

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.2115 of 2012
and MP.No.1 of 2012

The Divisional Manager,
New India Assurance Co. Ltd.,
Chandigarh.

... Appellant/Respondent-2

Vs.

1.Radhakrishnan
2.Vijaya
3.Kavitha
4.Arul

5.M/s.Owen Brockway (India) Ltd.,
Thondamanatham
Pondicherry.

... Respondents

Prayer : Civil Miscellaneous Appeal preferred under 173(1) of the Motor Vehicles Act, against the judgment and decree dated 20.03.2012 made in MCOP.No.266 of 2009 on the file of the Motor Accident Claims Tribunal cum III Additional District Judge at Puducherry.

For Appellant : Mr.C.Ramesh Babu

For Respondents : Mr. Prakash Adiapadam [for R1 to R4]
Mr.S.Sai Prasad
for M/s. Sai Raaj Associates [for R5]

सत्यमेव जयते

JUDGMENT

On 13.1.2009 at about 5.30 p.m. one Manikandan, aged 22 years while coming in his motorcycle along Kurumbapet Main Road, a Maruti van belonging to the fifth respondent [first respondent before the Tribunal] came rashly and negligently, knocked him down, owing to which he died. Claiming compensation of Rs.21,00,000/- his parents along with their two children (sister and brother of the deceased) approached the Tribunal. The Tribunal awarded Rs.6,84,000/- with interest at 7.5% per annum. The details of the compensation awarded by the Tribunal on various heads is as under :

Heads	Amount awarded (Rs.)
Towards loss of income (Rs.4,000 x 12 x 13)	6,24,000.00
Funeral expenses	10,000.00
Loss of love and affection	40,000.00
Transport charges	10,000.00
Total :	6,84,000.00

On the head of loss of dependency, it adopted a multiplier of 13, commensurate to the age of the mother and reckoned the monthly income of the victim at Rs.6,000/- after taking into account his avocation as Centering Contractor, and arrived at his net monthly income at Rs.4,000/- after deducting 1/3 towards his personal expenses and arrived at Rs.6,24,000/- [Rs.4000x12x13] on this head.

2. The insurance company of the offending vehicle has now come forward with this appeal challenging the liability and also the quantum of amount awarded by the Tribunal.

3. The learned counsel for the appellant argued that it was head on collision and the Tribunal in fitness of things should have apportioned the negligence between the rider of the motorcycle and the driver of the van. On the question of liability of the insurance company, the learned counsel argued that the vehicle in question is a public carrier and there was no valid permit for the same, which is a violation of policy condition. So far as quantum of compensation is concerned, the learned counsel contended that the Tribunal has been unduly charitable in fixing the monthly income notionally at Rs.6,000/-, when there was hardly no documentary evidence to suggest it.

4. Per contra, the learned counsel for the claimants would contend that the march of law, since the decision in Sarla Verma & Others Vs. Delhi Transport Corporation & another [2009 (2) TNMAC 1]: [2009 ACJ 1298] read with the ratio in Amrit Bhanu Shali & others Vs. National Insurance Co. Ltd., & Others [2012(2) TNMAC 321 (SC)], indicate that the age of the victim should be considered for determining the choice of multiplier and not the age of the mother, and that too after providing for future prospects of the victim. He also alleged that the victim was travelling carefully and the Tribunal has entered a positive finding that the negligence of the driver of the van in question alone was responsible for the accident.

5. After evaluating the rival submissions, this Court finds that there is hardly any evidence to interfere with the finding on the fact of negligence by the Tribunal, nor is there any evidence to absolve the insurance company of its liability. So far as the quantum of compensation is concerned, while it may be true that Rs.6,000/- has been notionally fixed by the Tribunal can be stated to be on a higher side, it must also be equally noticed that the multiplier to be adopted is that of the victim and not that of the mother of the victim, and the law on this aspect has already been settled vide Amrit Bhanu Shali & others Vs.National Insurance Co. Ltd.,& Others [2012(2) TNMAC 321 (SC)]. If the notional monthly income of the victim has to be reduced, then it is also equally required to adopt the multiplier corresponding to the age of the victim. This essentially a matter of internal balancing of the amount awarded. Taking into account the overall picture of the matter, I find it necessary to confirm the award of the Tribunal, instead of resorting to an exercise such as that.

6. In the result, I find no merit in the appeal and the same is dismissed. The appellant is directed to deposit the amount within a period of six weeks, less if any already deposited and whereupon, the claimants would be entitled to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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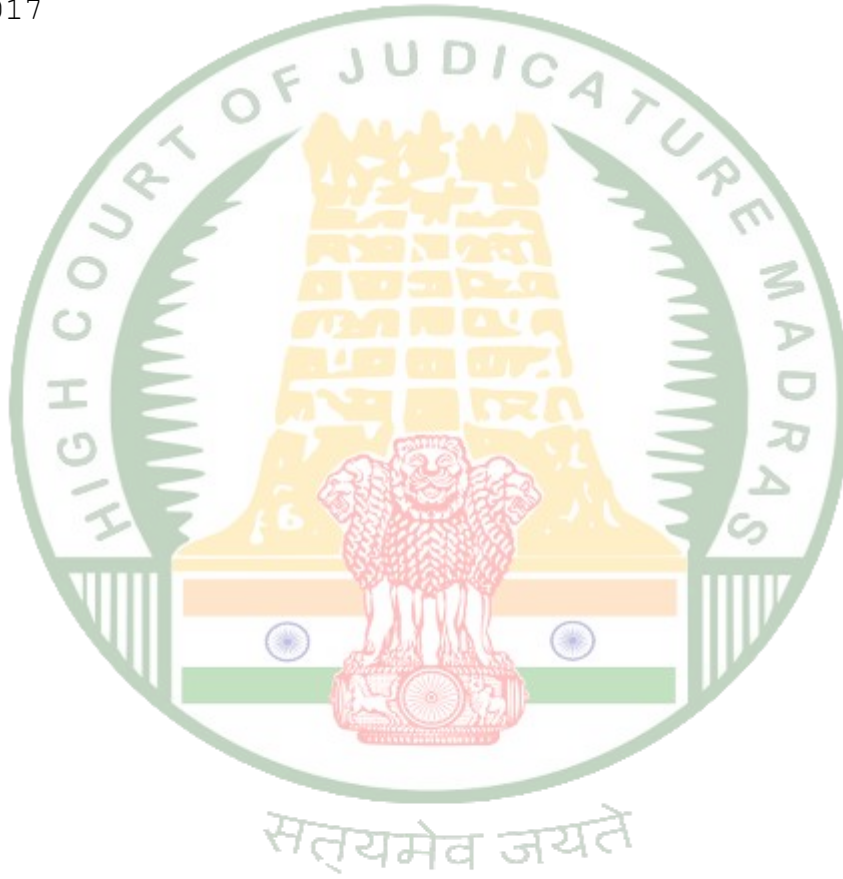
1.The Judge
III Additional District Court,
Motor Accident Claims Tribunal
Puducherry.

2.The Section Officer
VR Section
High Court, Madras.

+1 cc to Mr.Prakash Adiapadam Advocate sr 56385
+1 cc to M/s.Sai Raaj Associates sr 56348
+1 cc to Mr.C.Ramesh Babu Advocate sr 56070

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