IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2023
Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.Nos.1318 of 2023 and 982 of 2022
and
CMP.No.13176 of 2023

In C.M.A.No.1318 of 2023

The New India Assurance Company Limited,
Sundaram Finance Building, 2nd floor,
No.21, Pattulous Road, Chennai – 600 002.
Now also at Third party Claims Hub,
No.232, NSC Bose Road,
Chennai-600 001.

...Appellant

Vs.

1.kalpana
2.Minor Gokul
3.Minor Vidhya
The minor respondents 2 and 3 represented by their
Next friend/ the 1st respondent, their mother Kalpana

4.Govindammal
5.Venkatesan
6.Ambika

...Respondents

Prayer in C.M.A.No.1318 of 2023: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Order dated 29.03.2021 in M.C.O.P.No. 608 of 2018 passed by the Learned Special

District Judge (MACT), Motor Accidents Claims Tribunal (Special District Court), Dharmapuri.

For Appellant : Mr.R.Rajesh

For RR1 and 5 : Mr.G.Selvaraj

For R-6 : No appearance

In C.M.A.No.982 of 2022

1.kalpana
2.Minor Gokul
3.Minor Vidhya
Minor Petitioners 2 and 3 represented by their
next friend/ 1st petitioner mother Kalpana

4.Govindammal
5.Venkatesan

...Appellants

Vs.

1.Ambika

2.The New India Assurance Company Ltd.,
Sundaram Finance Building, 2nd Floor,
No.21, Pattulous Road,
Chennai-600 002.

...Respondents

Prayer in C.M.A.No.982 of 2022: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 29.03.2021 passed in M.C.O.P.No.608 of 2018 on the file of the Learned Motor Accidents Claims Tribunal cum Special District Court, Dharmapuri and enhance the award amount.

For Appellants : Mr.G.Selvaraj

For R-1 : No appearance

For R-2 : Mr.R.Rajesh

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals arise out of the same award in M.C.O.P.No.608 of 2021 dated 29.03.2021 and hence are disposed of by this common Judgment.

2. On 16.03.2018, while the deceased Govindaraj was driving his pick up vehicle bearing Reg.No. TN-29-AQ-3892, a lorry belonging to the first respondent bearing Reg.No. TN-93-5276, driven by its driver in a rash and negligent manner dashed the deceased's pick up vehicle and further hit a motor cycle proceeding in front of the lorry. Due to the impact of the accident, the pick up vehicle turned turtle and the said Govindaraj died on the spot.

3. According to the claimants, the deceased Govindaraj was aged 35 years and was an owner of the lorry. He was also in the business of purchasing and selling old vehicles. From the aforesaid business and as a driver, the deceased was earning Rs.50,000/- per month. The claimants as wife, minor children and parents of the deceased filed the claim petition claiming a sum of Rs.35,00,000/- as compensation for the death of the deceased Govindaraj.

4. The first respondent filed counter denying all the claim averments apart from disputing negligence and quantum. The first respondent further submitted that as the vehicle was insured, the liability was only that of the second respondent/ Insurance company.

5. The second respondent/Insurance company also filed counter, denying all the averments made in the claim petition, apart from disputing the negligence, liability and quantum.

6. Before the Claims Tribunal, on the side of the claimants, 4 witnesses were examined and Ex.P.1 to Ex.P.10 were marked in support of their claim. On the side of the respondents, 2 witnesses were examined and Ex.R.1 to Ex.R.7 were marked.

7. The Claims Tribunal on an assessment of entire evidence on record returned a finding of negligence against the driver of the first respondent, assessed the compensation at Rs.19,43,600/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance company.

C.M.A.No.1318 of 2023

8. The second respondent/Insurance company filed C.M.A.No.1318 of 2023, challenging the findings of Tribunal on the aspect of negligence. Therefore C.M.A.No.1318 of 2023 is first taken up.

9. The learned counsel for the appellant/Insurance company submits that finding of Tribunal on negligence was erroneous. According

to the learned counsel, the Tribunal failed to take note of F.I.R marked as Ex.R.1, the xerox copy of rough sketch marked as Ex.R.2 and the final report marked as Ex.R.3. According to the learned counsel, these documents clearly establish that the negligence was only that of the deceased. The learned counsel further submitted that from the rough sketch, Ex.R.2, it is clear that the accident occurred in the middle of the road and therefore it cannot be said that the deceased was not at all negligent and therefore the Claims Tribunal ought to have assessed the contributory negligence of the deceased also. The learned counsel further submitted that under Ex.R.3, the final report, it was stated that the F.I.R was closed, as abated, in view of the death of deceased. The learned counsel therefore submitted that the deceased contributed to the accident.

10. The learned counsel for the claimants on the other hand submitted that the Claims Tribunal had rightly rejected Ex.R.1 and Ex.R.3, as the same were not binding on the Tribunal. As far as Ex.R.2 is concerned, the learned counsel submitted that the rough sketch would

only show the location of accident and in the absence of any corroborative evidence, the negligence or contributory negligence against the deceased cannot be presumed.

11. The claimants filed C.M.A.No.982 of 2022 for enhancement of compensation.

12. It is submitted by the learned counsel for the appellants/claimants that the assessment of notional income by the Tribunal was very much on the lower side, considering that the accident took place in the year 2018 and the deceased was maintaining a family of 4 members, apart from himself. The learned counsel therefore submitted that the notional income deserved to be enhanced.

13. The learned counsel for the second respondent/Insurance company on the other hand submitted that the assessment of notional income by the Tribunal was just, fair and reasonable and the compensation

awarded under other heads were also reasonable and hence the same deserved to be confirmed.

