

In the High Court of Judicature at Madras

Dated: 30.09.2016

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The Honourable Mr. Justice T.RAJA
C.M.A.No.2083 of 2003
and
C.M.P.No.12734 of 2003

1.K.Karunanidhi

2.The United India Insurance
Company Ltd., Vellore,
rep. by the Divisional Manager,
Katpadi Road,
Vellore-4. Appellants / Respondents

..Vs..

1.Saraswathi

2.Minor Aswin Kumar

3.Minor Priyadarshini

4.Maniammal

(Minor Respondents 2 & 3 are
rep. by their mother/natural
guardian, the first respondent
Saraswathi) Respondents/ Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the judgment and
decree passed by the learned Principal District Judge, (MACT),
Tiruvannamalai in M.C.O.P.No.405 of 2000 dated 12.03.2002.

For Appellant-2 : Ms.Roselet Helen.M
for M/s.K.Akilandeswari

For Respondent : No Appearance
Nos.1 to 3

For Respondent : Not ready in notice
No.4

JUDGMENT

The Second Appellant/Insurance company has preferred the
present appeal, questioning the correctness of the impugned
award passed by the learned Tribunal (Principal District
Judge), Tiruvannamalai in M.C.O.P.No.405 of 2000 dated
12.03.2002.

2.The brief facts of the case are as follows:

On 17.12.1999 at about 6.00 a.m., when the deceased Saravanan and his friend Velusamy were going in their motor cycle near Alampoondi Village, a lorry bearing registration No.TN-25/A.6849 which came in the opposite direction, driven by its driver in a rash and negligent manner, hit the motor cycle and caused the accident. Due to which, the deceased Saravanan suffered multiple injuries on his head and nose and died on the spot and his friend who also got multiple injuries, fell unconscious and taken to Jipmer Hospital, succumbed to the injuries on 03.01.2000.

3.The learned Tribunal after analysing the evidence and materials available on record, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle and had awarded a sum of Rs.7,32,000/- to the claimants' family for the loss of life of the deceased Saravanan and directed the respondents jointly and severally to pay the compensation with interest at the rate of 9% p.a. from the date of petition till the date of award and thereafter, at the rate of 6% p.a. till the date of realisation.

4.Being aggrieved by the quantum of compensation awarded by the Tribunal, the present appeal has been filed by the Second Appellant/Insurance Company.

5.Learned counsel for the Second Appellant/Insurance company contended that the Tribunal had wrongly fixed the monthly income of the deceased at Rs.5000/- without any valid proof of income. The learned counsel would contend that as per the provisions of Motor Vehicles Amendment Act (Act 54 of 1994), the income of the deceased ought to have been fixed at Rs.15,000/- per annum but the same has not been done. She further submitted that the Tribunal without proper appreciation of evidence, had arrived at the conclusion in fastening the liability on the part of the driver of the lorry bearing Registration No.TN-25/A.6849, who was at no fault in causing the accident. She also contended that the compensation awarded by the Tribunal is highly excessive and without any basis and thus, pleaded before this Court that the same warrants interference.

6.Heard the learned counsel for the Second Appellant/Insurance Company and also perused the materials available on record.

7.On perusal of the record reveals that the First Information Report was registered in Cr.No.217 1999 for the offences under Sections 279, 338, 304(A) IPC and pending claim petition, the Criminal Court has found the driver of the offending vehicle as guilty of the charges and convicted him. Since the proceedings of the order passed by the Criminal

Court, convicting the driver of the offending lorry bearing registration No.TN-25/A.6849, which has caused the accident, was available before the Tribunal, it has rightly accepted the same, though it is not binding upon it, along with the evidence adduced by P.W.1/wife of the deceased and has rightly come to the conclusion that the driver of the offending lorry was guilty of driving the vehicle in a rash and negligent manner and therefore, this Court in respect of the same, is not able to find any infirmity in the finding recorded by the Tribunal. As the offending lorry was insured with the United India Insurance Company, the second appellant herein, the tortious act of the driver, has been rightly saddled with the compensation along with the owner of the offending vehicle to pay the compensation jointly and severally. Therefore, this Court does not find any error in the finding of the Tribunal.

