

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1842 of 2016
& C.M.P.No.13511 of 2016

The Superintendent of Police,
Erode District,
Erode.

.. Appellant

Versus

1.Shanthi

2.Minor Prabhu

3.Minor Prasanth

4.Murugan

5.Kaliammal

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 26.04.2013 made in M.C.O.P.No.1298 of 2010 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Tiruppur.

For Appellant : Mr.T.Jayaramaraj,
Government Advocate(C.S.)

For Respondents : Mr.Ma.P.Thangavel for R1 to R3

J U D G M E N T

The Superintendent of Police, Erode, has come forward to this Court with this appeal, questioning the impugned order dated 26.04.2013 made in M.C.O.P.No.1298 of 2010 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Tiruppur, awarding a sum of Rs.9,68,000/- to the claimants on the grounds of the quantum and liability.

2.Learned counsel appearing for the appellant would submit that it is not a case where the learned Tribunal can fix the negligence for causing the accident on the part of the driver of the vehicle bearing Registration No.TN G 0318 belonging to the appellant, for the reasons that the rider of the two wheeler, who was novice in driving the vehicle, has caused the accident, due to his rash and negligent driving of the vehicle. On 24.09.2010 at about 21.00 hours, the driver of the Jeep was slowly driving from Tiruppur to Kangeyam road, near Puthupalayam Pirivu at normal speed. At that time, the driver of the two

wheeler bearing Registration No.TN 39 K 8106 came in a rash and negligent manner. On seeing this, the driver of the jeep hooted the horn and applied sudden break and halted the vehicle to avoid the accident. In spite of the same, the two wheeler, which came in a rash and negligent manner, caused the accident. Therefore, it is the specific case of the appellant before the Tribunal that the accident was not caused due to rash and negligent driving of the driver of the jeep, belonging to the appellant/Police Department. But the accident had occurred only due to the rash and negligent driving of the two wheeler/the victim, but this fact was not properly analysed and answered by the Tribunal.

3. But this Court is not able to find any merit on his submissions for the reason that on 24.09.2010 at 21.00 hours, which the deceased Selvaraj was going by his two wheeler bearing Registration No.TN 39 K 8106 from South direction to North direction in Tirupur to Kangeyam Road, near Puthupalayam Pirivu, the appellant's jeep bearing Registration No.TN 33 G 0318 driven by its driver was coming from west to east direction in a rash and negligent manner and caused the accident. As a result, the deceased Selvaraj sustained grievous injuries all over the body and immediately, he was taken to Government Hospital, Tiruppur. Even after the best efforts given by the duty doctors, the life of the deceased could not be saved. The breadwinner of the claimants' family passed away due to the accident. The FIR was also filed for the offence under Sections 279 and 304(A) of IPC in Cr.No.6654 of 2010 on the file of Tirupur Police Station against the driver of the jeep.

4. PW1-Santhi, wife of the deceased and PW2-Palanisamy, eye witnesses of the accident, have deposed that the accident had occurred only due to the rash and negligent driving of the jeep driver. Such fact was also corroborated in the Ex.P1-FIR, registered against the driver of the jeep. On taking note of these facts, the Tribunal has held that the driver of Jeep is responsible for the said accident on the fateful day. Accordingly, the Tribunal has rightly fixed the entire liability on the 1st respondent.

5. As regard the quantum of compensation, the Tribunal has fixed a sum of Rs.6,000/- as notional monthly income of the deceased, and after deducting 1/3rd towards his personal expenses, it has rightly arrived at Rs.4,500/-. However, it has wrongly applied the multiplier '17', but as per the judgment rendered by the Hon'ble Apex Court in the case of Sarla Verma and Others v. Delhi Transport Corporation and another reported in 2009 (6) SCC 121, the correct multiplier would be '16', as the deceased was 34 years old at the time of accident. Further, the Tribunal has failed to apply the ratio laid down by the Apex Court in the case of Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 and Rajesh v. Rajbir Singh (2013) 9 SCC 54. As per the above judgments, the Tribunal ought to have added 50% as actual salary towards future prospectus. However, nothing has been done in the present case and that the Tribunal has awarded very meagre amount towards Consortium. Therefore,

this Court is not inclined to entertain the appeal filed by the appellant questioning the very meagre compensation awarded by the Tribunal.

6. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

7. Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order, failing which the interest payable would become 12% for the delayed period. On such deposit, it is for the claimants to move a petition before the learned Tribunal for withdrawing of the said amount.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Motor Accidents Claims Tribunal,
((Chief Judicial Magistrate), Tiruppur.

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

+1 cc to M/s.P.Thangavel, advocate, sr.59974

+1 cc to Spl.govt.Pleader, sr.60104.

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C.M.A. No.1842 of 2016

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