



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2017

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.92 of 2014

1.S.Petchiammal
2.S.Jegannathan
3.S.Marimuthu
4.S.Ulagamatha
5.Radha Devi

(The claim petition is
dismissed as against the
5th petitioner/claimant)
Vs.

... Appellants/claimants

1.G.Sevugan
2.S.Thangasamy
3.The Branch Manger,
National Insurance Company,
7/1, first floor, West Car Street,
Sivakasi Taluk.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this CMA by setting aside the order and decree dated 16.10.2012 made in MCOP.No.16 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Srivilliputhur.

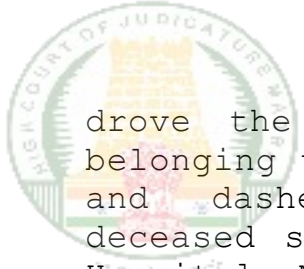
For Appellants : Mr.M.Thirunavukkarasu
For R-1 & R2 : No Appearance
For R-3 : MrJ.S.Murali

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award of the Motor Accident Claims Tribunal (Sub Court), Srivilliputhur , passed in M.C.O.P.No. 16 of 2009, dated 16.10.2012.

2. It is the case of a fatal accident which took place on 01.01.2006 at about 7.15 hours on Srivilliputhur - Sivakasi Main road near Veterinary hospital.

3. It is the case of the claimants before the Tribunal that ~~the driver of the bus~~ S.Subbaiah along with first and second petitioners was waiting in the Sithalamputhur Bus stop, near Veterinary hospital for bus. At that time the first respondent



drove the Maruthi van bearing Registration No. N- 67 R-1027, belonging to the second respondent, in a rash and negligent manner and dashed on the deceased. As a result of the accident, the deceased sustained Multiple grievous injuries and died in Rajaji Hospital, Madurai.

4. The claimants filed application in M.C.O.P.No.16 of 2009 on the file of the Motor Accident Claims Tribunal/ Sub Court, Srivilliputhur, seeking compensation.

5. Before the Tribunal, the appellants/claimants examined two witnesses as P.Ws.1 and 2 and marked fifteen documents as Ex.P.1 to Ex.P.14 and the respondents, have examined D.W.1 and marked Ex.D.1.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that 80 % of contributory negligence on the first respondent and 20% of contributory negligence on the deceased and therefore directed the third respondent to pay a sum of Rs.1,48,000/- to the claimants as compensation.

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

8. The learned counsel appearing for the third respondent/ Insurance Company submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference.

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

10. The learned counsel for the appellants/claimants would submit that while calculating income of the deceased, the Tribunal has not added 50% towards future prospects. He would further submit that under the heads of loss of consortium, loss of love and affection and for funeral expenses the amounts awarded by the Tribunal are on lower side and therefore, the compensation awarded by the Tribunal is to be enhanced.

11. The deceased age was 60 at the time of accident and the Tribunal rightly fixed monthly income at Rs.3000/- and if 50% of future prospects added, the monthly income would be Rs.4500/- and after $\frac{1}{4}$ th deduction Rs.3,375/- would be the monthly income and by adopting multiplier 7, the total loss of income would come to Rs.2,83,500/- (Rs.3375 X 7 X 12). The loss of consortium is increased from Rs.25,000/- to Rs.50,000/- and loss of love and affection from Rs.30,000/- to Rs.60,000/- and the Funeral expense is enhanced from Rs.10,000 to Rs.20,000/-.

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

S.No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1.	Loss of income	1,20,000	2,83,500	enhanced
2.	Loss of consortium to the first claimant	25,000	50,000	enhanced
3.	Loss of love affection to P1 to P4	30,000	1,00,000	enhanced
4	Funeral expenses	10,000	20,000	enhanced
	Total	1,85,000/-	4,53,500	By enhancing Rs.2,68,500

13. In the result,

(I) The Civil Miscellaneous Appeal is allowed, by enhancing the award of the Tribunal from Rs.1,85,000/- (Rupees one lakh and eighty five thousand only) to a sum of Rs.4,53,500 /- (Rupees four lakhs fifty three thousand and five hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs; Since the contributory negligence of the deceased is calculated at 20 %, the claimants are entitled to 80 % of the compensation only, I.e Rs.3,62,800/-(4,53,500 X80X 1/100) (Rupees three lakhs sixty two thousand and eight hundred only)

(ii) The third respondent/Insurance Company is 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 the respective shares with accrued interests and costs as apportioned by the Tribunal, without filing any formal application before the Tribunal.

(iii) The appellants/claimants are directed to pay necessary additional Court fees, if any, within a period of two weeks from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar



To

The Subordinate Judge,
The Motor Accident Claims Tribunal /
Srivilliputhur.

Copy to:-

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

+One cc to Mr.M.Thirunavukkarasu, Advocate, SR.No.74938

+One cc to Mr.J.S.Murali, Advocate, SR.No.74974

+One cc to Mr.C.Christopher, Advocate, SR.NO.75198

dsk/cm

RL/6C/4P/KP/SAR1/13/11/2017

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28/08/2017