



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.2539 of 2018

P.Kannan

... Appellant

Vs.

1. Vanaja

2. Minor Sathiyajith
S/o. Moorthi

3. Minor Reshika Shree
D/o. Moorthi

(Respondents 2 & 3 are minors rep. By
their natural guardian mother Vanaja
who is the first appellant herein)

4. Mathammal
W/o. Muthu

5. Muthu

6. D.Vijaya

... Respondent

Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 13.10.2017 made in MCOP. No.1310 of 2014 on the file of the Special District Judge to deal with MCOP Cases Salem.



For Appellant : M/s.B.Gopalakrishnan

For Respondents : Mr.S.P.Yuvaraj, RR1 to 6
R5- NRN

JUDGMENT

The claimants, who are the wife, children and parents of the deceased Moorthy, not being satisfied with the quantum of compensation fixed by the Tribunal, has filed this Appeal challenging the award passed by the Motor Accident Claims Tribunal, Salem, dated 13.10.2017 made in MCOP. No.1310 of 2014

2. The case of the appellant is that on 07.04.2014 when the appellant, who is a driver, was driving his tractor bearing Reg. No.TN 32 C 7200 near Vinayagar Kovil, Thoppur, the deceased was riding his motor cycle bearing Reg. No.KA 05 HH 7600 in a rash and negligent manner and dashed against right side rear wheel of the tractor and died on the spot. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation for a sum of Rs.20,00,000/-



WEB COPY

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, the Tribunal has fixed 50% negligence on the part of the deceased and 50% negligence on the part of the driver of the tractor and awarded Rs.11,84,136/- as compensation by fixing the liability as against the driver and owner of the tractor.

4. Questioning the quantum of compensation and negligence awarded by the Tribunal, the driver of the tractor has filed the present appeal.

5. The learned counsel for the appellant submitted that initially the claimants have filed a claim petition under Section 166 of MV Act and subsequently, they filed IA for amending the claim petition under Section 163(A) of the MV Act and the same was allowed. Hence, the claimants are entitled only for no-fault liability. Without considering the same, the Tribunal has passed the award, which is unsustainable and the same is liable to be quashed.



WEB COPY

6. The learned counsel for the respondents 1 to 5 did not dispute the submission made by the learned counsel for the appellant.

7. Heard the learned counsel for appellant and the learned counsel for the respondents 1 to 5. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.

9. The main ground that was urged by the learned counsel for appellant was that the Tribunal should have been fixed the compensation under own fault liability as there is no fault on the part of the appellant.

10. In the instant case, on perusal of the witness RW1 and RW3, it is seen that the driver of the tractor as well as the rider of the motor cycle have driven the vehicle in a rash and negligent manner, due to which, an accident had happened. Therefore, the Tribunal has fixed the



WEB COPY

liability equally on the appellant as well as the deceased and the same warrants interference.

11. Initially the respondents/claimants filed a claim petition under Section 166 of the MV Act. Subsequently, they filed amendment petition for amending the claim petition under Section 163(A) of the MV Act and the same was allowed. As per the second schedule of the Motor Vehicle Act, the maximum income has to be fixed for a sum of Rs.40,000/- per annum, in which, 1/3 has to be deducted for the expense of the deceased and 17 multiplier has to be applied. But Tribunal has fixed a compensation for a sum of Rs.8,84,136/- towards loss of income and the same is set aside. The compensation under the head of loss of income fixed by this Court is calculated as follows :-

$$\text{Loss of Income} = 40,000/- \times 1/3 \times 17 = 4,53,333/-$$

12. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and Rs.75,000/- towards loss of consortium, Rs.1,50,000/- towards loss of love and affection for the children and Rs.50,000 towards loss of love and affection for the parents and the same



WEB COPY

are set aside. As per the second schedule of the MV Act, the claimants are entitled Rs.5,000/- towards loss of consortium, Rs.2,000/- for funeral expenses and Rs.2,500/- towards loss of estate.

13. The compensation fixed by the Tribunal is modified in the following terms :-

Sl.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of income	8,84,136/-	4,53,333/-
2	Funeral exp.	25,000/-	2,000/-
3	Loss of consortium	75,000/-	5,000/-
4	Loss of love and affection for children	1,50,000/-	
5	Loss of love and affection for parents	50,000/-	
6	Loss of estate		2,500/-
	Total	11,84,136/-	4,62,833/- Rounded of to Rs.4,62,830/-

14. The compensation awarded by the Tribunal at Rs.11,84,136/- is hereby reduced to **Rs.4,62,830/-**. The appellant and the 6th respondent are



directed to deposit the modified compensation, jointly and severally with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. upon receipt of such payment, the Tribunal is directed to deposit a sum of Rs.2,62,830/- to the first respondent/wife and to pay a sum of Rs.75,000/- each to the second and third respondents/children and Rs.25,000/- each to the respondents 4 and 5 along with interest to their bank account through RTGS within a period of two weeks thereafter.

15. In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

rli



WEB COPY



M.DHANDAPANI.,J
rli

To,
Motor Accident Claims Tribunal, Chief Judge,
Special District Judge, Salem.

Civil Miscellaneous Appeal No.2539 of 2018

07.11.2024