

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.503 of 2017

1.G.Devaki

2.G.Mageshwari

3.G.Magendiran

4.G.Kumudha

5.Minor G.Rajiv Gandhi ... Appellants/Petitioners

(Minor rep. by his next friend mother
1st appellant G.Devaki)

Vs.

1.K.Kalaimani

2.The Divisional Manager,
United India Insurance Co. Ltd.,
Katpadi Road,
Vellore. ... Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.02.2011 made in M.C.O.P.No.301 of 2008 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Tirupattur Taluk, Vellore District.

For Appellants : Ms.A.Subadra
for Ms.M.Malar

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 21.02.2011 made in M.C.O.P.No.301 of 2008 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Tirupattur Taluk, Vellore District.

2.The appellants are claimants in M.C.O.P.No.301 of 2008 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Tirupattur Taluk, Vellore District. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Gunasekaran, who died in the accident that took place on 08.04.2004.

3.The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition. Against the said award dated 21.02.2011 made in M.C.O.P.No.301 of 2008, the appellants have come out with the present appeal challenging the dismissal of the claim petition.

4.The learned counsel appearing for the appellant/claimant contended that the Tribunal failed to see that when the deceased and others were loading sand in the lorry, due to the pressure of loading of sand in the lorry, the nearby dig got eroded and the deceased was buried in the sand. The wife of the deceased, P.W.1 and P.W.2 eyewitness, deposed that the deceased was buried in the sand while loading the sand in the lorry. The Tribunal without properly considering the evidence of P.W.1 & P.W.2 erroneously relied upon a vague FIR and held that the accident has not occurred as alleged by the appellants. P.W.2 has deposed that the lorry was at the place of Arumuga Nayinar and digging out sand nearby the place. The loading of sand in the lorry was higher and due to over pressure the sand eroded and the deceased was buried at the 15 feet dig. The deceased was buried only due to the pressure of sand in the lorry which was stationed near pit where the deceased and others were digging the sand. The 2nd respondent/Insurance Company has not examined any eyewitness to prove that the accident did not occur as alleged by the appellants. The Insurance Company has admitted that the driver of the lorry was waiting when coolies were loading the sand in the lorry till completion of loading of sand. Hence, the deceased died only due to the negligence of the driver of the lorry and prayed for compensation under various heads mentioned in the grounds of appeal and prayed for allowing the appeal.

5. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased did not die due to any accident involving in the lorry. On the other hand, the lorry was stationed at the place where the deceased died when the sand fell on him and he was buried in the sand. He further contended that the Tribunal has given valid and cogent reason for dismissing the claim petition, which does not require to be interfered with and hence prayed for dismissal of the appeal.

6. 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.

7. From the materials available on record, it is seen that the deceased was a coolie and the 1st respondent employed him for loading and unloading the sand in the lorry belonging to the 1st respondent insured with the 2nd respondent/Insurance Company. According to P.W.1 and P.W.2 the lorry was stationed on the edge of pit and the deceased and others were loading sand in the lorry. According to P.W.2, who is an eyewitness, due to the pressure of heavy loading of sand in the lorry, the sand eroded and the deceased was buried in a 15 feet dig. The 2nd respondent in the counter statement, has stated that the lorry was parked and was not running and the driver of the lorry was awaiting for the coolies to load the sand in the lorry. The evidence of P.W.2, contents of FIR and admission of the 2nd respondent in the counter statement that the lorry was parked for loading the sand, clearly reveals that due to heavy loading of pressure of lorry, the sand fell on the deceased and he was buried in the sand at a 15 feet dig and thereafter, died on the way to hospital. Even though the lorry involved in the accident belonging to the 1st respondent, insured with the 2nd respondent/Insurance Company, was stationed at high position, the appellants are entitled to compensation from the respondents. The 2nd respondent admitted that the lorry was insured with them but premium for insurance policy was paid by one Raja and policy was not transferred in the name of 1st respondent. Non-transferring of policy was not a ground for escaping from the liability. In fact, the policy is for vehicle and not for the owner. Once the 2nd respondent admits that the policy issued by them was in force at the time of the accident, the 2nd respondent is liable to pay compensation.

8. As far as quantum of compensation is concerned, it is not in dispute that the deceased was a coolie working for the 1st respondent and according to the appellants, the deceased was earning a sum of Rs.6,000/- per month. They have not filed any document to substantiate their contention. The accident has

occurred on 08.04.2004. Considering the date of the accident, a sum of Rs.4,000/- per month is fixed as notional income of the deceased. The appellants have stated that the deceased was aged 42 years at the time of accident. As per postmortem certificate, the age of the deceased is mentioned as 45 years at the time of accident. The age of the deceased is fixed as 45 years. The appellants are entitled to 25% enhancement towards future prospects. The multiplier applicable is '14', there are totally 5 dependents and 1/4th has to be deducted towards personal expenses of the deceased. Thus, a sum of Rs.6,30,000/- $\{(Rs.4,000/- + 1,000 (Rs.4,000/- \times 25\%) \times 12 \times 14 \times 3/4)\}$ is awarded towards loss of dependency. The 1st appellant, wife of the deceased has lost her husband and she is entitled to a sum of Rs.40,000/- towards loss of consortium. The appellants 2 to 5 are the daughters and sons of the deceased. They are entitled to a sum of Rs.10,000/- each towards loss of love and affection. A sum of Rs.15,000/- each is awarded towards funeral expenses and loss of estate respectively.

9.It is well settled that the Court has to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by this Court as follows:

S.No	Description	Amount awarded by this Court (Rs)
1.	Loss of dependency	6,30,000
2.	Loss of consortium	40,000
3.	Loss of love and affection for the appellants 2 to 5	40,000
4.	Funeral expenses	15,000
5.	Loss of estate	15,000
	Total	Rs.7,40,000/-

10.In the result, this Civil Miscellaneous Appeal is allowed. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.7,40,000/- awarded by this Court as per the order of this Court dated 08.02.2017 in C.M.P.No.10046 of 2016 in C.M.A.SR.No.33842 of 2016. The 2nd respondent/Insurance Company is directed to deposit the compensation amount awarded by this Court at the rate of 7.5% per annum within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants 1 to 4 are permitted to

withdraw their respective share of the award amount along with proportionate interest and costs. The share of the minor 5th appellant is directed to be deposited in a fixed deposit in any one of the Nationalised Banks till the minor attains majority. The 1st appellant being the mother of the 5th appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The appellants are directed to pay the necessary Court fee for the amount awarded by this Court. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1.The Additional District Judge,
The Motor Accident Claims Tribunal
Fast Track Judge,
Tirupattur Taluk,
Vellore District.

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

+1 cc to M/s.M.Malar Advocate sr4909

+1 cc to Mr.J.Chandran Advocate sr4800

C.M.A.No.503 of 2017

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