



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

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THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.3340 of 2017

1.Valliammal
2.Ponnusamy
3.Chandrasekar

... Appellants/Petitioner

Vs.

1.Rukmani
(R1 remained ex-parte before Tribunal.
Hence notice to R1 dispensed with)

2.The Manager,
National Insurance Company Limited,
No.19/B, S.R.Complex, Rajamani Thottam,
Bhavani Main Road,
Sankari,
Salem District - 637 301.

...Respondents/Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and Decree made in M.C.O.P.No.461 of 2015, dated 11.08.2017, on the file of the Motor Accidents Claims Tribunal cum Principal District Judge, Namakkal.

For Appellants : Mr.C.Kulanthaivel
For R2 : Ms.N.B.Surekha

JUDGMENT

The claimants in M.C.O.P.No.461 of 2015 which was on the file of the Motor Accidents Claims Tribunal/Principal District Court at Namakkal, are the appellants herein.

2. They are aggrieved by the quantum of compensation granted for the death due to accident of the husband of the first claimant/father of the second and third claimants.

3. Basic facts required are that, Ramasamy was the husband of the first claimant and the father of the second and third claimants. He was aged about 70 years and was doing an



agricultural work. It was claimed that he was earning a sum of Rs.15,000/- per month. On 08.01.2015, at around 4.50 in the evening, according to P.W.2, who had witnessed the accident, the deceased was waiting in the corner of the Karur to Salem National Highways at Velayutham palayam, Pugazhi Mandabam to cross the road, when a tanker lorry bearing registration No.TN52 W 5181 had dashed against him. He had unfortunately died of the injuries caused.

4. The Tribunal, by Judgment dated 11.08.2017, had stated that the claimants are entitled to a total compensation of Rs.2,56,688/-. But the Tribunal had further observed that the accident had occurred owing also to the negligence of the deceased and therefore, had determined that particular negligence at 50% of contribution and had granted a compensation of Rs.1,28,344/-.

5. Assailing the quantum of compensation granted and also the determination of 50% as contributory negligence, the claimants have filed the present appeal.

6. Heard Mr.C.Kulandhaivel, learned counsel for the appellants and Ms.N.B.Surekha, learned counsel for the second respondent/Insurance Company.

7. The nature of the accident had been stated briefly above. To reiterate that, on 08.01.2015, around 4.50 p.m., the deceased Ramasamy who was aged 70 years, was waiting to cross the National Highways Road between Karur and Salem at Velayutham Palayam, Pugazhi Mandabam. It is stated that, at that particular point of time, the offending lorry tanker bearing Registration No.TN 52 W 5181 had dashed against him and caused grievous injuries which ultimately led to his death.

8. The disputed fact is whether he was standing in the corner of the road or was actually crossing the road. The Tribunal had found that he was crossing the road and therefore held that he had contributed to the accident and therefore deducted 50% of compensation determined.

9. In this connection, the documents filed have to be examined. It is seen from the impugned award that before the Tribunal, during the course of trial, the first claimant Valliammal had examined herself as P.W.1 and an eye witness Shanmugam was examined as P.W.2. The driver of the lorry tanker was examined as R.W.1. On the side of the claimants, Exs.P1 to P11 were marked. Ex.P1 was the copy of the First Information



Report and Ex.P2 was the Accident Registrar, Ex.P5 was the report of the Motor Vehicle Inspector and Ex.P6 was the Copy of the Charge sheet.

10. On the basis of the aforementioned documents, the Tribunal came to a conclusion particularly, on the basis of the evidence of R.W.1/lorry driver that the deceased had crossed the road and on seeing a lorry coming, had turned back and at that particular point of time, the offending lorry had dashed against him. It was therefore observed by the Tribunal that the accident had occurred owing to this particular negligent act of crossing the road by the deceased.

11. This particular finding is assailed by Mr.C.Kulanthaivel, learned counsel for the appellant who stated that the said finding is based on the evidence of R.W.1 who was an interested witness and naturally, tried to state that the accident had occurred only owing to the negligence of the deceased and not owing to his own driving.

12. The learned counsel pointed out that even otherwise, deduction of 50% as contributory negligence is unwarranted. It was stated that this finding of the Tribunal is therefore to be interfered with.

