

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.641 of 2017

1.T.Jaisree
2.Minor T.Nishandini
3.Minor T.Pradeep
4.G.Kuttiappan
5.Rathinammal .. Appellants
(Minors rep. by next friend mother T.Jaisree)

Vs.

1.P.Ramesh
2.National Insurance Co. Ltd.,
Divisional Office- 7 (350700)
Janpath, New Delhi.
3.National Insurance Company Limited
Divisional Office
Perundurai Road, Erode.
4.A.Iyyappan .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.01.2011 made in M.C.O.P.No.435 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court at Bhavani.

For Appellants : Mr.Ma.P.Thangavel
For Respondents: Mr.S.Vadivel for R2 & R3
No Appearance for R1 & R4

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 06.01.2011 made in M.C.O.P.No.435 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Bhavani.

2.The appellants are the claimants in M.C.O.P.No.435 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Bhavani. They filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one Thangadurai, who died in the accident that took place on 04.03.2008. The Tribunal dismissed the claim petition as against the respondents 1 to 3.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the fourth respondent, rider-cum-owner of the TVS 50 and directed the fourth respondent to pay a sum of Rs.6,45,000/- as compensation to the appellants. The Tribunal dismissed the claim petition as against the respondents 1 to 3.

4.Challenging the portion of the award dismissing the claim petition against the respondents 1 to 3 and not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the accident occurred due to the rash and negligent driving by the first respondent and the Tribunal erred in fixing the negligence on the part of the fourth respondent. The First Information Report or Criminal Court records and Rough Sketch cannot be basis for fixing negligence. The Tribunal ought to have considered the evidence of P.W.2, who is the eye witness who has stated that the accident has occurred only due to the rash and negligent driving by the first respondent. In any event, the Tribunal ought to have fixed 75% negligence on the part of the first respondent and 25% negligence on the part of the fourth respondent. The deceased was working as Salesman in TASMAC and was earning a sum of Rs.7,000/- per month. The Tribunal failed to grant any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the respondents 2 and 3-Insurance Companies contended that the Tribunal considered the evidence of P.W.2, First Information Report, Rough sketch and charge sheet and concluded that the accident has occurred only due to the rash and negligent riding by the fourth respondent. The appellants have not substantiated with regard to the avocation and income and prayed for dismissal of the appeal.

7.Though notice was sent to the respondents 1 and 4 and their names were also printed in the cause list but there is no appearance on behalf of them.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents 2 and 3 -Insurance Companies and perused the entire materials on record.

9.It is the contention of the appellants that P.W.2 eye witness has lodged the complaint. In the complaint, he has stated that the accident has occurred due to the rash and negligent riding by the fourth respondent. After investigation, the police laid the charge sheet against the fourth respondent. P.W.2 contrary to the contents in First Information Report has deposed that the accident has occurred only due to the rash and negligent riding by the first respondent and both by the respondents 1 and 4. The Tribunal considering the evidence of P.W.2 in consonant with the First Information Report, charge sheet and rough sketch and evidence of R.W.1, concluded that the accident has occurred only due to the rash and negligent riding by the fourth respondent. It is no doubt that the First Information Report, charge sheet and rough sketch are not basis for fixing the negligence. At the same time, the same can be taken into consideration along with other materials on record to fix the negligence. The Tribunal has considered the entire materials on record in proper perspective and has given a finding that the accident occurred only due to the rash and negligent riding by the fourth respondent and dismissed the claim petition as against the respondents 1 to 3. The findings of the Tribunal is proper and valid and there is no reason to interfere with said findings.

10.As far as the quantum of compensation is concerned, the appellants have contended that the deceased was working as a salesman in TASMAC and was earning a sum of Rs.7,000/- per month. To substantiate the same, the appellants have not filed any oral and documentary evidence. The Tribunal in the absence of any material evidence, fixed the notional income of the deceased at Rs.4,500/- per month. The accident occurred in the year 2008. The notional income fixed by the Tribunal is meagre and a sum of Rs.6,000/- per month is fixed as notional income of the deceased. The deceased was aged 36 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. In the Post Mortem Certificate/Ex.P6, the age of the deceased has been mentioned as 35 years and the Tribunal erred in fixing the age of the deceased as 36 years and applied multiplier 16. As per the Post Mortem Certificate/Ex.P6, the correct age of the deceased is 35 years. Hence, the age of the deceased is fixed as 35 years. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the appellants are entitled to 40% enhancement towards future prospects. There are five dependants and the Tribunal erroneously deducted 1/3rd instead of 1/4th towards personal expenses of the deceased. Therefore, deducting 1/4th towards the personal expenses of the deceased and after applying proper multiplier '16', the compensation awarded

by the Tribunal towards loss of dependency is modified to Rs.12,09,600/- (Rs.6,000/- + 2,400 [Rs.6,000/- x 40%] x 12 x 16 x 3/4). A sum of Rs.25,000/- and Rs.2,000/- awarded by the Tribunal towards loss of consortium and funeral expenses respectively are meagre and the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal under the heads loss of love and affection and transportation 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)		Award confirmed or enhanced or granted
1.	Loss of dependency	5,76,000/-	12,09,600/-	Enhanced
2.	Loss of love and affection	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	2,000/-	15,000/-	Enhanced
4.	Loss of estate	-	15,000/-	granted
5.	Loss of consortium	25,000/-	40,000/-	Enhanced
6.	Transportation	2,000/-	2,000/-	Confirmed
	Total	6,45,000/-	13,21,600/-	Enhanced by Rs.6,76,600/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,45,000/- is hereby enhanced to Rs.13,21,600/- 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 pay necessary Court fee, if any, on the enhanced compensation. The fourth respondent is directed to deposit the enhanced award amount now determined by this Court, 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 1, 4 & 5 are permitted to withdraw their share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by

the Tribunal, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The shares of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 & 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 & 3. It is made clear that the appellants/claimants shall not be entitled for any interest for the delay period on the amount of Rs.6,76,600/- enhanced by this Court as per the order of this Court dated 16.02.2017 in M.P.No.1 of 2011 in C.M.A.SR.No.8461 of 2015. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal/
The Subordinate Judge, Bhavani.

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

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 5685.

+1 CC to Mr.S.Vadivel, Advocate sr 5182.

C.M.A.No.641 of 2017

SPD(CO)
SP(21/01/2021)

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