



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.07.2021	Delivered on: 29.07.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.3637 of 2019

K.Mallika

...Appellants/Claimant

Vs.

1.Daskshnamurthy

2.Narayanamurthy

3.The Branch Manager,
The New India Assurance Company Limited,
B.O. 711803,
LIC Complex, Ground Floor,
No.286, SM Road,
Arani.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.03.2018 made in M.C.O.P.No.109 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Arani, Tiruvannamalai District.

For Appellant : Mr.B.Balaji
For Mr.A.Panneerchelvam

For RR 1 & 2 : No appearance

For R3 : Ms.C.Sangamithirai

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed against the award dated 28.03.2018 made in M.C.O.P.No.109 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Arani, Tiruvannamalai District.

2.The appellant is the claimant in M.C.O.P.No.109 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court,



Arani, Tiruvannamalai District. She filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of her son viz., Kumaresan, who died in the accident that took place on 13.03.2013.

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3. According to the appellant, on 13.03.2013 at about 03.30 P.M., while her son Kumaresan along with Saravanan and Parthiban were traveling in the Hero Honda Super Splendor motorcycle bearing Registration No.TN 32 Q 3229 on the Karippur - Nachchapuram road, near Karipur Burial Ground, the driver of the Tractor bearing Registration No.TN 25 V 3564 and Tractor bearing Registration No.TN 25 V 9581 who was driving the Tractor from Nachchapuram to Karippur, drove the same in a rash and negligent manner and dashed against the motorcycle in which the said Kumaresan traveled and caused the accident. In the accident, the said Kumaresan sustained severe head injuries and died on the spot. Immediately after the accident, the said Saravanan and Parthiban were taken to Polur Government Hospital. The Duty Doctor inspected the said Saravanan and deposed that he was brought dead. For further treatment, the said Parthiban was taken to Adukkambarai Hospital, Vellore. Therefore, the appellant being the widowed Mother of the said Kumaresan has filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of her son against the respondents, being the driver, owner and insurer of the Tractor Tractor respectively.

4. The respondents 1 & 2, being the driver and owner of the Tractor Tractor filed counter statement before the Tribunal and on the date of passing the award, the counsel for the respondents 1 & 2 has not appeared before the Tribunal. The respondents 1 & 2 denied that at the time of accident, 3 persons traveled in the motorcycle by violating the law. The rider of the motorcycle only drove the same in a rash and negligent manner and dashed against the Tractor Tractor and invited the accident and there is no negligence on the part of the driver of the Tractor Tractor. At the time of accident, the Tractor Tractor was insured with the 3rd respondent-Insurance Company and only the 3rd respondent is liable to pay the compensation to the appellant, if any awarded by the Tribunal and prayed for dismissal of the claim petition as against the respondents 1 & 2.

5. The 3rd respondent-Insurance Company filed separate counter statement and denied all the averments made by the appellant. According to the 3rd respondent, the appellant has to prove the validity of the R.C., permit and F.C. of the Tractor Tractor belonging to 2nd respondent and also the validity of the driving license of the 1st respondent. The owner of the Tractor Tractor has not informed about the accident and hence, the 3rd



respondent is not liable to pay any compensation to the claimant. The 3rd respondent denies the fact that at the time of accident, the 1st respondent was having valid driving license to drive the Tractor Trailor. At the time of accident, 3 persons traveled in the motorcycle in violation of Policy and R.C.conditions. Further, the motorcycle was not insured and also the rider of the motorcycle was not possessing valid driving license at the time of accident. The owner and insurer of the motorcycle driven by the said Kumaresan have to be impleaded as necessary parties in the claim petition. The quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined herself as P.W.1, one Egambaram, eyewitness to the accident as P.W.2 and 10 documents were marked as Exs.P1 to P10. On behalf of the respondents, one Manivannan was examined as R.W.1 and no document was marked.

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 Tractor Trailor belonging to 2nd respondent, fixed 50% contributory negligence on the part of the deceased on the ground that 3 persons traveled in the motorcycle at the time of accident and awarded a sum of Rs.4,52,000/-, being 50% of the award amount as compensation to the appellant.

8.To set aside the portion of the award fixing 50% contributory negligence on the part of the deceased and not being satisfied with the amounts awarded by the Tribunal in the award dated 28.03.2018 made in M.C.O.P.No.109 of 2013, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously deducted 50% of the compensation towards contributory negligence when the Tribunal categorically held that the accident has occurred only due to the rash and negligent driving by the 1st respondent. Further, the 3rd respondent also did not establish any contributory negligence. Therefore, the Tribunal ought not to have deducted 50% towards contributory negligence. He further contended that the amounts awarded by the Tribunal towards funeral expenses and loss of love and affection are also meager and also the Tribunal has not awarded any amount towards loss of estate. The total compensation awarded by the Tribunal is meagre and prayed for setting aside the portion of the award fixing 50% contributory negligence on the part of the deceased and also for enhancement of compensation.



10. Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal considering the fact that three persons traveled in the motorcycle at the time of accident in violation of Policy and R.C. Conditions, has rightly fixed 50% contributory negligence on the part of the deceased. He further contended that the appellant has not filed any documentary proof to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, a sum of Rs.8,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.4,52,000/- as compensation to the appellant and the same is not meagre and prayed for dismissal of the appeal.

