

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3124 of 2017
and C.M.P.No.19230 of 2017

1.Ramasamy
2.Karuppannan

... Appellants

Vs.

S.Selvi

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.06.2015 made in M.C.O.P.No.67 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellants : Mr.M.Sivakumar

For Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award dated 12.06.2015 made in M.C.O.P.No.67 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellants are the respondents in M.C.O.P.No.67 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The respondent filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 30.07.2006.

3.According to the respondent, on the date of accident, i.e., on 30.07.2006, at about 19.15 hours, while she was walking on the left side of the road with her sister and husband, a motorcycle bearing Registration No. TN 29 X 1674 belonging to one Kumarasamy, father of the appellants, rode the vehicle in a rash and negligent manner without sounding horn, from Krishnagiri towards Bargur in the wrong track and caused the accident. Due to the said impact, the respondent fell down on the road and sustained multiple injuries all over the body.

Therefore, the respondent has filed the claim petition claiming compensation against the said Kumarasamy. Pending claim petition the said Kumarasamy died. The appellants, who are legal heirs of the deceased Kumarasamy were impleaded as respondents.

4.The second appellant filed counter statement denying the averments made by the respondent and contended that the respondent resided at Dhandekuppam village, which situates on the eastern side. The deceased rode the motorcycle from Krishnagiri towards Bargur, which road leading from Krishnagiri to Bargur situates on the western side i.e., South to North. So, there was no pathway for the pedestrians. The respondent came by walk and crossed the road speedily from East to West direction, on seeing the deceased motorcycle, suddenly she stopped, again crossed the National Highways road and she alone fell down before the motorcycle. The respondent has not mentioned that the deceased vehicle dashed against her. So the accident has not occurred due to rash and negligent riding of the motorcycle by the deceased Kumarasamy and he is not responsible for the accident. There is no fault on the part of the deceased. Hence, the appellants are not liable to pay any compensation to the respondent and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined herself as P.W.1 and Dr.Devendiran was examined as P.W.2 and marked 10 documents as Exs.P1 to P10. On the side of the appellants, the second appellant examined himself as R.W.1 and no documents were marked.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding of the motorcycle by the deceased Kumarasamy and directed the appellants, who are legal heirs of the deceased, to pay a sum of Rs.4,20,551/- as compensation to the respondent.

7.Against the said award dated 12.06.2015 made in M.C.O.P.No.67 of 2013, granting compensation to the respondent, the appellants have come out with the present appeal.

8.Though the learned counsel appearing for the appellants have raised various grounds in the grounds of appeal with regard to negligence fixed on the part of the deceased Kumarasamy father of the appellants, when the matter is taken up for hearing, he restricted his arguments only with regard to quantum of compensation awarded by the Tribunal.

9.The learned counsel appearing for the appellants contended the Tribunal failed to note the medical records and fixed the disability of the respondent as 45%. The respondent sustained

fracture of left femur and the same was re-united and there is no permanent disablement to the respondent. The multiplier method adopted by the Tribunal is erroneous. The Tribunal awarded excessive sum of Rs.10,500/- towards loss of income during the treatment period. The amounts awarded by the Tribunal towards future medical expenses, attendant charges, extra nourishment and pain & sufferings are also excessive and prayed for dismissal of the appeal.

10.Though notice was served on the respondent and her name is printed in the cause list, there is no representation on behalf of her either in person or through counsel.

11.Heard the learned counsel appearing for the appellants and perused the entire materials on record.

12.From the materials available on record, it is seen that the respondent has not filed any document to show that she suffered functional disability. In the absence of any material evidence, the compensation awarded by the Tribunal towards loss of earning capacity by adopting multiplier method is erroneous. The respondent examined Dr.Devendiran as P.W.2, who has assessed the disability of the respondent as 60% and marked the disability certificate as Ex.P10. The Tribunal considering Ex.P2/Wound Certificate, Ex.P7/Transport Bill and Ex.P10/Disability Certificate, reduced the disability to 45% and held that the appellants have not examined any expert to disprove the percentage of disability assessed by P.W.2/Doctor. The said reasoning is erroneous. The respondent is entitled to get compensation for 60% disability by adopting percentage method. In view of granting compensation by adopting percentage method, the compensation awarded by the Tribunal towards loss of earning capacity by adopting multiplier method is hereby set aside. The accident is of the year 2006 and hence, a sum of Rs.2,000/- is awarded per percentage of disability. Thus, a sum of Rs.1,20,000/- (Rs.2,000/- X 60%) is awarded towards disability. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby 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 or reduced
1.	Loss of earning capacity	3,21,300/-	-	set aside
2.	Disability	-	1,20,000/-	granted

3.	Loss of income	10,500/-	10,500/-	confirmed
4.	Pain & sufferings	20,000/-	20,000/-	confirmed
5.	Medical expenses	30,851/-	30,851/-	confirmed
6.	Future medical expenses	15,000/-	15,000/-	confirmed
7.	Extra nourishment	10,000/-	10,000/-	confirmed
8.	Transportation	2,900/-	2,900/-	confirmed
9.	Attendant charges	10,000/-	10,000/-	confirmed
	Total	Rs.4,20,551/-	Rs.2,19,251/-	reduced by Rs.2,01,300/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,20,551/- is hereby reduced to Rs.2,19,251/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to deposit the modified 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. On such deposit, the respondent is permitted to withdraw the modified award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are permitted to withdraw excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.67 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri, if the entire award amount has already been deposited. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Special Sub Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

Copy to

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

+1cc to M/s.C.Prabakaran, Advocate Sr.13015

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