



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.726 of 2017

1.Panchavarnam
2.Vimal
3.Selvalakshmi

... Appellants/Claimants

Vs.

1.M.Saravanan

2.M/s. Shri Ram General Insurance Company Ltd.,
Represented by its,
Divisional Manager, Divisional Office,
30 H.A.K. Road,
Nearby ICICI Bank Ltd.,
Chinna Chockikulam,
Madurai -625 002.

... Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1778 of 2011 dated 04.02.2015 by the learned District and Sessions Judge (for communal clashes case Court-MACT), Madurai.

For Appellant	: Mr.A.Theethar
For R-1	: No appearance
For R-2	: Mr.D.Sivaraman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the judgement and decree in M.C.O.P.No.1778 of 2011 dated 04.02.2015 by the District and Sessions Judge (for communal clashes cases Court-MACT), Madurai.

2.It is a case of a fatal accident, which took place on 08.05.2011 at 17.00 hrs, near Katchaikatti Muslim Tomb on Palamedu to Vadipatty.

3 It is the case of claimants before the Tribunal that on the date of accident, when the deceased V.S.Selvarajan was riding a two wheeler bearing Registration No.TN-59 K-4329, the driver of the vehicle bearing registration No.TN-57 L-6012, drove the vehicle in a rash and negligent manner and dashed against deceased, due to which the deceased sustained multiple grievous injuries all over his body and died on 10.05.2011.



4.The claimants filed an application in M.C.O.P.No.1778 of 2011 on the file of the Motor Accident Claims Tribunal/ District and Sessions Judge (for communal clashes case Court-MACT), Madurai, seeking compensation.

5.Before the Tribunal, the appellants/claimants examined three witnesses as P.W.1 to P.W.3 and marked eleven documents as Ex.P.1 to Ex.P.11. On the side of the respondents two witnesses were examined as R.W.1 and R.W.2 and four documents were marked as Ex.R.1 to Ex.R.4.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle and therefore directed the second respondent to pay a sum of Rs.4,74,000/-, as compensation to the claimants and recover the same from the first respondent.

7. Against which, the appellants/claimants filed this present appeal seeking enhancement of compensation.

8.The learned counsel for the appellants/claimants would submit that the Tribunal has erred in fixing the income of the deceased as Rs.4,500/-, when it has admitted that the deceased was getting a monthly pension of Rs.10,381/-. The compensation awarded under the other heads are also on lower side and therefore, the compensation awarded by the Tribunal has to be enhanced.

9.The learned counsel appearing for the second respondent submitted that the Tribunal has failed to note that the deceased was a pensioner and even after his demise, his family would receive the family pension, hence, there is no question of loss of income.

10. This Court heard the submissions made on either side and perused the materials available on record.

11.This Court is of the view that the deceased being pensioner, his family is entitled for family pension and therefore they cannot be granted any compensation towards loss of income. Therefore, the loss of income awarded by the Tribunal is set aside. However, this Court is also of the view that the compensation awarded by the Tribunal under others heads are very low. The Tribunal has awarded Rs.30,000/- towards loss of consortium and the same is enhanced to Rs.1,00,000/-. The Tribunal has awarded Rs.90,000/- towards loss of love and affection and considering the age and number of claimants, the same is enhanced to Rs.2,00,000/-. Tribunal has awarded Rs.5,000/-towards transportation and this Court enhances the same to Rs.25,000/-.It is submitted that the accident had occurred when the deceased was in service and hence he lost his two months salary as he was undergoing treatment during the above period. Considering the same Rs.42,000/- is granted towards loss of income during the

treatment period. The compensation awarded under other heads are confirmed.

12. This Court modifies the award of the Tribunal by reducing the compensation, as under:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	3,24,000	--	Set aside
2.	Loss of consortium	30,000	1,00,000	Enhanced
3.	Loss of love and affection	90,000	2,00,000	Enhanced
4.	Funeral expenses	25,000	25,000	Confirmed
5.	For Transportation	5,000	25,000	Enhanced
6.	Loss of income (during treatment)	--	42,000	Awarded
	Total	4,74,000	3,92,000	By reducing Rs.82,000/-

13. In the result,

(i) This Civil Miscellaneous Appeal is dismissed by reducing the award of the Tribunal from Rs.4,74,000/- (Rupees Four lakhs seventy four thousand only) to a sum of Rs.3,92,000/- (Rupees Three lakhs and ninety two thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The second respondent/ Insurance Company directed to deposit the entire award amount with accrued interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw their respective shares, with accrued interests and costs, as apportioned by the Tribunal without filing any formal application before the Tribunal. The second respondent/Insurance Company is permitted to withdraw the excess amount, if any. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

/True Copy/



To,

The District and Sessions Judge
(for communal clashes case Court-MACT),
Madurai.

Copy to:-

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

+One cc to Mr.D.Sivaraman, Advocate, SR.No.79945

dsk
RL/4C/4P/KP/SAR2/14/12/2017

C.M.A(MD) No.726 of 2017

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