

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2016

CORAM :

THE HON'BLE MR. JUSTICE A.SELVAM
and
THE HON'BLE MR. JUSTICE P.KALAIYARASAN

C.M.A.No.1293 of 2016
& C.M.P.Nos.9936 and 11393 of 2016

Branch Manager
Reliance General Insurance Company Ltd.,
Sri Lakshmi Complex, 1st Floor, Bharathi Street
Omalur Main Road, Swarnapuri
Salem - 636 004 ... Appellant/2nd Respondent

Vs.

1.R.S.Geetha
2.Minor S.H.Srikanth
3.Minor A.S.Mahasamrutha
4.Anandhi ... 1 to 4 Respondents/Petitioners
5.N. Suresh ... Respondent No.5/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree dated 21-01-2016 made in M.C.O.P.No.165 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Attur.

For Appellant : Mr. S. Arunkumar

For Respondents : Mr. P. Tamilavel
R5 - NDW(Notice Dispensed With)

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.)

This civil miscellaneous appeal has been directed against the award dated 21-01-2016 made in M.C.O.P.No.165 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Attur.

2. The respondents 1 to 4 herein as petitioners has filed M.C.O.P.No.165 of 2012 on the file of the Motor Accidents Claims Tribunal praying to pass an award in respect of the amount mentioned therein wherein the present appellant and the fifth respondent have been shown as respondents.

3. It is averred in the petition that the deceased by name Senthil Kumar is the husband of the first petitioner, father of the petitioner Nos.2 and 3 and son of the fourth petitioner.

4. On 26-09-2011, at about 11:00 p.m., this deceased has driven his motor-cycle bearing Registration No.TN 27 Q 6113 in front of Revenue Divisional Office, Attur. At that time, the lorry bearing Registration No.TS 52 B 2786 driven in a rash and negligent manner, dashed against the motor cycle and thereby caused fatal injuries.

5. On 07-10-2011, the said Senthil Kumar, has passed away. Prior to accident, the deceased run a Medical shop and thereby earned Rs.20,000/- (Rupees Twenty thousand only) per mensem. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

6. In the counter filed on the side of the second respondent, it is averred that the entire accident has taken place only due to the rash and negligent driving of the deceased. It is false to aver that the Driver of the first respondent has driven the lorry in rash and negligent manner. The quantum of the compensation claimed by the petitioner is excess and there is no merit in the petition and the same is liable to be dismissed.

7. On the basis of the rival evidence adduced on either side, the Motor Accident Claims Tribunal has fixed a compensation of Rs.37,75,130/- (Rupees Thirty seven lakhs Seventy Five thousand One hundred thirty only) and the same has been challenged by way of filing the present Civil Miscellaneous Appeal at the instance of the second respondent, as appellant.

8. The learned counsel appearing for the appellant/second respondent has sparingly contended that the deceased has attained 35 years of age, that no specific document has been marked with regard to monthly income. However, the Tribunal has arrived at Rs.19,632/- (Rupees Nineteen thousand Six hundred thirty two only) per mensem, after giving due deduction and further, the Motor Accidents Claims Tribunal has erroneously awarded a sum of Rs.1 lakh (Rupees One lakh only) towards loss of estate. Under the said circumstances, the calculation adopted by the Tribunal for arriving at the compensation is totally erroneous and therefore, the quantum of compensation awarded by the Tribunal is liable to be modified.

9. The learned counsel appearing for the respondent Nos.1 to 4 has also equally contended that at the time of accident,

the deceased has run a medical shop and thereby earned Rs.20,000/- per mensem and at the time of accident, he has attained only 34 years of age and the Tribunal after considering the documents filed on the side of the respondent Nos.1 to 4/petitioners has rightly awarded Rs.37,75,130/-(Rupees Thirty seven lakhs Seventy Five thousand One hundred thirty only) and therefore, the quantum of compensation awarded by the Tribunal does not require any modification.

10. On the basis of the rival submissions made on either side, this Court has closely perused the calculation made by the Motor Accidents Claims Tribunal. The Tribunal has rightly awarded medical and transport expenses. The Tribunal has also rightly awarded a sum of Rs.3,50,000/- (Rupees Three lakhs fifty thousand only) towards love and affection. However, the Tribunal has erroneously awarded Rs.1 lakh (Rupees One lakh only) towards loss of estate.

