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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.831 and 1169 of 2006

CMA 831 of 2006

1. The Tamil Nadu Government rep. by
the District Collecotor, Erode.
2. The Superintendent of Police,
Special Task Force,
Pannari Mugam. ...Appellants/2nd and 3rd respondents
3. Suresh Kumar, s/o Muthuramalingam,
24-C, Pudhu Colony, A.R.Line, Old Fort,
A.R. Line, OldFort, Tirunelveli.
...3rd Appellant/first respondent

Vs.

1. K.N.Karuppanasamy @ Velusamy (died)
...first Respondent/Claimant
2. Rajeswari
3. K.Shanmugapriya
4. K.K.Narendiran
5. Pavayammal
(R2 to R5 brought on record as legal heirs of the
deceased R1 vide court order dated 06.09.2019
made in CMP Nos.11611, 11613 and 11614 of 2019
in CMA No.831/2006)Respondents 2 to 5

CMA 1169 of 2006

1. K.N.Karuppanna Samy (deceased)
@ Velusamy
2. Pavayammal
3. Rajeshwari
4. K.K.Narendran
5. K.Shanmugapriya ...Appellants/Claimants



Vs.

1. Suresh Kumar

2. Government of Tamilnadu,
rep by District Collector, Erode District,
Erode 638 011.

3. The Superintendent of Police,
Special Task force, Bannari Camp ...Respondents/Respondents

Prayer in CMA 831 of 2006: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the order dated 28.06.2005 made in MCOP No.40 of 2005 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court No.2, Gobichettipalayam.

Prayer in CMA 1169 of 2006: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act against the order dated 28.06.2005 made in MCOP No.40 of 2005 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court No.2, Gobichettipalayam.

In CMA 831 of 2006

For Appellants : Mr.Devnarendren,
Government Advocate

For Respondents : Ms. Zeenath Begum for F2 and F4
R1 and R5 - Died
R3- No appearance

In CMA 1169 of 2006

For Appellants : Ms. Zeenath Begum

For Respondent : Mr.Devnarendren,
Government Advocate for R2 and R3
No appearance for R1

COMMON ORDER

Challenging the orders passed by the Tribunal in MCOP No.40 of 2005 dated 28.05.2005, the appellants/ respondents have filed the appeal in CMA No.831 of 2006 to set aside the same, whereas, the appellant/claimant has filed the appeal in CMA No.1169 of 2006 to enhance the compensation.

2. For the sake of convenience, the parties herein are referred to as per their ranking in the M.C.O.P No.40 of 2005.



3. The case of the claimant is that on 15.12.1997, at about 11.00 a.m. the claimant was riding his motor bike bearing registration No.TAS 8406 along Sathy-Mysore Trunk Road towards upward and while he was nearing the sixth bend on the Ghat Road at 87/8km Stone, a Tempo Trax Zeep bearing registration No. TN 33 G 0030 coming from opposite side hit the motor bike as a result of which the claimant sustained severe head injuries and he became unconscious and he was admitted to Sathy Government Hospital and then he was treated as inpatient from 15.12.1997 to 11.01.1998 in Ashwin Hospital, Coimbatore for surgery and then in D.K.G.R.Surgical Nursing Home, Sathyamangalam for post operative care and follow up. According to the claimant, the rash and negligent driving of the driver of the vehicle/ first respondent was the cause of accident and since the Zeep is belonging to the police department, all the respondents are liable to pay compensation of Rs.5,00,000/- to the claimant for the injuries sustained by him in the above accident.

4. The case of the claimant was resisted by the respondents by filing counter affidavits and contended that on the date and time of accident, the claimant was riding his motor bike rashly and negligently and was overtaking a van bearing registration No.TN37 K 3630 and by seeing that the driver of the zeep bearing registration No.33 G 0030 had stopped the zeep at the left hand side of the road towards downward, however the claimant had dashed against the foot step being at the right hand side driver door of the Zeep and only the rash and negligent driving of the claimant was the cause of accident and hence, the respondents are not liable to pay any compensation to the claimant.

5. Before Tribunal, the claimant and another two witnesses have been examined as PW1 to PW3 and Ex.A1 to Ex.A22 have been marked on the side of the claimant and the first respondent was examined as RW1 on the side of the respondents and no document has been marked on their side.

6. After analysing the evidence on record, the Tribunal awarded a compensation of Rs.2,44,000/- under various heads, as given hereunder.

Heads	Amount in Rs.
Loss of earning capacity	1,15,500
Medical bills	78,500
Pain and sufferings	50,000
Total	2,44,000

7. Not satisfied with the compensation awarded by the Tribunal, the claimant has filed the Appeal in CMA No.1169 of



2006 to enhance the compensation and the respondents have filed the appeal in CMA No.831 of 2006 to set aside the order passed by the Tribunal.

