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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2010 of 2020

1.Santhi
2.Nithya
Suganya (died)
3.Minor.Sabari
4.Minor.Manjari
(Minors are represented by their next friend/
guardian father Krishnamoorthy)

5.Suryaprakash

.. Appellants

Vs.

1.Ravichandran K.

2.M/s.United India Insurance Co. Ltd.
No.77, Oriental complex
A.A.street, Salem-1.

.. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.02.2020 made in M.C.O.P.No.46 of 2017 on the file of Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.K.Suryanarayanan
for Mr.M.Mohamed Riyaz

For R2 : Mr.M.J.Vijayaraaghavan

J U D G M E N T

This matter is heard through "Video-conferencing".

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 15% contributory negligence on the part of the deceased and for enhancement of compensation granted by the Tribunal in the award dated 07.02.2020 made in M.C.O.P.No.46 of 2017 on the file of Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellants are claimants in M.C.O.P.No.46 of 2017 on the file of Motor Accident Claims Tribunal, Special District Court, Salem. They filed the said claim petition claiming a sum



of Rs.25,00,000/- as compensation for the death of one Solaiyappan, who died in the accident that took place on 13.09.2016.

3. According to the appellants, on the date of accident i.e., on 13.09.2016 at about 4.00 p.m., while the deceased Solaiyappan was travelling in a bus from Vazhapady to Narasingapuram on Salem - Attur Main Road, near Selliampalayam, the driver of the bus drove the same in a rash and negligent manner, suddenly turned the bus, due to the said impact, the deceased fell down from the bus and thus, the accident has occurred. In the accident, the deceased Solaiyappan sustained fatal injuries and died in the hospital on 18.09.2016. Hence, the appellants have filed the above claim petition claiming compensation against the respondents.

4. The 1st respondent, owner of the bus remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company filed counter statement denying the averments made by the appellants and stated that the driver of the bus is not responsible for the accident. At the time of accident, the deceased was in an inebriated condition. In spite of warning given by the driver and conductor of the bus, the deceased Solaiyappan was standing in the foot board of the bus. When the bus was near Rajathi plastic shop, Selliampalayam, the deceased lost his dhothi, lost his balance and fell down on the road. The accident has occurred only due to negligent act of the deceased. The driver of the bus was acquitted in the criminal case. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellants. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant, wife of the deceased examined herself as P.W.1, one Sumathi, an eye-witness to the accident, was examined as P.W.2 and 12 documents were marked as Exs.P1 to P12. The 2nd respondent/Insurance Company examined one Mr.Dhinakaran, company witness as R.W.1, one Mr.Srinivasan, Investigation Officer as R.W.2 and marked two documents as Exs.R1 and R2.

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 bus belonging to the 1st respondent as well as the negligent act of the deceased, fixed 85% contributory negligence on the part of the driver of



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the bus and fixed 15% contributory negligence on the part of the deceased and directed both the 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said bus to jointly and severally pay a sum of Rs.9,61,940/- being 85% of the award amount as compensation to the appellants.

8.The appellants have come out with the present appeal challenging the portion of the award fixing 15% contributory negligence on the part of the deceased as well as for enhancement of compensation.

9.The learned counsel appearing for the appellants contended that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the 1st respondent. Due to negligence of the driver of the bus, the deceased Solaiyappan, who is the husband of the 1st appellant, father of the appellants 2 and 5, grand father of the appellants 3 and 4, sustained fatal injuries and died. The Tribunal ought to have fixed entire negligence on the driver of the bus. The Tribunal erroneously fixed 15% contributory negligence on the deceased. The Tribunal failed to appreciate the oral and documentary evidence let in before it and failed to award fair and adequate compensation to the appellants. At the time of accident, the deceased was working as a driver and was earning a sum of Rs.35,000/- per month. The monthly income fixed by the Tribunal is meagre. The deceased was aged 50 years at the time of accident. The Tribunal ought to have granted 25% enhancement towards future prospects instead of 10%. There are six dependants. The Tribunal erroneously deducted 1/3rd instead of 1/4th towards personal expenses. The Tribunal applied multiplier '11' instead of '13'. The deceased has taken treatment as in-patient in Government Hospital, Salem, from 13.09.2016 to 18.09.2016 and spent a sum of Rs.1,51,420/- towards medical expenses. The Tribunal ought to have granted compensation towards transportation and prayed for setting aside 15% contributory negligence fixed on the deceased and for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased was standing in the foot board in an inebriated condition inspite of warning given by the driver and conductor of the bus. At the time of accident, dhoti of the deceased fell down and flew away from the bus. In order to catch dhoti, he jumped from the bus, fell down and invited the accident. The accident occurred only due to negligence of the deceased. The Tribunal erroneously fixed 85% contributory negligence on the driver of the bus. In any event, the compensation granted by the Tribunal is not meagre and prayed for dismissal of the appeal.



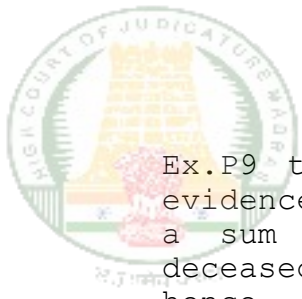
11. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.

