

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2785 of 2014

1.Kala

2.Banupriya (Minor)

3.Naveen Kumar (Minor)

(Minor appellants 2 and 3 are rep.
by their mother and natural guardian,
1st appellant)

4.Backiyammal

.. Appellants/Claimants

Vs.

1.A. Anthony Raj

2.Future General India Insurance Co. Ltd.,
1st Floor, North Wing, Karumuttu Nilayam,
No.192, 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 25.03.2014, made in M.C.O.P. No.1740 of 2012, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr. R. Kalai Arasan

for M/s. N.M. Muthurajan

For Respondents: Mr. E. Rajadurai (For R2)

for M/s. N. Vijayaraghavan

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the award of the Tribunal dated 25.03.2014, made in M.C.O.P. No.1740 of 2012, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellants filed M.C.O.P. No.1740 of 2012, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.14,00,000/- as compensation for the death of one R.Subramani, who died in the accident that took place on 23.12.2011.

3.According to the appellants, on the date of accident, at 22.45 hrs, when the deceased was driving Auto bearing Registration No. TN-01-L-8373 from Savitha Dental College at Poonamallee to Kovur along Poonamallee High road, along Senneerkuppam service road, 1st respondent, driver-cum-owner of the Van bearing Registration No.TN-20-BP-5017 parked the vehicle in negligent manner in the middle of the road without any parking indication. The deceased, unaware of the haphazard parking of the Van, hit against the Van and caused the accident. In the accident, the deceased sustained fatal injuries. Hence, the appellants filed the claim petition, claiming compensation against the respondents as owner and insurer of the said Van.

4.The 2nd respondent - Insurance Company filed counter statement and denied all the averments made by the appellants. According to the 2nd respondent, the accident did not occur due to rash and negligent driving by the driver of the Van belonging to the 1st respondent. The deceased who was driving the Auto, hit the Van from behind and caused accident. The deceased contributed to the accident by his negligent driving of Auto. In any event, the appellants have to prove the age, avocation and income, injuries sustained in the accident, treatment taken by the deceased for the same, to claim compensation. The total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition. The 1st respondent, owner-cum-driver of the Van adopted the contentions in counter affidavit filed by the 2nd respondent-Insurance Company.

5.Before the Tribunal, the 1st appellant examined herself as P.W.1, examined two eye witnesses as P.W.2 and P.W.3 and marked 4 documents as Exs.P1 to P4. The 1st respondent, driver of the Van examined himself as R.W.1, examined Law Officer of 2nd respondent as R.W.2 and marked 5 documents as Exs.R1 to R5.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to negligence of both the 1st respondent/owner-cum-driver of the Van as well as deceased/driver of the Auto and fixed contributory negligence as 75:25 and awarded a sum of Rs.11,53,000/- as compensation to the appellants. The Tribunal directed the respondents to jointly and severally pay a sum of Rs.8,64,750/-, being 75% of the award amount as compensation to the appellants.

7.Challenging the 25% contributory negligence fixed on the deceased as well as not being satisfied with the amounts granted by the award dated 25.03.2014, made in M.C.O.P. No.1740 of 2012, the appellants have come out with the present appeal.

8.The learned counsel appearing for the appellants contended that accident occurred due to the negligent parking of the 1st respondent, driver-cum-owner of the Van, without any indication. The Tribunal without properly appreciating the evidence let in by the appellants, erroneously fixed 25% contributory negligence on the part of the deceased. The deceased was owner-cum-driver of Auto and was earning a sum of Rs.650/- per day. The Tribunal erroneously fixed a meagre amount of Rs.6,000/- per month as notional income. Considering the nature of work as a Auto driver, the Tribunal ought to have fixed Rs.8,000/- per month as income. The deceased was aged 37 years at the time of accident. The Tribunal granted only 30% enhancement towards future prospects, instead of 50%. The amounts granted by the Tribunal for loss of consortium, loss of love and affection and funeral expenses are meagre and prayed for enhancement of compensation.

