A. Murugesan and Another Vs. K. Subramanian and Another

A. Murugesan and Another Vs. K. Subramanian and Another

SooperKanoon Citation : sooperkanoon.com/953839

Court : Chennai

Decided On : Nov-05-2012

Judge : C.S. Karnan

Appeal No. : C.M.A (MD) No. 1736 of 2004

Appellant : A. Murugesan and Another

Respondent : K. Subramanian and Another

Advocate for Pet/Ap. : For the Appellants: A. Saravanan, Advocate. For the Respondents: R1, dismissed for, R2, S. Ramachandran, Advocate.

Judgement :

(Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.09.1997 and made in M.C.O.P.No.1428 of 1995, on the file of the Motor Accident Claims Tribunal, III Additional Subordinate Judge, Trichirapalli.)

1. The appellants/claimants had filed in M.C.O.P.No.1428 of 1995, on the file of the Motor Accident Claims Tribunal, III Additional Subordinate Judge, Trichirapalli, against the respondents and claimed a sum of Rs.2,08,500/- due to the death of their son viz., Ramalingam @ Raman aged about 22 years in the accident. On 10.11.1994, at about 02.30 p.m., the deceased Sukumar drove the auto bearing registration No.TTG-3606, in which the claimant's son Ramalingam @ Raman was travelling and while it was crossing the unmanned railway gate at Thiruvarumbur,

the said auto stopped due to mechanism failure. At that point, the "Thirupathi Express" train came at a high speed and dashed against the auto. In the said accident, both the driver of the auto and passenger of the auto viz., Ramalingam @ Raman sustained injuries and succumbed due to the injuries. The legal heirs of the deceased driver of auto had filed in M.C.O.P.No.1427 of 1995. The present claimants, who are the parents of the (deceased) passenger have filed the present M.C.O.P.No.1428 of 1995.

2. The 2nd respondent/National Insurance Company had filed a counter statement stating that the accident had been committed by the driver of the auto due to his rash and negligent driving. Further, it was submitted that the said auto had not been insured with them. The age of the deceased and income of the deceased were denied.

3. The learned Motor Accident Claims Tribunal, after considering the averments of both sides and framed two issues viz., (1) Whether the accident was committed by the 1st respondent's driver due to his rash and negligent driving?

(2) If so, what is the quantum of compensation? On the side of the claimants, the claimants were examined as PW.1 and PW.2 and five documents were marked viz., Ex.P1-First Information Report; Ex.P2-Post Mortem report; Ex.P3-Insurance Policy; Ex.P4-Driving licence of the auto driver. On the side of the respondent, no one was examined and no document was marked.

4. PW.2, the father of the deceased had adduced evidence stating that his son is aged about 22 years and he had given a sum of Rs.50 per day to the family, from his earnings and his age was 65 years and his wife's age was 59 years. The learned Tribunal had fixed the multiplier as '10' and income of the deceased as Rs.12,000/- per year, after deducting 1/3rd of his income and awarded Rs.60,000/-. Besides, this they awarded a sum of Rs.10,000/- under the head of funeral expenses and Rs.5,000/- to the claimants under the head of love and affection. The Tribunal had fixed a liability of 50% on the deceased for contributory negligence and in effect a sum of Rs.37,500/- was deducted from the total compensation and awarded the balance of Rs.37,500/- as compensation together with interest at the rate of 12% per annum.

5. Not being satisfied with the said compensation amount, the claimants have filed the above appeal for additional compensation of a sum of Rs.1,00,000/-. The learned counsel for the appellant submits that the accident Tribunal had erroneously fixed the liability of 50% on the (deceased), who was a passenger. The age of the deceased was 22 years and he was earning member of the family. Both the parents were depending upon the income of the deceased. For fatal case, a sum of Rs.37,500/- only had been granted, which is on the lower side. The learned counsel further submits that without seeing the rough sketch, the liability had been fastened on the occupant of the auto is not pertinent in the instant case.

5. The Learned counsel further submits that the auto was duly registered with the Insurance Company and therefore, they are liable to pay the entire compensation to the claimants.

6. The learned counsel for the Insurance Company submits that no income proof had been produced for the deceased Raman. Further, the age of the claimants had been considered by the Tribunal and compensation was awarded to the claimants, after deducting 50% for contributory negligence as the auto driver was rash and negligent in his driving and caused the accident. The learned counsel further submits that the claimants have to produce rough sketch in order to establish their case for claiming adequate compensation against the Insurance Company.

7. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned judgments of the learned Tribunal, this Court is of the view that adequate compensation had not been granted to the claimants. Further the contributory negligence of 50% fixed on the deceased is not proper. Even though rough sketch was not produced, it is admitted that the accident took place. Therefore, this Court fixes the notional income of the deceased as Rs.3,000/- per month. After deducting 50% for his personal expenses and after adopting a multiplier of '10' this Court awards a sum of Rs.1,80,000/- under the head of loss of income and Rs.10,000/- towards funeral expenses and Rs.10,000/- each of the claimants under the head of loss of love and affection. In total, this Court grants a sum of Rs.2,10,000/-. After, deducting

the original compensation of a sum of Rs.37,500/- this court grants a sum of Rs.1,72,500/- as it is found to be appropriate in the instant case. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation. This Court directs the 2nd respondent/National Insurance company to pay the Additional compensation of a sum of Rs.1,72,500/- as per this Court's findings, within a period of eight weeks from the date of receipt of a copy of this order.

8. This Court apportions 50% of the compensation to the 1st claimant and the other 50% of the compensation to the 2nd claimant, together with apportioned interest therein. After such deposit has been made before the Trial Court into the Credit of M.C.O.P.No.1428 of 1995, on the file of the Principal Subordinate Judge, Truchirapalli, it is open to the claimants to withdraw their apportioned share along with interest, after filing a memo. The appeal value is Rs.1,00,000/- but this Court has awarded Rs.1.72,500/-. Therefore, this Court directs the appellants to pay Court fee for the excess compensation awarded by this Court to the registry of this Court. The registry, after receiving court fee, can deliver this order to the appellants.

9. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed in M.C.O.P.No.1428 of 1995, on the file of II Additional Subordinate Judge, Thiruchirapalli, Dated 30.09.1997, is modified. No costs.