8.In regard to fixation of monthly income, as the deceased was projected as a business man, earning a sum of Rs.25,000/- per month, the learned Tribunal has fixed the monthly income of the deceased as Rs.5,000/- per month, as the income was not supported by any proof, which was arrived at Rs.60,000/- per annum. Since he died at the age of 28 years, the Learned Tribunal had adopted the multiplier '18', as per the amended Act 54 of 1994 and arrived at a sum of Rs.10,80,000/- and after deducting $1/3^{rd}$ towards his personal expenses, the loss of income was arrived to Rs.7,20,000/-. However, in the considered opinion of this Court, as per the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma V. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), 50% of the salary amount has to be added to the actual salary of the deceased, towards future prospects, but the same was not been done by the learned Tribunal. In addition to this, the learned Tribunal had awarded a sum of Rs.10,000/- towards loss of consortium, which is also meagre in the considered view of this Court as the deceased has left his wife at the age of 22 years and it has awarded a sum of Rs.2,000/- towards funeral expenses. In total, the Tribunal has awarded a sum of Rs.7,32,000/- as just and reasonable compensation to the claimants which does not warrant inference in the considered opinion of this Court. Therefore, the appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed.

9.It is stated by the learned counsel for the Second Appellant/Insurance Company that the entire award amount has been deposited, out of which, as per the order of this Court dated 04.10.2004, 50% of the award amount has been withdrawn by the claimants 1 & 4. It is made clear that the claimants 1 and 4 are entitled to withdraw their balance share amount, by moving appropriate application before the learned Tribunal. In respect of the minor claimants/respondents 2 & 4 share amount, the first respondent/claimant is permitted to withdraw the

accrued interest once in every 3 months till they attain majority. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

DP

To

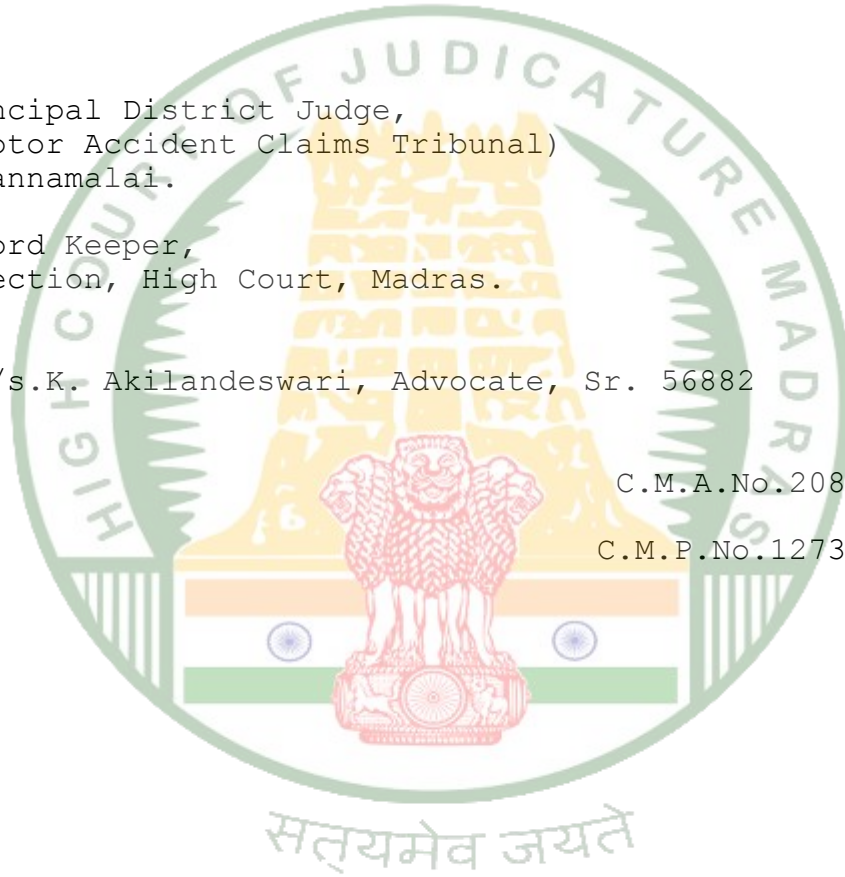
1.The Principal District Judge,
(The Motor Accident Claims Tribunal)
Thiruvannamalai.

2.The Record Keeper,
V.R. Section, High Court, Madras.

1 cc to M/s.K. Akilandeswari, Advocate, Sr. 56882

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