9.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that driver of the Van parked the vehicle in the service road on the left hand side, with indicator. The deceased drove the Auto in a rash and negligent manner, dashed on the back side of the Van and caused the accident. The 2nd respondent examined the driver of the Van as R.W.1 and proved negligence on the part of the driver of the Auto/deceased. The FIR was registered only against the deceased, based on the complaint given by the relative of the deceased. The Tribunal without properly appreciating the evidence let in by the 2nd respondent and FIR, erroneously fixed 75% negligence on the part of the 1st respondent, driver of the Van, instead of fixing entire negligence on the deceased. The amount granted by the Tribunal is also excessive and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

11.From the materials on record, it is seen that it is the contention of the appellants that R.W.1 parked the Van in the middle of service road. Due to the same, the deceased who was driving the Auto, dashed on the Van and sustained injuries and died. In support of their contention, before the Tribunal, the appellants examined P.W.3 - eye witness who deposed as claimed in the claim petition. It is the contention of the 2nd

respondent-Insurance Company that R.W.1 parked the Van with indicator in service road. The deceased, driver of the Auto in a rash and negligent manner, dashed on the backside of the Van and caused the accident. FIR was registered only against the deceased and the 2nd respondent examined the 1st respondent, driver-cum-owner of the Van as R.W.1 and marked FIR, rough sketch, investigation report and accident register copy. P.W.3 - eye witness admitted in cross examination that he did not see whether the Van was parked with parking light. R.W.1 in cross examination admitted that he was standing in front of the Van and saw the accident only after the deceased dashed on the Van. In view of the above, the Tribunal considering the evidence of P.W.3, R.W.1 and rough sketch, held that both the deceased as well as the 1st respondent, driver-cum-owner of the Van are responsible for the accident and fixed 25% contributory negligence on the part of the deceased and 75% on the part of the 1st respondent, driver-cum-owner of the Van. The reason given by the Tribunal for fixing 25% contributory negligence on the part of the deceased is valid.

12.As far as the quantum of compensation is concerned, the appellants claimed that the deceased was owning Auto and was earning a sum of Rs.650/- per day. In the grounds of appeal, the appellants have stated that the Tribunal ought to have fixed the monthly income as Rs.8,000/-, as per the Minimum Wages Act. In the absence of any material evidence, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased and the same is meagre. The accident is of the year 2011. Considering the nature of work done by the deceased, a sum of Rs.8,000/- per month is fixed as notional income of the deceased, as claimed by the appellants. The deceased was aged 37 years at the time of accident. The Tribunal granted only 30% enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects. There are four dependants of the deceased. Hence, deducting 1/4th towards personal expenses of the deceased and applying multiplier '15', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.15,12,000/- {[Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)] x 12 x 15 x 3/4}. The Tribunal has awarded a meagre sum of Rs.25,000/- towards loss of consortium to the 1st appellant and Rs.25,000/- towards loss of love and affection to the appellants 2 to 4. The 1st appellant being wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium and the appellants 2 to 4 are entitled to a sum of Rs.60,000/- towards loss of love and affection. The amounts awarded by the Tribunal towards funeral expenses and loss of estate are also meagre. Hence, the same are enhanced to Rs.15,000/- each. The Tribunal erroneously has

awarded a sum of Rs.25,000/- towards pain and suffering to the appellants. The appellants are not entitled to any amount towards pain and suffering and hence, the same is set aside. The amount awarded by the Tribunal towards transportation is just and reasonable and hence, the same is 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	10,53,000/-	15,12,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	25,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 to 4	25,000/-	60,000/-	Enhanced
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Loss of estate	10,000/-	15,000/-	Enhanced
6.	Transportation	5,000/-	5,000/-	Confirmed
7.	Pain and sufferings	25,000/-	-	Set aside
	Total	11,53,000/-	16,47,000/-	Enhanced by Rs.4,94,000/-
	75% of the compensation	8,64,750/-	12,35,250/-	Enhanced by 3,70,500/-

13. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.11,53,000/- is enhanced to Rs.16,47,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the sum of Rs.12,35,250/-, being 75% of the 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.1740 of 2012. On such deposit, the appellants 1 and 4 are permitted to withdraw their share of the award amount, now determined by this Court, 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 shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, 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-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Small Causes Judge,
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

C.M.A.No.2785 of 2014

VBA (CO)
GN (27/04/2021)

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