagre sum of Rs.11,42,400/- towards loss of dependency after deducting 15% negligence on the part of the deceased. The Tribunal has not awarded any amount towards loss of love and affection. The total compensation awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 15% contributory negligence on the part of the deceased as well as for enhancement of compensation.

10. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that following the judgment of the Madurai Bench of this Court reported in 2018 ACJ 110 [Branch Manager, Oriental Insurance Company Limited Vs. Indirani and others], the Tribunal rightly fixed 15% contributory negligence on the part of the deceased for not wearing helmet at the time of accident. The appellants have not substantiated their claim that the deceased was working as driver and was earning a sum of Rs.20,000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.7,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The amounts awarded by the Tribunal under different heads are not meagre and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

11. Heard the learned counsel for the appellants as well as the 2nd respondent and perused the entire materials on record.

12. From the materials available on record, it is seen that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the 1st respondent. The Tribunal considering the fact that the deceased was not wearing

helmet at the time of accident, fixed 15% contributory negligence on the part of the deceased. This is inconsonance with the judgments rendered by this Court in a number of cases. There is no error in the said finding of the Tribunal warranting interference by this Court.

13. As far as quantum of compensation is concerned, the appellants have contended that the deceased was a driver and was earning a sum of Rs.20,000/- per month. They failed to prove their said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the deceased. The accident occurred in the year 2015 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. The Tribunal rightly applied multiplier '16' and rightly granted 40% enhancement towards future prospects. There are four dependants of the deceased and the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of 1/3rd. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.20,16,000/- {Rs.14,000/- [Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] X 12 X 16 X $\frac{3}{4}$ }. The amounts awarded by the Tribunal under conventional heads are just and reasonable and hence, the same 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	13,44,000/- 85% of the award comes to 11,42,400/-	20,16,000/- 85% of the award comes to 17,13,600/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.12,12,400/-	Rs.17,83,600/-	enhanced by Rs.5,71,200/-

15% of negligence fixed by the Tribunal on the part of the deceased is hereby confirmed and 85% of the total award amount comes to Rs.17,83,600/-.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the 85% compensation awarded by the Tribunal at Rs.12,12,400/- is hereby enhanced to Rs.17,83,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court, i.e., Rs.17,83,600/- along with interest and costs, less the amount already deposited, if any, 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.139 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Ariyalur. On such deposit, the appellants 1 and 4 are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till they attain majority. On such deposit, the first appellant, being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in three months, for the welfare of the minor appellants 2 and 3. No costs.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Ariyalur.

Copy to:

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

+1cc to Mr.M.B.Gopalan , Advocate SR.No. 1534

+1cc to Mr.P.Parthikannan , Advocate SR.No. 751

C.M.A.No.4847 of 2019

A.SK(07/09/2020)