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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2374 of 2017

and C.M.P.No.12706 of 2017

1. The Commissioner, Agricultural Department,
Chepauk, Chennai Town and City
2. The Assistant Director, Agricultural Department,
Dharmapuri Post and District ... Appellants/Respondents1&2

..VS..

1. Brindha
2. Madhesh
3. Senthilkumar
4. Sangeetha
5. Anjala ...Respondents 1 to5/Petitioner
6. R.Jagadhalapradhaban ...6th Respondents /
3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 22.06.2016 made in MCOP No.12 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellants : Mr. M.Venugopal, Spl.G.P.,

J U D G M E N T

Though the sixth respondent, owner of the offending vehicle, has been served and his name printed in the cause list, there is no representation on behalf of him. Hence, the matter is taken up on merits, in the absence of the sixth respondent.

2. The claim has been filed by the first claimant as wife, and the second and third claimants as sons, the fourth claimant as daughter and the fifth claimant as second wife, of the deceased, Krishnan.

3. Krishnan, the deceased, aged 60, an Agriculturist and a Tailor, earning a sum of Rs.15,000/-, died in an accident that took place on 19.08.2014. His Legal Representatives filed the claim petition, for compensation, claiming a sum of Rs.10,00,000/-. As against the claim made for a sum of Rs.10,00,000/-, the Tribunal has passed an award for a sum of Rs.5,91,250/-. Challenging the negligence, liability and the quantum of compensation, the appellants / respondents 1 and 2 before the Tribunal, have filed this Appeal.



4. It is the case of the claimants that the deceased, at the time of accident, was travelling as a pillion rider in the Splendor Plus two-wheeler (motor cycle) bearing Registration No.TN29-AX-1875. One Gunasekaran was riding the vehicle. When the vehicle was at Thenkannikottai-Ramaiyapatti Road, near Odasaleripallam, a jeep bearing registration No.TM29-G-0612, belonging to the appellants, came in an opposite direction, in a rash and negligent manner and dashed against the deceased. The deceased was taken to the Government Hospital, Dharmapuri, and for better treatment, he was transferred to Government Hospital, Salem, where he died on 30.08.2014, i.e., 11 days after the accident.

5. It is the case of the claimants that even though the deceased was 60 years old, he was hale and healthy and he was doing agricultural and tailoring work and earning a sum of Rs.15,000/- per month; so saying, the claimants have claimed a sum of Rs.10,00,000/-, as compensation.

6. The Tribunal has quantified the compensation at Rs.5,91,250/- under the following breakup details:-

Total Loss of income	Rs.4,86,000.00
Loss of consortium and company	Rs. 25,000.00
Loss of love and affection for Petitioners 2 to 4	Rs. 30,000.00
Expenses for the relatives, who have taken care of the deceased in the hospital for 21 days x 250	Rs. 5,250.00
For Transport expenses and extra nourishment	Rs. 25,000.00
Funeral expenses	Rs. 10,000.00
Loss to estate	Rs. 10,000.00

Rs.5,91,250.00

7. While calculating the total loss of income, the monthly income has been taken at Rs.6,000/- per month. Deducting 1/4th towards the personal expenses of the deceased, contribution to the family was taken at Rs.4,500/-. Adopting the multiplier of '9', the loss of dependency has been quantified at Rs.4,86,000/- (Rs.4,500/- x 12 x 9). Awarding other heads as detailed above, the total amount has been quantified at Rs.5,91,250/-.

8. From a perusal of the details of the award passed by the Tribunal, it is evident that the loss of love and affection awarded to claimants 2 to 4 and loss of consortium to the first claimant are meager and it cannot be said to be excessive. The monthly income has been fixed at a moderate rate, which can be said to be low in the year 2014.



9. It is the case of the respondents / claimants that it is only at the instance of the driver of appellants herein / respondents 1 and 2 before the Tribunal, this accident took place.

9.1. But the case of the appellants is that the accident took place only on account of the rider of the two-wheeler namely Gunasekaran, who was under the influence of liquor. The Trial court has commented upon the fact that the contention that the driver of the two-wheeler was under the influence of liquor had not been taken in the counter and it is stated only for the first time in the proof affidavit and therefore, only to get rid of the clutches from the law, such a defence has been taken, as an after thought and therefore, it cannot be relied upon.

10. The Tribunal has also relied upon the circumstances that the driver of the appellants' vehicle has surrendered before the Pappireddipatti Police Station and thereafter, he went on bail. This fact has also been taken note of, while considering the evidence of the eye witnesses.

11. Considering the totality of the circumstances, there is a finding that the negligence was only on the part of the driver of the appellants and not on the part of the deceased. Therefore, on the issue of negligence also, the appellants have no case.

12. Once it is established that the accident took place only on account of rash and negligent driving on the part of the third respondent before the Tribunal, the conclusion is inevitable that there is liability on the part of the appellants to satisfy the award. Therefore, there are no acceptable grounds raised to entertain this Appeal. Therefore, the Appeal is rejected, at the admission stage itself. No costs. Consequently, the connected CMP is closed.

13. The appellants are directed to deposit the entire amount of compensation, along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. The claimants are entitled to share the award amount as per the ratio of apportionment made by the Claims Tribunal. On such deposit being made, the Tribunal shall transfer the amount to



the Savings Bank Accounts of the major claimants through RTGS forthwith. No costs. Consequently, the connected CMP is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Presiding Officer
Motor Accident Claims Tribunal, Additional District Judge,
Dharmapuri
2. The Section Officer, V.R.Section, Madras High Court,
Chennai 104

+1 cc to Spl Government Pleader (CS) sr 53519 dt 09/04/2018

C.M.A.No.2374 of 2017
& C.M.P.No.12706 of 2017

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