



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

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

CMA (MD) No.265 of 2016

1.P.Valliammal
2.P.Sivasubramanian
3.P.Adalarasan ... Appellants / Petitioners.

/Vs./

1.Dr.Bharathi Kannan
2.Iffco Tokiyo Genral Insurance Company Ltd.,
Iffco Tower, Plot No.3,
Sector 29, Gurgaon,
Hariyana-122 001.
3.Iffco Tokiyo Genral Insurance Company Ltd.,
Door No.335-1-A, V.V.Complex,
North Bye Pass Road, Vannapettai,
Tirunelveli. ... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act 1988 against the judgment and decree, dated 08.12.2015 passed in M.C.O.P.No.311 of 2012 by the learned Principal District Judge, Thoothukudi.

For Appellants : Mr.L.Robert Chandrakumar

For R-1 : Mr.S.Muthalraj

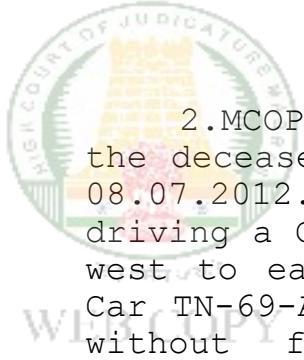
For R-2 : Mr.G.Maruthiah

For R-3 : No appearance

J U D G M E N T

(Judgment of this court was made by K.KALYANASUNDARAM, J.)

The claimants have preferred this appeal against the judgment and decree passed in MCOP No.311 of 2012 by the learned Principal District Judge, Thoothukudi, seeking enhancement of compensation.



2.MCOP No.311 of 2012 was filed by the wife and the children of the deceased Perumpadaiyan, who died in a motor vehicle accident on 08.07.2012. According to the claimants, when the deceased was driving a Car TN-72-K-2711 on Tuticorin-Palayamkottai main road from west to east direction and proceeding near Mangalagiri Vilakku, a Car TN-69-AK-6364, which was driven by the driver in a high speed, without following the rules, dashed against the deceased. Unfortunately, the deceased died on the way to a hospital. A criminal case in Crime No.176 of 2012 was registered against the driver of the Car by the Pudukottai Police station.

3.The claimants have further stated that the deceased was doing agriculture and also doing business of water supply and real estate, thereby, earning Rs.40,000/- per month and due to the death, they lost their breadwinner and therefore, they are entitled for Rs.40,00,000/- as compensation.

4.The claim was resisted by the respondents Insurance Company, by contending that the accident was due to the negligence of the deceased. Further, the deceased had no valid license to drive the Car and he was a drunkard. Since, the deceased drove the vehicle in an inebriated mood, he lost control of the vehicle and dashed against the offending vehicle. Hence, they are not liable to be pay compensation.

5.The tribunal, after analyzing the evidences, both oral and documentary, came to the conclusion that the driver of the Car caused the accident and awarded compensation of Rs.2,03,000/- along with interest @ 7.5% p.a. As stated above, this appeal has been preferred seeking enhancement of compensation. So, this court need not elaborate on the other aspects.

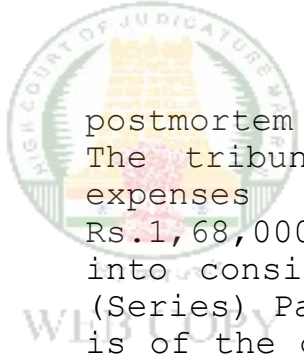
6.Mr.L.Robert Chandrakumar, learned counsel for the appellants submitted that the award amount is very meagre and the tribunal has erroneously fixed the monthly income of the deceased at Rs.3,000/-.

7.Per contra, the learned counsel for the respondents argued that the award is reasonable and prayed for dismissal of the appeal.

8.We have heard the rival submissions made on either side and perused the materials available on record.

9.The wife of the deceased deposed before the tribunal that her husband was earning Rs.40,000/- per month and to substantiate her claim Ex.P8 Certificate issued by the Commercial Tax Department, Ex.P9 Pass Book issued in favour of Velmurugan Minerals and Ex.P10 R.C book of the vehicle TN-69-2634, Ex.P11 RC book of the vehicle TN69-2650 were produced. The tribunal, taking note of the fact that they were standing in the name of the son of the deceased, rejected the same and fixed notional income at Rs.3,000/- per month.

10.PW1 has further deposed that the deceased was 58 years old at the time of the accident, but the tribunal based on Ex.P2,



postmortem certificate, fixed the age of the deceased as 61 years. The tribunal, after deducting 1/3rd towards personal and living expenses therefrom and by applying multiplier '7', awarded Rs.1,68,000/- towards loss of dependency. The tribunal has not taken into consideration the income from the agriculture as per Ex.P14 (Series) Patta and sale deed. In view of the above facts, this Court is of the opinion that the income of the deceased could be fixed as Rs.8,000/- per month and after deducting 1/3rd for his personal expenses therefrom and by applying multiplier '7', calculated the loss of dependency as Rs.4,48,000/- (Rs.5,333.33/-x 12 x 7). The tribunal has awarded Rs.5,000/- towards funeral expenses. In our considered view, it is a very meagre amount and it has to be enhanced Rs.15,000/-. The tribunal has not awarded any amount towards loss of consortium and Rs.40,000/- is awarded towards loss of consortium. The award amount of Rs.30,000/- towards love and affection to all three claimants is confirmed. In total, the claimants would be entitled for Rs.5,33,000/- along with interest @ 7.5% p.a.

11. In the result, the appeal is partly allowed as indicated above. The first and second respondents are directed to deposit the modified award amount, less already deposited, within a period of eight weeks from the date of receipt of a copy of the judgement. On such compliance, the claimants are permitted to withdraw their share as apportioned by the tribunal. No costs.

Sd/-

Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

1. The learned Principal District Judge,
Thoothukudi.

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

+One cc to Mr. L. Robert Chandrakumar for M/s. G. Prabhu Rajadurai,
Advocate, SR.No.87577

+One cc to Mr. G. Maruthiah, Advocate, SR.No.87874
sm/er

RL/6C/3P/KKR/SAR1/6/2/2018

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