13. Ms.N.B.Surekha, learned counsel for the second respondent on the other hand, pointed out that the lorry driver had been acquitted of the offence of causing the accident before the Magistrate Court and that fact had also been observed by the Tribunal.

14. I have carefully considered the arguments on that particular aspect.

15. It is a fact that the deceased was hit by the lorry tanker. The only issue to be considered is whether he was standing on the side of the road as asserted by P.W.2 or was crossing the road and turned back when the accident occurred as asserted by R.W.1.

16. Ex.P1, the First Information Report is the first statement as to the nature or the manner in which the accident occurred. It had been stated that the accident had occurred when he attempted to cross the road.

17. The fact that the lorry driver was acquitted of the criminal offence, would not come to the rescue of R.W.1, since



strict proof is required for conviction and if it is made probable that the accident occurred also owing to negligence by the other party, then the benefit will only be given to the driver of the vehicle. I would therefore not give much credence to the acquittal of R.W.1, which was on appreciation of evidence adduced during that trial.

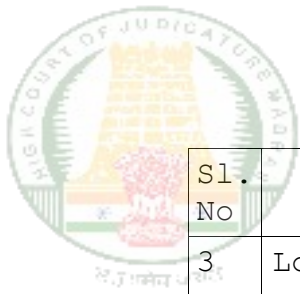
18. In view of this particular reasoning, I hold that 50% deduction towards contributory negligence fixed by the Tribunal is little excessive. I would reduce the contributory negligence to 25% and grant it the ratio of 75% : 25%. It must be kept in mind that the lorry driver, R.W.1 should also have taken care when he had seen a aged man crossing the road and he was the last person who could have prevented the accident from occurring.

19. The issue of compensation was then determined by the Tribunal and in this connection, the Tribunal had determined the income of the deceased at Rs.6,000/- per month. On the other hand, the Tribunal had deducted 1/3rd towards personal expenses and had retained 2/3rd towards his contribution to the family. I would interfere with the income determined and I would determine the notional income of the deceased at Rs.6,500/- per month and deduct 1/3rd towards personal and medical expenses, which would mean that he would contribute a sum of Rs.4,334/- @ Rs.4,400/- to the family [6,500 X 1/3]. Thus, loss of income per annum can be determined as Rs.2,64,000/- by taking a multiplier of 5, in view of the age of the deceased [Rs.4,400 X 12 X 5].

20. For loss of estate, I would grant a sum of Rs.15,000/-. For funeral expenses I would retain the same as awarded by the Tribunal. For Loss of consortium, I would grant a sum of Rs.30,000/-. For transport expenses, I would grant a sum of Rs.2,000/- For medical bills, I would retain the same. For love and affection I would grant a sum of Rs. 10,000/- each for the two children and grant Rs.20,000/- under the head of loss of love and affection.

21. The total compensation now calculated is as under:

Sl. No	Description	Amount awarded by this Court (Rs)
1	Loss of Income	Rs.2,64,000/-
2	Loss of Consortium to the first appellant	Rs.30,000/-



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Sl. No	Description	Amount awarded by this Court (Rs)
3	Loss of Love and affection to the second and third respondents (each Rs.10,000/-)	Rs.20,000/-
4	Loss of estate	Rs.15,000/-
5	Funeral Expenses	Rs.5,000/-
6	Transportation	Rs.2,000/-
7	Medical bills	Rs.5,688/-
	Total	Rs.3,41,688/-
	75% Contributory negligence	Rs.2,56,266/-

22. In the result, this Civil Miscellaneous Appeal is allowed. The compensation awarded by the Tribunal at Rs.1,28,344/- (being the 50% contributory negligence) is hereby enhanced to Rs.2,56,266- [Rupees Two lakhs Fifty Six Thousand Two Hundred and Sixty Six only] (being the 75% contributory negligence) together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, as awarded by the Tribunal less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.461 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal. On such deposit, the appellants are permitted to withdraw the amount, now awarded by this Court as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, as awarded by the Tribunal less the amount if any, already withdrawn by making necessary applications before the Tribunal. Since this Court had enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssi



To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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Copy To

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.C.Kulandhaivel, Advocate SR.No.26618
+1cc to Mr.N.B.Surekha, Advocate SR.No.26476

C.M.A.No.3340 of 2017

SMI(CO)
GN(06/06/2022)