14. I have heard both the learned counsels and have perused the materials placed on record.

15. It is seen that the accident occurred while the deceased was driving his pick up vehicle from Palacode - Hosur main road on 16.03.2018. At that time a lorry belonging to the first respondent driven by its driver in a rash and negligent manner dashed against the deceased's pick up vehicle, resulting in his death on the spot. It is seen that FIR was registered against the deceased. The FIR was subsequently closed, treating the charges as abated in view of the death of the deceased, as evidenced by Ex.R.3, final report. The Claims Tribunal relied on the Judgment of this Court in the case of *Managing Director, Tamil Nadu State Transport Corporation limited, Madurai Division III, Rani Thottam, Nagercoil, Kanyakumari District vs.* ***S.Yobu and another*** reported in *2014(1) TN MAC 295*, wherein this Court

(Madurai Bench) held that the conclusion or decision of police cannot be substituted with the decision of the Tribunal. This Court further held that the Tribunal was bound to assess the evidence applying the basic standards of proof, but, it need not follow the technical Rules of evidence embodied in the Evidence Act. In view of the above Judgment, the Tribunal was justified in rejecting Ex.R.1 and Ex.R.3. As far as Ex.R.2, the rough sketch is concerned, it can only show the location or situs of the accident. The manner of accident has to be proved by evidence.

16. In the present case, the claimant examined P.W.2 who is an eye witness. P.W.2 categorically stated that it was the negligence of the lorry driver of the 1st respondent that resulted in the accident. In my view, in the absence of any contra evidence, the Tribunal was justified in relying on the evidence of P.W.2 for its finding on negligence against the driver of the 1st respondent. It is pertinent to note here that the respondent's failed to examine the driver of the lorry, who could have been the best person to prove the manner of accident. An adverse inference can be drawn against

the respondents for failing to examine the lorry driver as he would have been the best person to speak of the accident. Hence the plea of the respondent that the deceased's own negligence resulted in the accident or that the deceased contributed to the accident cannot be accepted.

17. In the light of the above discussion, I am of the view that the finding of the Claims Tribunal on the issue of negligence is unassailable and therefore the same is confirmed.

18. On the issue of quantum of compensation, it is seen that in the absence of any evidence in support of the income of the deceased, the Tribunal assessed the notional income of the deceased at Rs.8,500/- per month.

19. It is seen that the driving license of the deceased was marked as Ex.P.8 and Ex.P.3 was also marked to show that the deceased was owner of pick up van. The Tribunal assessed the notional income of the deceased at Rs.8,500/- per month, which in my view is very much on the lower side.

It is seen that the accident took place in the year 2018 and considering the economic situation in the year 2018 and also the fact the deceased was maintaining a family of 4 members, I am of the view that the notional income can be safely fixed at Rs.12,000/- per month.

20. Both the learned counsels fairly submitted that the award under other heads was in conformity with the Hon'ble Supreme Court Judgment in the case of *National Insurance Co. Ltd. Vs. Pranay sethi* reported in *2017 (16) SCC 680.*

21. It is seen that the deceased was aged 35 years at the time of accident and therefore by adding 40% of the monthly income towards future prospects, the monthly income is arrived at Rs.16,800/- (12,000 x 40/100 = 4,800 + 12,000 = 16,800/-). Annual income is arrived at Rs.2,01,600/- (16,800 x 12 = 2,01,600/-). As the deceased left behind 4 dependents, the deduction towards personal expense of the deceased is fixed at $1/4^{th}$, after deducting $1/4^{th}$, the annual contribution of the deceased

to the family is arrived at Rs.1,51,200/-. As the deceased was 35 years of age at the time of accident the multiplier '16' is taken. Therefore the pecuniary loss is assessed at Rs.24,19,200/- (1,51,200 x 16 = 24,19,200/-). The award towards other heads is confirmed.

22. In view of the said discussion, the award of the Claims Tribunal is modified as follows:

S.No	*Various Heads*	*Award by Tribunal (amount in Rs.)*	*Award by this Court (amount in Rs.)*
1.	Compensation for pecuniary loss	17,13,600/-	24,19,200/-
2.	Loss of spousal consortium for 1st appellant	40,000/-	40,000/-
3.	Loss of parental and filial consortium for appellants 2 to 5	1,60,000/-	1,60,000/-
4.	Loss of estate	15,000/-	15,000/-
5.	Funeral expenses	15,000/-	15,000/-
Total		19,43,600/-	26,49,200/-

In the result, the claimants are entitled to enhanced compensation of Rs.26,49,200/- along with 7.5% interest.

23. It is submitted by the learned counsel for the claimants that award of the Claims Tribunal was not deposited. In view of the said submission, a direction is issued to the Insurance company to deposit the enhanced compensation of Rs.26,49,200/- along with 7.5% interest from the date of claim petition till the date of deposit within a period of twelve (12) weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimants are entitled to withdraw the amount as per the apportionment directed by the Claims Tribunal.

24. The learned counsel for the claimants submits that the claimants have filed the appeal restricting the value to Rs.5,00,000/- only. As this Court has enhanced the compensation by Rs.7,05,600/- the claimants are directed to pay the deficit Court fee. Registry is directed not to draft the decree till the deficit Court fee is paid.

25. In the result, the Civil Miscellaneous Appeal filed by the Insurance company in C.M.A.No.1318 of 2023 is dismissed and the appeal filed by the claimants in C.M.A.No.982 of 2022 is allowed. Consequently connected Miscellaneous Petition is closed. There shall be no order as to costs in both the appeals.

28.06.2023

dsn
Speaking Order:Yes/No
Index:Yes/No
Neutral Citation:Yes/No

To
The Learned Special District Judge,
Motor Accident Claims Tribunal,
Dharmapuri

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

N.MALA.,J.

dsn

C.M.A.Nos.1318 of 2023 and 982 of 2022
and
CMP.No.13176 of 2023

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