



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2017

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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.M.A. (MD) No.1288 of 2015
and

M.P. (MD) No.2 of 2015 and C.M.P. (MD) No.249 of 2016

The Superintendent of Police,
O/o. Superintendent of Police,
Sivagangai District.

: Appellant/Respondent -I

Vs.

1.P.Selvi
2.P.Kamatchi
3.P.Meenakshi
4.R.Ravindran
5.Kandeeeparajangam

: Respondents 1 to 3/Claimants

: Respondents 4 & 5/Respondents 2 & 3

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the order dated 19.02.2015 in M.C.O.P.No.34 of 2011 on the file of the Motor Accident Claims Tribunal, Sivagangai (District Court, Sivagangai).

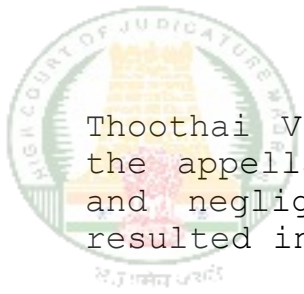
For Appellant : Mr.S.Chandrasekar,
Government Advocate
For Respondents 1to3 : Mr.N.Madhava Govindan
For Respondent No.4 : Mr.D.Senthil

J U D G M E N T

[Judgment of the Court was delivered by R.SUBBIAH, J.]

This appeal has been filed by the Superintendent of Police, Sivagangai District, as against the order dated 19.02.2015, made in M.C.O.P.No.34 of 2011, passed by the Motor Accident Claims Tribunal -cum- District Court, Sivagangai,, awarding a sum of Rs.17,00,000/- as compensation as against the claim of Rs.20,00,000/- made by the respondents 1 to 3 herein, who are the claimants before the Tribunal.

2. The first respondent is the wife of the deceased Panchavarnam and the second and third respondents are the son and daughter of the deceased respectively. The case of the respondents 1 to 3 is that on 10.09.2010, when the first respondent's husband was driving his motorcycle bearing Registration No.TN-63-F-4017 near



Thoothai Vilakku, at about 10.30 p.m., another vehicle owned by the appellant bearing Registration No.TN-63-G-0358 came in a rash and negligent manner and dashed against the deceased, which resulted in the death of the deceased.

3. So far as the quantum of compensation is concerned, it is the case of the respondents 1 to 3 before the Tribunal that the deceased was working as a Special Sub-Inspector of Police and earning income of Rs.22,670/- per month. Thus, on that basis, the respondents 1 to 3, as legal heirs of the deceased, claiming a sum of Rs.20,00,000/- as compensation, have filed the Claim Petition.

4. In order to prove the claim on the side of the claimants, the son of the deceased examined himself as P.W.1, besides examining two other witnesses as P.Ws.2 and 3 and 7 documents were marked as Exs.P.1 to P.7. On the side of the appellant, the driver of the vehicle was examined as R.W.1. The Tribunal, after analyzing the entire evidence available on record, has come to the conclusion that the accident had happened only due to rash and negligent driving of the appellant vehicle. Thus, by coming to such a conclusion, the Tribunal has calculated the compensation and passed an Award for a sum of Rs.17,00,000/-.

5. Hence, aggrieved over the same, the present appeal has been filed by the appellant challenging the finding rendered by the Tribunal with regard to the rash and negligent aspect as well as the quantum of compensation.

6. So far as the rash and negligent aspect is concerned, it is the contention of the learned counsel for the appellant that the deceased alone is responsible for the accident, since he was driving his two wheeler in a rash and negligent manner. Thus, the learned counsel contended that the driver of the appellant cannot be held responsible for the accident.

7. We have carefully gone through the entire materials available on record, more particularly, counter filed by the appellant before the Tribunal. In the counter, they have not put forth any specific case with regard to the rash and negligent aspect. Simply, they have denied the case of the claimants stating that the driver of the appellant is not responsible for the accident. Moreover, we find that the driver of the appellant was examined as R.W.1, whose evidence is self-interested one. Therefore, in the absence of any corroboratory piece of evidence to support the evidence of R.W.1, we do not find any infirmity in the finding rendered by the Tribunal with regard to the rash and negligent aspect, by rejecting the evidence of R.W.1. Therefore, no case is made out by the appellant with regard to rash and negligent aspect.

8. So far as the quantum of compensation is concerned, it is the grievance of the appellant that the Pay Certificate produced on the side of the claimants, viz., Exs.P.5 and P.7 would show that the



deceased was earning only a sum of Rs.22,670/- per month, whereas the Tribunal has taken a sum of Rs.25,000/- as monthly income contrary to the documents produced by the claimants. Thus, it is contended by the learned Government Advocate that the amount awarded under the head of loss of income has to be reduced.

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9. Keeping in mind the submissions made on either side, we have gone through the reasoning given by the Tribunal in its order and we find that the Tribunal, by giving a specific finding that had the deceased continued in service upto his retirement, he would have got increment and Dearness Allowance upto Rs.3,000/- and thereby, added another sum of Rs.3,000/- along with the monthly income of Rs.22,670/- and fixed a sum of Rs.25,000/- as monthly income and thus, his annual income comes to Rs.3,00,000/-. Out of this, one third amount has to be deducted towards the personal expenses of the deceased and thus, the actual loss of income comes to Rs.2,00,000/-. Furthermore, on perusal of the Award passed by the Tribunal, we find that the Tribunal has correctly rendered a finding that the deceased died at the age of 55 years and he is having three years service. Therefore, by taking a sum of Rs.25,000/- as monthly income and by applying the multiplier '3' and after deducting one third towards the personal income of the deceased, the total loss of income comes to Rs.6,00,000/-. The Tribunal also had gone into the fact that after retirement, the claimants would get pension amount and the Tribunal fixed a sum of Rs.15,000/- as monthly pension to the claimants and thus, the yearly pension would come to Rs.1,80,000/- and after deducting one third towards his personal expenses, the actual loss of pension would come to Rs.1,20,000/-. By applying the multiplier '8', the total loss of pension comes to Rs.9,60,000/-. Hence, the claimants are entitled to Rs.15,60,000/- [Rs.9,60,000/- + Rs.6,00,000/-] towards loss of income. Apart from that, the Tribunal has awarded Rs.60,000/- towards loss of love and affection, Rs.50,000/- towards loss of consortium, Rs.15,000/- for funeral expenses and Rs.15,000/- towards loss of estate and thus, passed an award for a sum of Rs.17,00,000/-. Absolutely, we do not find any infirmity in the calculation made by the Tribunal.

10. We are of the opinion that the calculation made by the Tribunal is well within the principles laid down by the Hon'ble Supreme Court as well as by this Court in various judgments. Therefore, we do not find any reason to reduce the amount awarded passed by the Tribunal as compensation. Finding no merit, the appeal filed by the appellant is dismissed, directing the appellant to deposit the compensation amount, after deducting the amount already deposited by them. On such deposit, the claimants are permitted to withdraw their respective shares. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/

Assistant Registrar(CS-II)



To

The Motor Accident Claims Tribunal,
Sivagangai (District Court, Sivagangai).

COPY TO:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/S.N.Madhava Govindan, Advocate, SR.No. 4066

+1CC to M/S.V.Selva, Advocate, SR.No. 4408

+1CC to the Special Government Pleader, SR.No. 4488

Order made in
C.M.A. (MD) No.1288 of 2015

Dated:
25.01.2017

SML

KK/PM PN/17.02.2017/4P/6C