11. Though notice has been served on the respondents 1 & 2 and their names are printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

13. It is the case of the appellant that on 13.03.2013 at about 03.30 P.M., while her son Kumaresan along with Saravanan and Parthiban were traveling in the Hero Honda Super Splendor motorcycle bearing Registration No. TN 32 Q 3229 on the Karippur - Nachchapuram road, near Karipur Burial Ground, the driver of the Tractor bearing Registration No. TN 25 V 3564 and Tractor bearing Registration No. TN 25 V 9581 who was driving the Tractor from Nachchapuram to Karippur, drove the same in a rash and negligent manner and dashed against the motorcycle in which the said Kumaresan traveled and caused the accident. To prove the said contention, the appellant examined herself as P.W.1, one Egambaram, eyewitness to the accident was examined as P.W.2 and marked F.I.R. as Ex.P1, which was registered against the driver of the Tractor Tractor belonging to 2nd respondent. On the other hand, it is the case of the 3rd respondent-Insurance Company that at the time of accident, the deceased Kumaresan only drove the motorcycle along with two pillion riders without possessing valid driving license in a rash and negligent manner and caused the accident. To prove the said contention, the 3rd respondent has neither examined the driver of the Tractor Tractor nor examined any independent eyewitness. Further, the 3rd respondent has not lodged any complaint against the deceased and also has not filed any objection to the F.I.R., which was registered against the driver of the Tractor Tractor. The Tribunal considering the



evidence of P.W.1, P.W.2, contents of Ex.P1/F.I.R. and failure on the part of the 3rd respondent for not examining the driver of the Tractor Trailer, not lodging any complaint against the deceased and also not filing any objection to the F.I.R., held that the accident has occurred only due to the negligence on the part of the driver of the Tractor Trailer belonging to 2nd respondent and there is no error in the said finding of the Tribunal. The Tribunal having held so, fixed 50% contributory negligence on the part of the deceased on the ground that three persons traveled in the motorcycle at the time of accident.

14.It is an admitted fact that at the time of accident three persons traveled in the motorcycle and the Father of one of the pillion riders viz., Saravanan, who gave complaint to the Police has also admitted that at the time of accident, three persons traveled in the motorcycle. Two wheeler is meant for travelling only two persons viz., only the rider and a pillion rider and if three persons travel in the motorcycle, the rider of the motorcycle will not have complete balance and probably he will not be in a good position to ride the motorcycle. In the present case, the Tribunal after perusing the oral and documentary evidence, came to the conclusion that the accident has occurred only due to rash and negligent driving by the driver of the Tractor Trailer, but fixed 50% contributory negligence on the part of the deceased only on the ground that three persons travelled in the motorcycle at the time of accident. In the case on hand, eventhough three persons traveled in the motorcycle at the time of accident, there is no negligence on the part of them and had the driver of the Tractor Trailer drove the same in a careful manner, the accident would not have occurred. In view of the same, this Court is of the considered view that 50% contributory negligence fixed on the part of the deceased only on the ground that three persons traveled in the motorcycle is excessive and the same is reduced to 10%.

15.As far as quantum of compensation is concerned, it is the claim of the appellant in the claim petition that at the time of accident, the deceased was aged 20 years, was a Mechanic and was earning a sum of Rs.10,000/- per month. Except oral evidence, the appellant has not produced any documentary proof to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal considering the age, nature of work done by the deceased and the raise in cost of living, fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2013 and the salary of even unskilled workers has increased substantially. Hence, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the



deceased. As per Ex.P2/Postmortem certificate and Ex.P6/death certificate, the deceased was aged 20 years at the time of accident and the Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] rightly applied multiplier '18', but failed to grant 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 Limited Vs. Pranay Sethi and others], the appellant is entitled to 40% enhancement towards future prospects. Thus, by fixing a sum of Rs.9,000/- as monthly income and granting 40% enhancement towards future prospects, the compensation awarded by the Tribunal for loss of dependency is modified to Rs.13,60,800/- {Rs.12,600/- [Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)] X 12 X 18 X $\frac{1}{2}$ }. The amounts awarded by the Tribunal towards funeral expenses and loss of love and affection are meagre and hence, the same are enhanced to Rs.15,000/- and Rs.40,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and transportation. The appellant is entitled to a sum of Rs.15,000/- each towards loss of estate and transportation. 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
1.	Loss of dependency	8,64,000/-	13,60,800/-	Enhanced
	50% of loss of dependency	4,32,000/-	-	
	90% of loss of dependency	-	12,24,720/-	
2.	Loss of love and affection	10,000/-	40,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of Estate	-	15,000/-	Granted
5.	Transportation	-	15,000/-	Granted
	Total	Rs.4,52,000/-	Rs.13,09,720/-	Enhanced by Rs.8,57,720/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,52,000/- is hereby enhanced to Rs.13,09,720/- together with



interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent-Insurance Company is directed to deposit the 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 to the credit of M.C.O.P.No.109 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Arani, Tiruvannamalai District. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Arani,
Tiruvannamalai District.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.A.Panneerchelvam, Advocate, S.R.No.36632

C.M.A.No.3637 of 2019

LN[co]
NSK 18/11/2021