



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3565 of 2021

1. Rayalamma @ Ragelamma
2. J.Daniel
3. J.Yesupadam
4. J.Babu
5. J.Victor

.. Appellants

Vs.

1. Rabiya Banu

2. M/s.New India Assurance Company Ltd.,
No.77, First Avenue,
Indra Nagar,
Adyar, Chennai- 20.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award against the judgment and decree dated 15.10.2019 and made in MACT. No.3193/2007 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mrs.Subadra
For Respondents : Mr.C.John Mohan
R1- No appearance

J U D G M E N T

This appellants/claimants have come forward with this appeal seeking



to quash the award against the judgment and decree dated 15.10.2019 and made in MACT. No.3193/2007 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. Brief fact which are necessary for disposal of this appeal is as follows:-

The first appellant is the wife and the appellants 2 to 5 are children of the deceased J.David. Who was aged about 46 years. On 01.08.2007 at about 17.00 hours, the deceased was riding his cycle from the office to residence at Mount Poonamallee Road, West to East direction. While he was proceeding near Bharath Petrol Bunk, the first respondents van bearing Registration No.TN 07 P 7173 was driven in a rash and negligent manner, hit against the cycle, due to which, the accident had happened and the deceased sustained injuries and during the course of treatment, he died in the hospital. Thereby, the appellants/claimants have filed a claim Petition before the Labour Court claiming compensation of Rs.14,00,000/-

3. Before the Tribunal, during trial, in order to prove the case, on the side of the appellant, two witnesses were examined viz., PW1 and PW2 and



marked 21 documents viz., Exs.P1 to P21, On the side of the respondent/Insurance company, no witness was examined and no document was marked. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the petition. Aggrieved by the said award, the appellants have filed this appeal before this Court for awarding compensation.

4. The learned counsel for the appellants/claimants submitted that the Tribunal erred in dismissing the claim petition on the ground that the manner of the accident for the purpose of liability has not been proved through proper oral and documentary evidence, when it has been sufficiently proved through evidence, further PW2 eyewitness has clearly deposed about the manner of the accident that due to rash and negligence driving of the driver of the van and the van is owned by the first respondent an accident had happened.

5. The learned counsel further submitted that the Tribunal has taken a view that as per Ex.P1/FIR was registered as against the unknown vehicle. However, in Ex.P2 remand report stated that one Selvaraj is the owner of



the offending vehicle. But in the claim petition, the said Selvaraj has not been shown as respondent. In the cross examination, PW1 has admitted that the deceased met with an accident by an unknown vehicle and he was taken into hospital in the first respondent's van. As such, liability cannot be fixed against the respondents.

6. The learned counsel further submitted that the Tribunal failed to consider the age occupation and income of the injured. At that time of the accident, the injured was aged about 46 years old and working as a ground man at M/s.Officers Training Academy, Union of India, Ministry of Defence, Chennai and earned about Rs.10,777/- per month which was not considered by the Tribunal. To prove the employment, Ex.P5 to P7 were marked viz., salary certificate, appointment order and Identity Card. Hence, the Tribunal ought to have award compensation to the appellants on the head of loss of dependency, love and affection, funeral expenses and loss of estate as per the Judgment of Hon'ble Apex Court. Without considering the entire fact, the Tribunal without any basis dismissed the claim petition filed by the appellants, which needs to be interfered with.



7. Per contra, learned counsel appearing for the second respondent/insurance company submitted that as per the accident register, the deceased was lying on the road side unconscious and the passengers have brought him to the hospital. Subsequently, the son of the deceased has lodged a complaint stating that some vehicle whose registration number not known had caused the accident. As per the FIR, the driver of the van, owned by the first respondent which was insured with the second respondent brought the deceased to the hospital. Thus the deceased did not sustain injuries due to the involvement of the van insured with the second respondent. The first respondent's van was falsely implicated in this case. The Tribunal, with considering the all the averments, dismissed the claim petition, which does not warrant any interference. Hence, this Court may dismiss the appeal.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. The factum of the accident is not disputed by the parties.



Admittedly, the son of the deceased has lodged a complaint. As per the FIR, some unknown vehicle dashed against his father and due to which, his father sustained injuries and admitted in the hospital. However, the informant of the FIR has not an eyewitness in the accident, he is the hearsay witness to the occurrence. Based on the complaint, the concerned police registered a criminal case as against the unknown vehicle. Subsequently, the first respondent van has been implicated, in which, the deceased was taken to the hospital for treatment.

10. On perusal of the evidence of PW2, who is the eyewitness to the accident, it is clearly seen that due to rash and negligent driving of the driver of the van, which was owned by the first respondent and insured with the second respondent, an accident had happened. The driver hit against the deceased who rode the cycle. Without considering the eyewitness, the trial Court has rejected the claim made by the dependents of the deceased, which is unsustainable one. However, the respondents 1 & 2 have not produced any witness or documentary evidence before the Tribunal. The respondents have not disprove the evidence of PW2. Even then, the Tribunal has dismissed the claim petition, which is unfair. Hence, this Court is inclined to



interfere with the award and the appellants are entitled to get compensation.

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11. At the time of the death, the age of the deceased is 46 years old and employed as Ground Man in the Officers Academic, Union of India, Chennai. To prove the age and employment, the appellants have produced Ex.P5 to 7 viz., salary certificate, appointment order and Identity card. In view of the above, this Court is inclined to fix the income of deceased at Rs.10,077/- per month. As per the judgment of Sarla Verma, 1/4th has to be deducted as there are five dependents to the deceased and 13 multiplier should be adopted. In respect of future prospects, 30% has to be adopted. The loss of income fixed by this Court is as follows:

$$\begin{aligned} &= \text{Rs.10,077/-} \times 1/4 \text{ (deduction)} \\ &= 2520/- \quad 10,077/- = 7557 \times 30\% \text{ (future prospectus)} \\ &= 2267/- + 7557/- = 9824/- \times 12 \times "13" \text{ (multiplier)} \\ &= \mathbf{15,32,544/-} \end{aligned}$$

12. In respect of loss of love and affection, this Court is inclined to award a sum of Rs.40,000/- to each of the appellants (5 persons X Rs.40,000/-). Further, this Court is inclined to award a sum of Rs.15,000/- each towards loss of estate and funeral expenses, which the claimants are



entitled to.

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13. In the light of the above discussion, this Court awards the compensation in the following manner:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of income	15,32,544/-
2.	Loss of love and affection	2,00,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	17,62,544/-

14. The second respondent insurance company is directed to deposit a sum of Rs.17,62,544/- along with interest at the rate of 7.5% per annum from the date of filing of the petition to till the date of deposit within a period of four weeks from the date of receipt of a copy of this order before the Tribunal in the credit of the case number. Upon receipt of such payment, the Tribunal shall deposit the compensation amount for a sum of Rs.5,00,000/- to the first appellant and shall deposit a sum of Rs.3,15,636/- each to the appellants 2 to 5 to their bank account through RTGS along with interest within a period of two weeks thereafter. The appellants are not



entitled for any interest for the delay period.

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15. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

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Index : Yes

Speaking Order : Yes

To

The Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes,
Chennai.



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M.DHANDAPANI,J.

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