11. Considering the fact that the Tribunal has already awarded Rs.3,50,000/-(Rupees Three lakhs fifty thousand only) towards love and affection and also considering the fact that the Tribunal has separately awarded Rs.28,27,008/-(Rupees Twenty Eight lakhs Twenty Seven Thousand Eight only) towards loss of future income, this Court is of the view that awarding of Rs.1 lakh towards loss of estate is totally unwarranted and the same is liable to be deducted. After deducting the same, the respondent Nos.1 to 4 are entitled to get a sum of Rs.36,75,130/-(Rupees Thirty six lakhs Seventy Five thousand One hundred thirty only). Under the said circumstances, this civil miscellaneous appeal is liable to be allowed in part.

In fine, the civil miscellaneous appeal is allowed in part without costs and the award passed in M.C.O.P.No.165 of 2012 is modified as follows:

The respondent Nos.1 to 4 are entitled to get Rs.36,75,130/- (Rupees Thirty Six lakhs Seventy Five thousand One hundred thirty only). In other aspects, the award of the Motor Accidents Claims Tribunal is confirmed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

glp

To

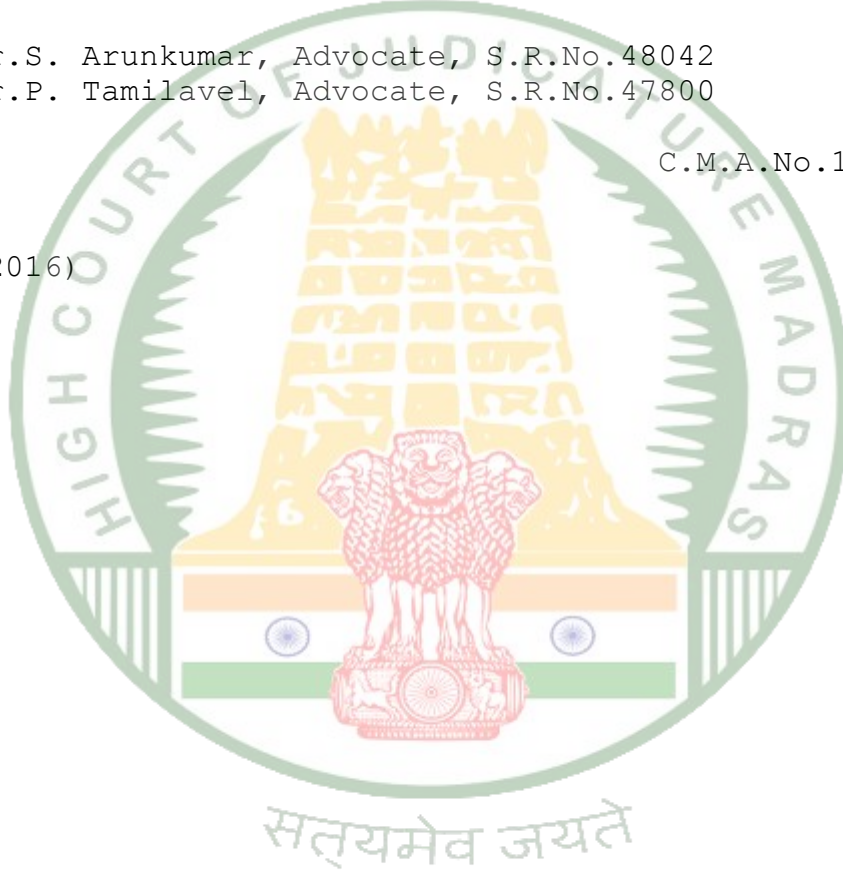
1.The Sub Judge,
Sub Court,
Motor Accident Claims Tribunal,
Attur.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S. Arunkumar, Advocate, S.R.No.48042
+1cc to Mr.P. Tamilavel, Advocate, S.R.No.47800

C.M.A.No.1293 of 2016

VGI (CO)
CA(23/09/2016)



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