8. Heard the learned counsels for the parties and I have perused the materials on record.

9. The learned counsel appearing for the claimant submitted that the claimant was doing agriculture and dairy work and was earning a sum of Rs.35,000/- per month. He also submitted that before Tribunal the claimant has filed Ex.A21 and Ex.A22 to prove his income by selling the sugar cane to Sakthi Sugars Limited for a sum of Rs.2,41,590 for the year 2000-2001 and a sum of Rs.64,777/- for the year 2002-2003 respectively. Further he submitted that though the claimant had earned from the business of milk production, the Tribunal had not considered the same and erroneously fixed only a sum of Rs.30,000/- per annum as income of the claimant. He also submitted that due to the accident, the claimant sustained grievous injury on his head and a part of skull was opened and removed blood clot and thereafter, skull was not fixed, thereby he lost his earning capacity and also suffered by other related ailments. He further submitted that the PW3 Doctor was examined before the Tribunal and he deposed that the permanent disability suffered by the Claimant was 35% and due to the accident, the claimant was not able to do his agriculture and dairy work atleast for three months, however, the Tribunal has not awarded any amount towards loss of income and extra nourishment and awarded very meagre amount as compensation, without considering the documents and grievous injuries sustained by him. He further submitted that due to the accident, the claimant died during appeal proceedings and his legal heirs were impleaded as appellants 2 to 5 and hence, he prayed for enhancement of compensation and the appeal filed by the Government is liable to be dismissed.

10. The learned counsel appearing for the respondent/State submitted that during the accident, the claimant had driven his vehicle rashly and negligently and by overtaking a van which was going ahead him, dashed the foot step being at the front side driver seat of the zeep, as a result of which he sustained injuries and this aspect was not considered by the Tribunal. He further submitted that without considering the evidence on record the Tribunal has awarded a huge amount as compensation and hence, the Corporation has preferred the present appeal in CMA No.831 of 2006 to set aside the same.

11. The learned Government Advocate appearing for the Corporation submitted that the claimant had driven his vehicle rashly and negligently and dashed against the zeep belonging to



view that the Tribunal has fixed very meagre amount as income of the claimant and the same warrants interference by this court. By considering the above facts including occupation of the claimant, it is just and fair to fix a sum of Rs.50,000/- p.a. as income of the claimant. As per the disability certificate Ex.A18, the permanent disability suffered by the claimant is 35%. Accordingly, by adopting proper multiplier '11' " Loss of Earning Capacity " is fixed at $(50,000 \times 35\% \times 11)$ Rs.1,92,500.

16. As far as the medical expenses is concerned, the learned counsel appearing for the claimant submitted that the claimant has paid a sum of Rs.1,20,000/- towards his medical expenses, however, the Tribunal has awarded only a sum of Rs.78,500/-. As per the receipts filed by the claimant i.e. Ex.A8 to Ex.A12, the Tribunal has rightly calculated all the amounts paid and fixed a sum of Rs.78,500/- as " Medical Expenses ". Except those documents, the claimant has not produced any other bills to prove his contentions. As far as the other head " Pain and Sufferings " is concerned, the Tribunal has fixed a just compensation of Rs.50,000/- which does not warrant any interference by this court. Accordingly, the modified compensation awarded under various heads is as follows.

Heads	Compensation awarded by the Tribunal	Compensation modified by this court
Loss of earning capacity $(50,000 \times 35\% \times 11)$	1,15,500	1,92,500
Medical bills	78,500	78,500
Pain and sufferings	50,000	50,000
Total	2,44,000	3,21,000

From the above said compensation, the third and fourth appellants in CMA No.1169 of 2006 are entitled to get Rs.1,00,000/- each and the second and fifth appellants are entitled to Rs.60,500/- each.

17. In the result,

(i) The appeal in CMA No. 831 of 2006 is dismissed. No costs.

(ii) The appeal in CMA No.1169 of 2006 is partly allowed and the compensation awarded by the Tribunal is enhanced from 2,44,000/- to Rs.3,21,000/- and the third and fourth appellants (Rajeshwari and K.K.Narendran) in CMA No.1169 of 2006 are entitled to get Rs.1,00,000/- each and the second and fifth appellants (Pavayammal and K.Shanmugapriya) are entitled to Rs.60,500/- each. No costs.



(ii) The respondents/ government are directed to deposit the enhanced compensation of Rs.3,21,000/- along with the interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of 12 weeks from the date of receipt of a copy of this order, less the amount if already deposited.

(iii) On such deposit being made by the respondents the claimants are entitled to withdraw the same as per the ratio referred above, after following due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional District Judge,
Additional District Court,
Motor Accident Claims Tribunal,
Fast Track Court No.2,
Gobichettipalayam.

Copy To

The Section Officer,
V R Section,
High Court, Madras.

+1cc to Mr.Zeenath Begum, Advocate, S.R.No.1061
+1cc to the Government Pleader, S.R.No.1367

CMA No.831 and 1169 of 2006

RSV(CO)
RGA(23/11/2021)