BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)Nos.161 & 162 of 2017
and
C.M.P(MD)Nos.1758, 1759, 5665 & 5666 of 2017

The Forest Extension Officer,
Forest Extension Division,
Pudukkottai ... Appellant/Respondent in Both appeals

Vs.

1.Thiraviyam
2.Minor Edward James
3.Minor Praveen George
(On behalf of 2,3 Minors natural Guardian their mother is representing)

4.Arokia Mary ...Respondents/Petitioners in C.M.A(MD)No.161 of 2017

1.Arokia Mary
2.Daicy Parimalarani
3.Liyo Charles
4.Arokia Mary ...Respondents/Petitioners in C.M.A(MD)No.162 of 2017

PRAYER: Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act against the common award, dated 30.11.2016 made in M.C.O.P.Nos.261 & 263 of 2014, on the file of Motor Accident Claims Tribunal-cum-Additional District and Special Court, Pudukkottai.

For Appellant (both cases) : Mr.M.Murugan Government Advocate
For Respondents (both cases) : Mr.R.Devaraj

JUDGMENT

[Judgment of the Court was made by K.KALYANASUNDARAM,J.]

Challenge made in these appeals is to the award passed by the Motor Accidents Claims Tribunal (Additional District & Special Court), Pudukkottai in MCOP Nos.261 and 263 of 2014, dated 30.11.2016.

2.Since, both the appeals arise out of the common judgment and the issues involved in both the appeals are same, the appeals are heard together and disposed of by a common judgment.

3.The legal heirs of the deceased John and Michael Samy, who died in a motor vehicle accident on 09.04.2014, filed petitions in MCOP Nos.261 & 263 of 2014 claiming compensation of Rs.30,00,000/- and Rs.25,00,000/- respectively alleging that on 09.04.2014, when the deceased John was driving his two-wheeler along with his brother Michael Samy, as pillion rider in a two-wheeler bearing Registration No.TN-55-AJ-0014 from Alangudi to Pudukkottai Road towards east to west, a Bolero Car bearing Registration No.TN-55-G-0607 belonging to the appellant, which was driven by its driver in a rash and negligent manner and dashed against the two-wheeler. In the impact, both of them sustained grievous injuries and succumbed to the injuries in the hospital.

4.The claimants have further stated that the deceased John was working as a Tea Master and was earning Rs.15,000/- per month. The deceased Michealsamy was working in Fiber Industries and his monthly salary was Rs.12,000/-. A case in Crime No.114 of 2014 was registered under Section 304(A) of IPC by Alangudi Police Station against the driver of the offending vehicle.

5.The appellant resisted the claim contending that the accident had taken place due to the negligence of the deceased, so they are not liable to pay any compensation and the claim was on the higher side.

6.Before the tribunal, the first claimant, in both claim petitions, examined themselves as PW1 & PW2 and also examined three other witnesses as PW3 to PW5 and marked 11 documents as Exs.P1 to P11. On the side of the appellant, two witnesses were examined as RW1 and RW2, but they did not produce any document.

7.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the Car has caused the accident and awarded compensation of Rs.17,35,000/- and Rs.12,31,000/- respectively. Challenging the award, the present appeals have been filed.

8.Heard the learned counsel for the appellants and the learned counsel for the respondents and perused all the materials available on record.

9.The manner of the accident and the finding on negligence are not in dispute and the appeals are confined only to quantum of compensation awarded by the Tribunal.

10.It is contended by the learned counsel for the appellants that the notional income fixed by the tribunal at Rs.12,000/- is on the higher side, so the quantum is to be reduced. On the other hand, the learned counsel for the claimants submitted that the award is reasonable, which does not warrant any interference of this court.

11.CMA(MD)No.161 of 2017:-PW1 the wife of the deceased in her evidence reiterated the averments made in the claim petition. PW4, who claims to be the owner of the Tea Stall deposed that the deceased was working under him and was paid Rs.400/- per day. Ex.P8 is the electricity bill and Ex.P9 are P10 are the licences and tax receipts issued in the name of PW4. When there was no documentary evidence, the tribunal relying upon the oral evidence of PW1 and PW4 fixed the income at Rs.12,000/-. A perusal of the averments in the claim petition would reveal that it has been averred that the deceased John was a Tea Master and he was also doing agriculture, but no documentary evidences have been produced in support of the claim. In the light of the above facts, it would be appropriate to fix the income of the deceased at Rs.6,000/- and by adding 50% towards future prospects, the income is calculated at Rs.9,000/- per month. After deducting 1/3rd towards his personal expenses, the loss of contribution would be Rs.6,000/-.

12.From perusal of Ex.P2 postmortem certificate, it shows that the deceased was 40 year old. So, as per the decision in Sarla Verma, by applying multiplier '15', the loss of dependency is arrived at Rs. Rs.10,80,000/- (Rs.6,000/- x12 x 15). In all other respect, the award of the Tribunal is confirmed. Hence, the C.M.A (MD)No.161 of 2017 is partly allowed. The claimants are entitled to Rs.13,75,000/- as against Rs.17,35,000/- as awarded by the Tribunal. The interest at the rate of 7.5% is maintained.

13.CMA(MD)No.162 of 2017:- The wife of the deceased Michealsamy had examined herself as PW2 and deposed that the deceased husband was 48 year old and he was working in a Fibre Industries and also by doing agriculture, was earning Rs.12,000/- per month. The owner of the Fibre Mill has examined as PW5. Though no documentary evidence was produced to prove the income of the deceased, the tribunal has fixed notional income at Rs.9,000/ to determine the loss of income. Considering the facts and the evidence available on record, this court opines to fix Rs.7,500/- as income and Rs.1,500/- towards future prospectus and the total income of the deceased works out to Rs.9,000/-.

14.The tribunal after deducting 1/3rd towards personal expenses and by applying multiplier '13', award compensation of Rs.9,36,000/- towards loss of income; Rs.10,000/- towards loss of estate; Rs.50,000/- for loss of consortium; Rs.2,00,000/- for loss of love and affection and Rs.10,000/- for transportation and Rs.25,000/- for funereal expenses, the tribunal has totally awarded Rs.12,31,000/- in the considered opinion of this court, the award is reasonable and therefore, it is confirmed. Hence, CMA(MD)No.162 of 2017 is dismissed.

15.The appellant shall deposit the entire modified award amount, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited. On such deposit, the major claimants are permitted to withdraw their share in the award amount with proportionate accrued interest and costs as per the ratio of apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

The Additional District and Special Judge,
Motor Accidents Claims Tribunal-cum-
Additional District and Special Court,
Pudukkottai.

COPY TO:
The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.R.Devaraj, Advocate SR.No. 83153
+1cc to Special Government Pleader, SR.No. 83144

C.M.A(MD)Nos.161 & 162 of 2017
20.10.2017

am
JM/SV MMS/SAR 3/09.03.2018/4P/6C