



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2017

CORAM:

WEB COPY

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

C.M.A(MD) No.401 of 2017

1.Thilagavathi
2.P.Arunkumar
3.Minor P.Ram Praveen : Appellants / Petitioners
(Rep. by his mother and natural
guardian the 1st appellant)

Vs.

1.Gurunathan
2.M/s.New India Assurance Company Ltd.,
Rep. by its Divisional Manager,
Door No.248-B, Kamarajar Salai,
Rekha Towers II Floor,
Madurai District.
3.Chellammal : Respondents/ Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 14.09.2016 passed in M.C.O.P.No.667 of 2014 on the file of Motor Accident Claims Tribunal, VI Additional District Judge, Madurai, in so far as the quantum of compensation is concerned.

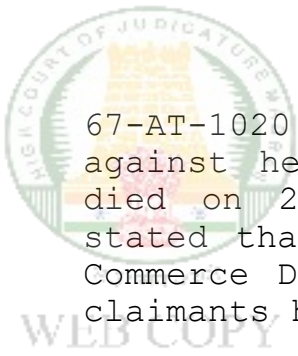
For Appellants : Mr.R.Subramanian
For R-1 : No Appearance
For R-2 : Mr.J.S.Murali
For R-3 : Mr.P.T.Ramesh Raja

JUDGMENT

(Judgment of the Court was delivered by K.KALYANASUNDARAM,J.)

The claimants in M.C.O.P. No.667 of 2014 being not satisfied with the compensation awarded by the Motor Accident Claims Tribunal (VI Additional District Judge), Madurai, preferred this appeal seeking enhancement of compensation.

2.The brief facts of the case are that the legal-heirs of the deceased R.Pandi, who died in a motor vehicle accident on 25.11.2013, filed a petition claiming compensation of RS.1,50,00,000/- on the ground that when the first claimant and the deceased R.Pandi were taking morning walk, a Car bearing Reg.No.TN-



67-AT-1020 driven by its driver in a rash and negligent manner, hit against her husband. Due to the injuries sustained, the deceased died on 28.11.2013 at the hospital. The claimants have further stated that the deceased was working as an Assistant Professor in Commerce Department in Government Arts College, Paramakudi and the claimants have lost their only bread winner.

3. Resisting the claim petition, the respondents pointed out that the deceased himself invited the accident and therefore, they are not liable to pay the compensation. They have also stated that the claim is exorbitant and excessive.

4. The tribunal, upon consideration of the evidence, adduced by the parties fixed negligence on the driver and the deceased at the ratio of 70:30 respectively. Challenging the award, the present appeal has been filed.

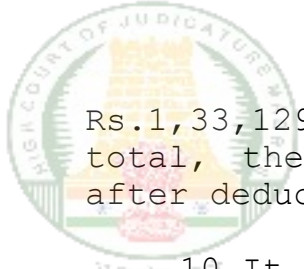
5. Heard Mr. M. Saravanan, learned Counsel for the appellants and Mr. J. S. Murali, learned Counsel for the second respondent and Mr. P. T. Ramesh Raja, learned Counsel for the third respondent and perused the materials available on record.

6. Before the tribunal, PW1, in her evidence has stated that on 25.11.2013 at about 5.30 a.m., she was walking behind her deceased husband, keeping extreme left side of the road, a speedy Car dashed against her husband. In the course of her evidence, she admitted that at the time of accident, many persons were walking on the road. A perusal of Ex.R2 would reveal that mud was dumped on the left side of the road, therefore, the deceased came to the middle of the road and invited the accident.

7. PW1 has further stated that the deceased was drawing salary of Rs.1,15,875/- per month. Ex.P18 - Salary Certificate and Ex.P19 - PAN Card establish that the deceased was born on 07.11.1959 and he died at the age of 54 years. There is no dispute that the claimants are legal-heirs and Ex.P7 the legal-heirs certificate issued by the authorities confirms the same.

8. It is not in dispute that the deceased was having four years of service before his retirement. Ex.P18 salary certificate shows that the deceased was drawing Rs.1,15,875/- per month and the annual income comes to Rs.13,90,500/- (Rs.1,15,875/- x 12). After making deductions, the contribution was taken towards income tax, educational cess and additional cess of Rs.2,78,100/-, the contribution comes to Rs.11,12,400/- per annum. After deducting $\frac{1}{4}$ th towards personal expenses and by adopting multiplier 11, the tribunal has awarded Rs.91,77,300/- towards loss of dependency.

9. The Tribunal has further awarded Rs.50,000/- towards loss of consortium, Rs.75,000/- towards loss of love and affection, <https://hcservices.reports.gov.in/hcservices/> Rs.10,000/- towards funeral expenses, Rs.10,000/- towards transportation and Rs.1,000/- towards loss of articles and



Rs.1,33,129/- towards medical expenses as per Exs.P25 and P26. In total, the tribunal has awarded Rs.94,56,430/- (rounded off) and after deducting 30% towards negligence, awarded Rs.66,19,500/-.

10.It is contended by the learned Counsel for the appellants that the tribunal was not right in fixing 30% negligence on the deceased. According to the learned Counsel for the appellants, Ex.P9 - Mahazar shows that there was no mud deposited on the road and therefore, the finding of negligence on the deceased is liable to be set aside.

11.Per contra, Mr.J.S.Murali, learned Counsel for the second respondent pointed out that PW1 is an eye-witness to the occurrence and the tribunal, after elaborately considering the evidence of the eye-witness, has rightly come to the conclusion that the deceased has also contributed to the accident.

12.In the instant case, as stated supra, in the evidence, PW1 has admitted that she was walking behind the deceased and other general public were also walking on the same direction. The tribunal, in proper appreciation of the evidence of PW1 and other documentary evidence, in our view, rightly fixed 30% negligence on the deceased. Therefore, we do not find force in the contention of the learned counsel for the appellants. As regards quantum, in our considered view, the compensation appears to be reasonable, warranting no interference of this court.

13.In the result, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal - cum -
VI Additional District Judge, Madurai.

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

+One cc to Mr.R.Subramanian, Advocate, SR.No.85545

+One cc to Mr.J.S.Murali, Advocate, SR.No.85612

gk

RL/5C/3P/KKR/SAR1/23/1/2018

C.M.A(MD) No.401 of 2017