

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3074 of 2019

1.Santhi
2.Gopinath
3.Deepalakshmi

... Appellants/Petitioners

vs.

1.V.Elangovan

2.The New India Assurance Company Ltd.,
Office at 136, MBT Road, Navalpur,
Ranipet,
now presently at Officer's Line, CSI Complex,
Vellore at present legal Cell, LIC Buildings,
6th Floor, NSC Bose Road, Chennai - 600 104.

3.The Reliance General Insurance Company Ltd.,
Office at Legal Cell, Plot No.2054,
IInd Avenue 2nd Floor, Anna Nagar,
Chennai - 600 040,
Now at No.6, Reliance House,
4th Floor, Haddows Road, Nungambakkam,
Chennai - 34 Opp to Shastri Bhavan.

... Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2019 made in M.C.O.P.No.2 of 2015 on the file of the Motor Accident Claims Tribunal, Fast Tract Court-II cum Additional District and Sessions Judge II at Ranipet.

For Appellants : Mr.V.Parivallal

For Respondents : R1 - No appearance

R2 - Mr.M.Krishnamoorthy

R3 - M/s.C.Bhuvanasundari

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the Judgment and decree dated 30.04.2019 made in M.C.O.P.No.2 of 2015 on the file of the Motor Accident Claims Tribunal, Fast Tract Court-II cum Additional District and Sessions Judge II at Ranipet.

2. The learned counsel appearing on behalf of the appellants mainly contended that the notional monthly income of Rs.6,000/- fixed by the Tribunal is inadequate and not in commensuration with the cost index of the year, in which, the accident occurred. Further, it is stated that the contributory negligence of 15% fixed by the Tribunal is improper and contrary to the evidence produced by the appellants/claimants before the Tribunal. Thus, the contributory negligence fixed by the Tribunal against the deceased is to be set aside as well as the compensation awarded is to be enhanced.

3. The learned counsel appearing on behalf of the 2nd respondent/New India Assurance Company Limited, disputed the contentions by stating that the Tribunal has granted a reasonable compensation. The contributory negligence was fixed based on the manner, in which, the accident occurred and the contribution of the deceased was properly assessed by the Tribunal. This apart, the appellants/claimants had not produced any acceptable document regarding the income of the deceased. In the absence of any such document or proof of income, the Tribunal is right in fixing the Notional monthly income of Rs.6,000/- and therefore, the grounds raised in the appeal are untenable and the appeal itself is to be dismissed.

4. The accident occurred on 03.08.2015 at about 10.30 a.m., at Ranipet to Walaja, MBT Road, near Autonagar Pillaiyar Koil. Ranipet Police Station registered a case in Crime No.391/2015 under Sections 279, 337 altered to 304(a) IPC. The deceased was the rider of Moped Cycle. Due to the accident, he sustained grievous injuries. The Claim Petition was filed by the wife, son and daughter of the deceased. It is brought to the notice of this Court that the Son of the deceased became major and the daughter got married and therefore, the son and daughter are not the dependents and they have got independent earning capacity.

5. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective

parties to the Claim Petition. As far as the negligence is concerned, the Tribunal made a finding that the appellants/claimants have not filed the Driving License of the deceased before the Tribunal. Postmortem Report disclosed that the deceased died due to the head injuries. It was established before the Tribunal that the deceased was not wearing Helmet and therefore, the Tribunal relying on Section 129 of the Motor Vehicles Act, arrived a conclusion that the Driver of the two wheeler ought to have wear the Helmet, so as to follow the safety norms prescribed under the statute. This apart, the appellants/claimants had not produced Driving License. Thus, it was established before the Tribunal that the deceased was not possessing Driving License and not wearing the Helmet at the time of accident and therefore, he sustained grievous head injuries and died. Under those circumstances, the Tribunal fixed the contributory negligence of 15% against the deceased and accordingly, the point was decided.

6. Regarding the quantum of compensation, the Tribunal fixed the Notional monthly income of the deceased as Rs.6,000/- and accordingly, calculated the compensation.

7. This Court is of the considered opinion that the accident occurred during the year 2015. The deceased was aged about 43 years at the time of accident and he was a Tea Vendor. Therefore, even in the absence of any Income Certificate or any proof, the Tribunal ought to have fixed a reasonable income, which would match the cost index of the year. Thus, a sum of Rs.6,000/- fixed by the Tribunal is on the lesser side and this Court is of the opinion that a sum of Rs.7,500/- per month would be appropriate and reasonable. Accordingly, the Notional monthly income of the deceased is to be fixed at Rs.7,500/- and 25% future prospects is to be added. In view of the enhancement made in the monthly income, the compensation awarded by the Tribunal is modified as detailed hereunder:

1.Loss of Dependency		
(monthly income=Rs.7,500/-		
Future prospects25%		
=Rs.7,500+25%=1,875/-		
Rs.7,500/-+1,875/-=Rs.9,375/-)		
		:9,375x2/3x12x14
		= 10,50,000/-
2.Loss of Consortium to Wife	:	40,000/-
3.Funeral Expenses	:	15,000/-
4.Loss of Estate	:	15,000/-

5. Medical Expenses	:	1,52,180/-

	:	12,72,180/-
Deduction of 15% contributory negligence	:	1,90,827/-

TOTAL		10,81,353/-

8. Thus, the respondents/claimants are entitled for a total compensation of Rs.10,81,353/- (Rupees Ten Lakh Eighty One Thousand Three Hundred and Fifty Three only) along with the interest at the rate of 7.5% per annum.

9. The 2nd respondent/New India Assurance Company Limited is directed to deposit the entire award amount, deducting the amount already deposited, along with accrued interest within a period of twelve (12) weeks from the date of receipt of a copy of this judgment and on such deposit, the appellants/claimants are permitted to withdraw their respective portion of the compensation as apportioned by the Tribunal in its judgment by filing an appropriate application before the Tribunal and the payments are to be made through RTGS. The appellants/claimants are directed to pay the additional Court fee, if any, with reference to the enhanced compensation within a period of two (2) weeks from the date of receipt of a copy of this judgment.

10. Accordingly, the judgment and the decree dated 30.04.2019 passed in M.C.O.P.No.2 of 2015 stands modified and consequently, the Civil Miscellaneous Appeal in C.M.A.No.3074 of 2019 is allowed in part. No costs.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
Fast Tract Court-II cum
Additional District and Sessions Judge-II,
Ranipet.

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

C.M.A.No.3074 of 2019

srg 29/04/2021