

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3144 of 2017

and

C.M.P.No.22709 of 2019

1.N.Alamelu

2.A.Nallathambi

.. Appellants/Claimants

Vs.

1.V.Balasubramaniam

2.The IFFCO TOKIO General Insurance Company Ltd.,

D.No.138/2, 2nd Floor, L.M.R. Shopping Arkkat,

M.G.M.Theatre Opposite, Namakkal Town,

Namakkal.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.07.2017 made in M.C.O.P.No.1229 of 2015 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Namakkal.

For Appellants : Mr.R.Nalliyappan

For R2 : Mr.S.Arunkumar

For R1 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 50% contributory negligence on the part of the deceased as well as for enhancement of compensation granted by the Tribunal in the award dated 19.07.2017 made in M.C.O.P.No.1229 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.1229 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal. The appellants filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Thangaraj, who died in the accident that took place on 24.07.2015.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver cum owner of the lorry belonging to the 1st respondent as well as negligent act on the part of the deceased, fixed 50% contributory negligence on the part of both the deceased as well as 1st respondent, awarded a sum of Rs.7,43,895/- as compensation and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.3,71,948/- i.e., 50% of the award amount, as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, and fixing 50% contributory negligence on the part of the deceased, the appellants have come out with the present appeal seeking enhancement of compensation and for setting aside 50% contributory negligence fixed on the negligence.

5.The learned counsel appearing for the appellants/claimants contended that the Tribunal erred in fixing 50% contributory negligence on the part of the deceased. The Tribunal ought to have fixed entire negligence on the part of the driver of the lorry as the accident occurred only due to the rash and negligent driving by the driver of the lorry. It is further contended that the deceased was aged 21 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as a mason but the Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal has not awarded any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside 50% of contributory negligence fixed on the part of the deceased as well as enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the rider of the two wheeler drove his vehicle with two pillion riders in a careless manner without following traffic rules. At that time of accident the rider of the two wheeler, without noticing the vehicles coming from opposite direction suddenly attempted to overtake a lorry and hit the lorry, caused the accident. The accident has

occurred only due to rash and negligent riding by the rider of the two wheeler. The Tribunal ought to have fixed entire negligence on the rider of the two wheeler alone. The appellants have not filed any documents to prove the age, income and avocation of the deceased. In the absence of any material evidence, the notional income fixed by the Tribunal is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8. From the materials available on record, it is seen that as per Ex.P1/FIR and Ex.P4/charge sheet, it is admitted fact that the accident took place on 24.07.2015 and in the accident, one Thangaraj and Gokulraj died. From the evidence of PW2 and RW1, it is seen that one Rajesh drove his two wheeler along with two pillion riders, namely, Thangaraj and Gokulraj. Near Kunjandiyur to Mettur Main Road, in front of Murugan lorry stand from East to West, the rider of the two wheeler overtook a lorry which was proceeding in front of him and at that time, the 1st respondent's lorry driven by its driver from West to East i.e. opposite direction to the two wheeler on the upward road and the rider of the two wheeler dashed against the 1st respondent's oncoming lorry and thus the accident had occurred. It is pertinent to note that the rider of the two wheeler tried to overtook a lorry which was proceeding in front of him and failed to notice the oncoming opposite lorry belonging to the 1st respondent and dashed against the right side of the lorry and invited the accident. Considering all the above materials, the Tribunal fixed 50% contributory negligence on the part of the deceased, holding that the deceased is also responsible for the accident. There is no error in the said finding of the Tribunal warranting interference by this Court.

9. As far as quantum of compensation is concerned, the appellants have stated that the deceased was working as a mason and was earning a sum of Rs.15,000/- per month. The appellants have failed to produce the documents to substantiate the said contention. In the absence of any material evidence, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The same is meagre. The accident is of the year 2015 and the deceased was aged 20 years at the time of the accident. The Tribunal has not awarded any enhancement towards

future prospects. A sum of Rs.10,000/- is fixed as notional income of the deceased and the appellants are entitled to 40% enhancement towards future prospects. Since the deceased died as a bachelor, the Tribunal has rightly deducted 1/2 towards personal expenses of the deceased and applied multiplier '18', which is proper. Thus, the amount awarded by the Tribunal towards loss of dependency is enhanced to Rs.15,12,000/- $\{(Rs.10,000/- + 4,000 (Rs.10,000/- \times 40\%) \times 12 \times 18 \times 1/2)\}$. The amounts awarded by the Tribunal towards loss of estate, funeral expenses, love & affection and transportation are meagre and hence the same are hereby enhanced to Rs.15,000/-, Rs.15,000/-, Rs.40,000/- and Rs.10,000/- respectively. The amount awarded by the Tribunal towards medical bills is just and reasonable and hence the same is 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
1.	Loss of dependency	6,48,000	15,12,000	Enhanced
2.	Loss of estate	3,000	15,000	Enhanced
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Love and affection	2,000	40,000	Enhanced
5.	Transportation	1,000	10,000	Enhanced
6.	Medical bills	84,895	84,895	Confirmed
	Total	Rs.7,43,895/-	Rs.16,76,895/-	Enhanced by Rs.4,66,500/-
	[50% contributor y negligence]	Rs.3,71,948/-	Rs.8,38,448/-	

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,43,895/- is hereby enhanced to Rs.16,76,895/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are entitled to 50% of the award amount i.e. Rs.8,38,448/-. The

appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit 50% of the enhanced award amount now determined by this Court i.e., Rs.8,38,448/- 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. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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

+1cc to Mr.R.Nalliyappan, Advocate SR.7487

+1cc to Mr.S.Arunkumar, Advocate SR.7810

C.M.A.No.3144 of 2017
and

C.M.P.No.22709 of 2019

SV (CO)

CB (07/10/2020)

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