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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.3146 of 2012

1.Rajammal
2.Santhi
3.Prabha
4.Chitra

... Appellants/Claimants 1 to 4

Versus

1.Kandasamy (Deceased)

2.United India Insurance Company Ltd.,
No.19/2A, Jangan Main Road,
Opposite Raja Kalyana Mahal, Salem - 4.

3.Rakkan (Died)
4.Perumayee (Died)
5.Lakshmi
6.Mayilsamy

...Claimants 5 &6

7.Yuvaraj (LRS of R1)
(RR 5 to 7 brought on record as LR's of
the deceased R1 vide order of Court
dated 26.09.2012 made in MP Nos.
1 to 3 of 2011 in CMA SR No.66887 of 2010)
(Rakkan and Perumayee died as per the
memo dated 04.02.2021 (SR3919) and
vide court order dated 09.02.2021 made in
CMA No.3146 of 2012 [DKKJ])

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 26.03.2008 made in M.C.O.P.No.1633 of 2003 on the file of the Motor Accident Claims Tribunal (Principal District Court), Salem.

For Appellants : Mr.J.Ramakrishnan

For R1 : Died (steps taken)

For R2 : M/s.R.Sreevidhya

For R3 & R4 : Died
R5 to R7 : Mr.R.Nalliyappan



J U D G M E N T

This appeal is laid as against the judgment and decree dated 26.03.2008 made in M.C.O.P.No.1633 of 2003 on the file of the Motor Accident Claims Tribunal (Principal District Court), Salem.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 31.05.2003, when the deceased was riding his TVS 50 in front of his house on the left side of the road, the vehicle, owned by the first respondent, driven by its driver in a rash and negligent manner, dashed against the motor cycle, due to which, he sustained grievous injuries and immediately he was taken to the hospital for treatment and he was died. He was an agriculturist and also doing coconut business, thereby he was earning Rs.6,000/- p.m. at the time of accident. He was aged only 48 years. Hence, the legal heirs of the deceased filed a claim petition.

4. Resisting the same, the second respondent/Insurance Company filed a counter stating that the accident was not took place due to the rash and negligent driving on the part of the driver of the vehicle owned by the first respondent, but only because of the rash and negligent driving of the deceased. Therefore, the second respondent is not held to be liable to pay any compensation as claimed by the claimants and sought for dismissal of the claim petition.

5. On the side of the claimants, they examined P.W.1 and marked Ex.P1 to Ex.P4. On the side of the respondents, no one was examined and no exhibits were marked. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal dismissed the claim petition only for the reason that the negligence was not proved against the vehicle driver owned by the first respondent. Aggrieved by the same, the claimants filed the present appeal.

6. The learned counsel appearing for the appellants/claimants would submit that the first claimant is the wife of the deceased, who is the eye witness of the accident. Immediately after the accident, she lodged a complaint and the same was registered in Cr.No.548 of 2003 for the offences under Sections 279 and 304(A) of IPC. In her evidence, she categorically stated that when the deceased was in front of the house, a tempo, owned by the first respondent, driven by its driver in a rash and negligent manner, dashed against him, as a



result of which, he sustained grievous injuries and died. Unfortunately, she is being an illiterate, there was some contradiction in her deposition and as such, the Tribunal concluded the negligence on the part of the driver of the vehicle owned by the first respondent was not proved by the claimants. Insofar as, the quantum of compensation is concerned, the deceased died at the age of 48 years and he was earning a sum of Rs.6,000/- per month as agriculturist and also doing coconut business.

7. Per contra, the learned counsel for the second respondent/Insurance Company would submit that the first claimant/wife of deceased deposed that while she was standing in front of her house, the vehicle owned by the first respondent dashed against the deceased. Due to which, he sustained grievous injuries and immediately he was taken to the hospital and died. But in FIR, it was mentioned that, while the first claimant was standing in front of her house, the deceased proceeding towards the house nearby in his TVS 50, at that time, the vehicle owned by the first respondent dashed against the deceased. Therefore, there is a contradiction between both the FIR as well as the deposition. The Tribunal rightly concluded that the claimants failed to prove the negligence on the part of the driver of the vehicle owned by the first respondent.

8. Heard the learned counsel for the appellants as well as the learned counsel for the respondents.

9. A perusal of the FIR, which was marked as Ex.P1 reveals that on 31.05.2003, when the deceased was riding in his TVS 50 in front of the house, a tempo, owned by the first respondent, driven by its driver in a rash and negligent manner dashed against him, due to which, he sustained grievous injuries and died. Whereas, the deposition of P.W.1 revealed that while she was standing in front of her house, a tempo driven by its driver owned by the first respondent in a rash and negligent manner, hit against the deceased, due to which, he sustained injuries and died. Whether, the deceased while he was riding his motor cycle or while standing in front of his house, there is no issues but fact reminds that the vehicle owned by the first respondent and its driver had driven the vehicle and hit against the deceased. Therefore, this Court comes to the conclusion that the accident took place due to the negligence of the driver who driven the tempo in a rash and negligent manner. Therefore, the accident took place due to the negligence on the part of the driver of the vehicle owned by the first respondent. The second respondent being the insurer of the vehicle owned by the first respondent is liable to pay compensation.



10. Insofar as, the quantum of compensation is concerned, the deceased died at the age of 48. Therefore, the multiplier 13 is applicable to calculate the loss of income. The personal expenditure can be deducted at 1/4. Though, the claimants stated that the deceased was earning a sum of Rs.6,000/- p.m., they failed to prove the same. Therefore, this Court fixes the income of the deceased at Rs.3,000/- and the future prospects at 25%. Accordingly, the pecuniary loss is calculated as $\text{Rs.3,000/-} + 25\% * 13 * 12 - \frac{1}{4} = 4,38,750/-$. Therefore, this Court is inclined to award compensation under various heads as follows :

Heads	Amount awarded by this Court (Rs.)
Pecuniary Loss [Rs.3,000/- + 25% * 13 * 12 - $\frac{1}{4}$ = 4,38,750/-].	4,38,750.00
Loss of estate	15,000.00
Loss of Consortium	40,000.00
Funeral expenses	15,000.00
TOTAL	5,08,750.00

11. In the result the Civil Miscellaneous Appeal is allowed as follows:-

(i) The Claimants/Appellants are awarded a sum of Rs.5,08,750/- as compensation.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The claimants are entitled to get the award amount as follows:-

1st claimant - Rs. 2,03,500/-

2nd to 4th claimant - Rs. 1,01,750/- each

(iv) The second respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(v) On such deposit, the claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(vi) The claimants shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced



compensation.

(vii) There shall be no order as to costs.

Sd/-

Assistant Registrar(I)

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//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
(Principal District Court),
Salem.

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

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No.25781

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.25846

C.M.A.No.3146 of 2012

SPD(CO)
CB(01/10/2021)