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12. From the materials on record, it is seen that it is the case of the appellants that while the deceased was waiting to get down from the bus in the bus stop, the driver of the bus drove the same in a rash and negligent manner without reducing the speed at a curve, due to the same, the deceased fell down, sustained injuries and died inspite of treatment. In support of their case, the 1st appellant examined herself as P.W.1, one Sumathi, eye-witness to the accident was examined as P.W.2 and marked F.I.R., which was registered against the driver of the bus as Ex.P1. On the other hand, it is the case of the 2nd respondent that the deceased was under consumption of alcohol at the time of accident and stood in the foot board inspite of warning by the driver and conductor of the bus. To substantiate the same, the 2nd respondent examined one Mr. Dinakaran, company witness as R.W.1 and one Mr. Srinivasan, Investigation Officer as R.W.2. R.W.1 and R.W.2 are not eye-witnesses to the accident. The Tribunal considering the materials placed before it, held that had the driver of the bus negotiated the curve diligently, a person standing in the foot board would not have fallen down and sustained injuries. At the same time, the Tribunal considering F.I.R., held that the deceased Solaiyappan, who was standing in the foot board, also contributed to the accident, fixed 15% negligence on the deceased and 85% negligence on the driver of the bus.

13. From the materials on record, it is seen that the 2nd respondent has not examined the driver of the bus to show that the deceased was standing in the foot board at the time of accident and to catch dhothi, he jumped from the bus, fell down and invited the accident. Further, the Tribunal considered the evidence of P.W.2, who admitted that the deceased was standing in the foot board at the time of accident. From the above facts, it is seen that the accident has occurred while the bus was turning at a curve. The Tribunal held that the driver of the bus ought to have been diligent while negotiating the curve. Having held so, the Tribunal fixed 15% negligence on the part of the deceased, which is on the higher side. Considering the entire materials, 15% contributory negligence fixed on the deceased is reduced to 5%. The respondents are directed to pay 95% of the compensation awarded.

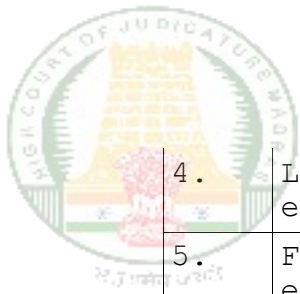
14. As far as quantum of compensation is concerned, it is the contention of the appellants that the deceased was working as a driver and was earning a sum of Rs.35,000/- per month. The appellants have marked the driving license of the deceased as



Ex.P9 to prove the avocation. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the deceased, which is meagre. The accident is of the year 2016 and hence, a sum of Rs.15,000/- per month is fixed as notional income of the deceased. The deceased was aged 50 years at the time of accident as per Ex.P4/post-mortem certificate. The Tribunal has granted 10% enhancement towards future prospects, which is not proper. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others], the appellants are entitled to 25% enhancement towards future prospects for the age group between 40 to 50 years. There are six dependants of the deceased. The Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses. The Tribunal applied multiplier '11', which is not proper. As per the judgment of the Hon'ble Apex reported in 2009 (2) TNMAC 1 SC (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '13'. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.21,93,750/- (Rs.15,000/- + 3750 [Rs.15,000/- X 25%] X 12 X 13 X 3/4). After deducting 5% for contributory negligence, the loss of dependency comes to Rs.20,84,062/- (Rs.21,93,750/- - Rs.1,09,688/-). The Tribunal has not awarded any compensation towards loss of love and affection. Hence, a sum of Rs.30,000/- each is awarded towards loss of love and affection to the appellants 2 and 5, who are daughter and son of the deceased respectively and Rs.15,000/- each is awarded towards loss of love and affection to the appellants 3 and 4, who are grand children of the deceased. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

15.It is well settled that the Tribunal and the Courts have 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 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 or reduced
1.	Loss of dependency	7,40,520	20,84,062	Enhanced
2.	Medical bills	1,51,420	1,51,420	Confirmed
3.	Loss of consortium	40,000	40,000	Confirmed



4.	Loss of estate	15,000	15,000	Confirmed
5.	Funeral expenses	15,000	15,000	Confirmed
6.	Loss of love and affection to the appellants 2 and 5 & appellants 3 and 4	60,000 30,000	90,000	Granted
	Total	9,61,940	23,95,482 rounded off to 23,95,480	Enhanced by Rs.14,33,540 /-

16. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,61,940/- is hereby enhanced to Rs.23,95,480/- 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. Both the respondents are jointly and severally 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. On such deposit, the appellants 1, 2 and 5 are permitted to withdraw their respective share of the award amount now determined by this Court as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor appellants 3 and 4 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. One Krishnamoorthy, father of the minor appellants 3 and 4 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 3 and 4. No costs.

Sd/-

Deputy Registrar (CCAA)

//True Copy//

Sub Assistant Registrar

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To

1.The Special District Judge
(Motor Accident Claims Tribunal)
Salem.

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

+lcc to Mr.M.Mohamed Riyaz, Advocate, S.R.No.3915

C.M.A.No.2010 of 2020

SSV(CO)
CB(17/11/2021)