



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.117 of 2016

and

C.M.P. (MD) .No.1982 of 2016

P.Chinna Adaikkan

... Appellant/Respondent

Vs.

1.P.Malaiammal

2.Athirstalakshmi

3.Murugeswari

... Respondents/Claimants

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.342 of 2010, on the file of the Motor Accident Claims Tribunal, VI Additional District Judge, Madurai, dated 06.02.2015.

For Appellant

: Mr.S.Chandrasekaran

For Respondents

: No Appearance

JUDGMENT

Heard the learned counsel on either side.

2.The owner of the vehicle has filed this appeal, questioning the impugned award both on the ground of liability as well as quantum. one Ponmani, husband of the first respondent herein, was riding a two-wheeler on 11.06.2009 at about 4.30 p.m. The driver of the tractor belonging to the appellant applied sudden brake and stopped the vehicle. As a result, the said Ponmani, dashed against the trailer on the back side. In the resulting accident, he suffered injuries. While being taken to the hospital, he died. Crime No.136 of 2009 was registered against the driver of the tractor. He was running a petty shop business. The respondents filed M.C.O.P.No.342 of 2010, on the file of the 6th Additional District Judge, Madurai, dated 06.02.2015 and claiming compensation of a sum of Rs.8,00,000/-.

3.The Tribunal awarded a sum of Rs.6,12,500/- as compensation and fixed the entire liability on the appellant. This was because, the vehicle was not insured. Questioning the same, this appeal has been filed.

4.The learned counsel appearing for the appellant would contend that the entire negligence ought to be fixed only on the deceased. This is a case in which the principle of *res ipsa loquitur* can be applied. The deceased had hit the trailer from behind. This single consideration is sufficient to hold that the

deceased was at fault. The learned counsel for the appellant would suggest that the deceased was in an intoxicated condition and that he had been rash and negligent. There is no material to support the theory of intoxication. Therefore, I am not in a position to accept the said submission. The case of the claimants is that the tractor and trailer was going in the front side and only on the account of the sudden stopping of the vehicle by applying sudden brake, the accident had occurred. The claimants examined PW2 in support of the said contention. I am inclined to accept the reasoning given by the Tribunal for fastening the liability on the driver of the tractor cum trailer. However, the deceased had also contributed to the accident. If he had maintained sufficient safety distance, the accident could have been averted. The deceased must have followed the tractor cum trailer very closely from behind. That is why he dashed against the trailer. Admittedly, the trailer was in the front and it was the deceased who hit the trailer from behind. In these circumstances in the interest of justice 10% of the negligence can be fixed on the deceased.

5.As regards quantum of compensation, the same will have to be reworked as under:-

Sl.No	Heads	Amounts in Rupees
1.	For pecuniary loss	Rs. 4,32,000/-
2.	For loss of consortium	Rs. 40,000/-
3.	For funeral expenses	Rs. 15,000/-
4.	For transport expenses	Rs. 2,500/-
5.	For damages of articles	Rs. 500/-
6.	For loss of love and affection	Rs. 30,000/-
	Total	Rs. 5,20,000/-

6.Since 10% negligence can be fixed on the deceased, the compensation payable to the claimants can be fixed at **Rs. 4,68,000/-**. The first respondent will be entitled to a sum of Rs.3,48,000/- with interest. The respondent 2 and 3 will be entitled to a sum of Rs.60,000/- each. The award dated 06.02.2015, made in M.C.O.P.No.342 of 2010, on the file of the 6th Additional District Judge, Madurai, is modified accordingly.

7.The appellant is directed to deposit the entire compensation amount of Rs.4,68,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants are entitled to



withdraw the same, as apportioned by this Court, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

8. This Civil Miscellaneous Appeal is partly allowed. No costs. consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The VI Additional District Judge,
Motor Accident Claims Tribunal/
Madurai.
2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Chandrasekaran, Advocate SR.No.87772

TSG

VB/PN/SAR1/27.07.2018/3P/5C

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