

D. Deepa and Others Vs. K. Mohan and Another

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Court : Chennai

Decided On : Oct-16-2015

Judge : C.S. Karnan

Appeal No. : C.M.A. No. 63 of 2014

Appellant : D. Deepa and Others

Respondent : K. Mohan and Another

Judgement :

(Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.336 of 2011, dated 10.07.2013, on the file of Motor Accidents Claims Tribunal, Special Sub Judge-I, Chennai.)

The short facts of the case are as follows:-

On 09.01.2011 at about 03.00 p.m., when the deceased was going on his motorcycle bearing registration No.TN-18-E-1575 at 200 Feet Road, Padi Bridge Downstairs, Chennai, a lorry bearing registration No.AP-28-T-4555, driven in a rash and negligent manner, hit against the motorcycle. The deceased was thrown out and sustained multiple injuries and died on the same day in Vee Care Hospital, Chennai. Hence, the legal-heirs of the deceased have filed the claim against the owner and insurer of the lorry.

2. The second respondent / Insurance Company has filed a counter and submitted that the deceased was riding his motorcycle rashly and negligently without holding a license and as such, he himself has contributed to the occurrence of the accident. The averments regarding the age, occupation of deceased was also not admitted. It was also submitted that the petitioners have to prove that the first respondent's driver had a valid driving license to drive a lorry with relevant endorsements. It was submitted that the claim was excessive and hence, it was prayed to dismiss the claim petition.

3. The Tribunal, after considering the averments of both parties, framed four issues for consideration. On the side of the claimants, three witnesses were examined and eight documents were marked. On the side of the second respondent, no witness, no documents.

4. The Tribunal, after scrutiny of oral documentary evidence awarded a sum of Rs.10,82,000/- with interest at the rate of 7.5% per annum from the date of numbering the petition with costs.

5. Not being satisfied with the quantum of compensation passed by the Tribunal, the claimants have filed the above appeal.

6. The learned counsel Mr.K.Varadha Kamaraj appearing for the appellants submits that the Tribunal erred in fixing the income of the deceased as Rs.6,000/- per month as against the claim of Rs.15,000/- per month and failed to consider the oral evidence of P.W.1 and P.W.2 and also Ex.P8 salary certificate. The learned counsel further submits that the Tribunal failed to take into consideration the future prospects of the deceased. Further, the award granted under the heads of loss of love and affection, loss of consortium to the first claimant and funeral expenses was also on the lower side. Hence, the learned counsel entreats the Court to award additional compensation of Rs.5,00,000/-.

7. The learned counsel Mr.D.Bhaskaran appearing for the second respondent submits that the deceased was riding his motorcycle rashly and negligently without holding a license and hence, he himself as contributed to the occurrence of the accident and as such, contributory negligence has to be attributed to the deceased

but the Tribunal had failed to take this into consideration. Further, no rough sketch was filed to prove that the accident was caused only due to negligence of the driver of the lorry. The contentions of the claimants that the second and third claimants are dependants on the deceased is also not correct. In the light of the above context, the award passed by the Tribunal is excessive and hence, it has to be scaled down.

8. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed-set of papers, this Court is of the view that the deceased was working as a driver in a private company. Hence, the salary of Rs.6,000/- fixed by the Tribunal is on the lower side, especially, on considering that the accident had occurred in the year 2011. Hence, this Court fixes the salary of deceased at Rs.9,000/- per month. Further, the award granted under the heads of loss of consortium, and funeral expenses is also on the lower side. Hence, this Court reassesses the compensation as follows:-

Rs.14,58,000/- ($\text{Rs.9,000} \times \frac{3}{4} \times 12 \times 18$) is awarded as compensation to the claimants under the heads of loss of income; Rs.60,000/- is awarded for loss of consortium to the first claimant; Rs.12,500/- is awarded under the head of loss of love and affection to each of the claimants 2 to 5; Rs.14,000/- is awarded under the head of funeral expenses. In total, this Court awards Rs.15,82,000/- as compensation. Hence, this Court grants Rs.5,00,000/- as additional compensation, which is the appeal value. Hence, the above appeal is allowed.

9. Therefore, this Court directs the second respondent/Insurance Company to deposit the additional compensation of Rs.5,00,000/- with interest at the rate of 7.5% per annum from the date of filing the claim, till date of payment of compensation, within a period of six weeks from the date of receipt of a copy of this order. The first, second, third, fourth, fifth claimants are entitled to receive Rs.1,50,000/-, Rs.50,000/-, Rs.50,000/-, Rs.1,25,000/- and Rs.1,25,000/- respectively. After such deposit being made the claimants 1, 2 and 3 are permitted to withdraw their apportioned share as fixed by this Court, after filing a Memo along with a copy of this order. The apportioned share of the fourth and fifth

claimants have to be deposited in their names in a nationalized bank under the cumulative deposit scheme until such time the minor claimants attain the age of a major and the fixed deposit certificate has to be handed over to the first claimant, viz., mother of the minors.

10. In the result, the above appeal is allowed. There is no order as to costs.

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