

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3177 OF 2017

1.Sakunthala
2.Athilakshmi

.. Appellants/
Petitioner

Vs.

1.V.Ramar

2.United India Insurance Company Ltd.

Rep. by its Branch Manager

No.171/E, RKS complex

Villupuram. ... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.02.2016 made in M.C.O.P.No.9 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Villupuram.

For Appellants : Mr.M.Sivakumar

For R1 : No appearance

For R2 : Mr.D.Bhaskaran

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company as well as for enhancement of compensation granted by the Tribunal in the award dated 11.02.2016 made in M.C.O.P.No.9 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Villupuram.

2.The appellants are claimants in M.C.O.P.No.9 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Villupuram. The appellants filed the said claim petition claiming a sum of Rs.9,00,000/- as compensation for the death of one Venkatesan, who died in the accident that took place on

21.08.2008.

3. According to the appellants, on the date of accident i.e., on 21.08.2008 at 10.00 a.m., while the appellants along with the deceased and others were travelling in a Mahindra Champion mini lorry bearing Registration No. TN 32 U 1206 from West to East direction in Veerabayangaram village, the driver of the said mini lorry drove the same in a rash and negligent manner, turned left side, capsized on the pit and caused the accident. Due to the said accident, the said Venkatesan succumbed to his injuries in the hospital on 24.08.2008. Therefore, the appellants filed the above said claim petition claiming compensation against the respondents.

4. The 2nd respondent/Insurance Company remained exparte before the Tribunal.

5. The 1st respondent, owner of the mini lorry filed counter statement denying the averments made in the claim petition and stated that the driver of the mini lorry belonging to the 1st respondent possessed valid driving license to drive the vehicle and the vehicle had valid permit, Fitness Certificate and Registration Certificate. The mini lorry was insured with the 2nd respondent/Insurance Company at the time of accident and therefore, the 2nd respondent is liable to pay compensation to the appellants. The 1st respondent has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined herself as P.W.1 and marked five documents as Exs.P1 to P5. The respondents did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the mini lorry belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.2,41,000/- as compensation to the appellants and dismissed the claim petition as against the 2nd respondent/Insurance Company.

8. Challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company as well as not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the deceased travelled as loadman in the offending vehicle. The Tribunal without properly appreciating the evidence of

P.W.2, dismissed the claim petition as against the 2nd respondent/Insurance Company. The deceased was working as an agricultural coolie and was earning a sum of Rs.18,000/- per month. The Tribunal fixed only a meagre sum of Rs.3,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company and for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the offending vehicle is the goods vehicle and the deceased travelled as an un-authorised passenger. The appellants have not stated in the claim petition as well as contended before the Tribunal that the deceased travelled in the vehicle as loadman. The Tribunal considering the averments made in the claim petition, held that the offending vehicle is the goods vehicle, the deceased travelled as an un-authorised passenger, the 2nd respondent/Insurance Company is not liable to pay the compensation and rightly dismissed the claim petition as against the 2nd respondent/Insurance Company. There is no error in the said finding of the Tribunal and prayed for dismissal of the appeal.

11.Though notice was served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

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

13.It is the contention of the learned counsel appearing for the appellants in the claim petition that the deceased travelled as passenger in the goods vehicle to go to temple for worshipping family deity and while returning, the accident has occurred. In the claim petition, it is not stated that the deceased travelled in the vehicle as loadman. For the first time in the grounds of appeal, the appellants have stated that the deceased travelled as loadman. The said contention now raised by the appellants in this appeal is an after thought and the same is made only with a view to get compensation from the 2nd respondent/Insurance Company. For the above reason, I hold that there is no error in the award of the Tribunal dismissing the claim petition as against the 2nd respondent/Insurance Company.

14.As far as quantum of compensation is concerned, the appellants have contended that the deceased was earning a sum of Rs.18,000/- per month by working as an agricultural coolie. They have failed to substantiate the said contention. In the absence

of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the deceased, fixed the age of the deceased as 63 years at the time of accident as per Ex.P4/Post-mortem certificate, applied multiplier 7 and deducted 1/3rd towards personal expenses. The accident is of the year 2008 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.5,000/- per month is fixed as notional income of the deceased. Thus, a sum of Rs.2,80,000/- (Rs.5,000/- X 12 X 7 X 2/3) is awarded towards loss of dependency. The Tribunal has awarded a sum of Rs.25,000/- towards loss of consortium and loss of love & affection to the 1st appellant, which is meagre. Hence, the 1st appellant is entitled to a sum of Rs.40,000/- towards loss of consortium and loss of love & affection to the 1st appellant. The Tribunal also awarded a sum of Rs.10,000/- towards loss of love & affection to the 1st appellant and Rs.20,000/- towards loss of care and protection to the appellants 1 & 2, which are not proper and the same are liable to be set aside and they are hereby set aside. The 2nd appellant, who is daughter of the deceased is entitled to a sum of Rs.10,000/- towards loss of love and affection. A sum of Rs.20,000/- awarded by the Tribunal towards funeral expenses is excessive and the same is hereby reduced to Rs.15,000/-. In view of the same, the amounts awarded by the Tribunal under the conventional heads are not interfered with and the appellants are not entitled to any enhancement of compensation. 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 dependency	1,66,000	2,80,000	Enhanced
2.	Funeral expenses	20,000	15,000	Reduced
3.	Loss of consortium and loss of love & affection to the 1 st appellant	25,000	40,000	Enhanced
4.	Loss of love and affection to the 1 st appellant	10,000	-	Set aside

5.	Loss of care and protection to the appellants 1 & 2	20,000	-	Set aside
6.	Loss of love and affection to the 2 nd appellant	-	10,000	Granted
	Total	Rs.2,41,000/-	Rs.3,45,000/-	Enhanced by Rs.1,04,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,41,000/- is hereby enhanced to Rs.3,45,000/- 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 directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellants/claimants shall not be entitled for any interest for the delay period on the amount of Rs.1,04,000/- enhanced by this Court as per the order of this Court dated 31.10.2017 made in C.M.P.No.17633 of 2017 in C.M.A.SR.No.78847 of 2017. The 1st respondent, owner of the vehicle is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount if any, already deposited by him, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Special District Judge
The Motor Accident Claims Tribunal
Villupuram.

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

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.9391
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.9534

C.M.A.No.3177 of 2017

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