



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.73 of 2015

1.Periyasamy
2.Indira
3.Thalamuthu
4.Kanimozhi

... Appellants/Petitioners

Vs.

1.A.Arul
2.The Branch Manager,
Sriram General Insurance Company
Limited,
Office at D.No.8, Ralco Industrial Area,
Chithapuram, Jaipur,
Rajasthan
(R1 set exparte before Tribunal)

(hence notice may be dispensed with) ... Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 19.12.2012 in M.C.O.P.No.2092 of 2009 on the file of the District and Sessions Judge, Communal Clash Cases Court cum Motor Accident Claims Tribunal, Madurai and set aside the order and to pass an enhanced award of Rs.5,01,000/-.

For Appellant : Mr.R.Pon Karthikeyan

For Respondent : R1 Exparte
Mr.G.Maruthiah for R2

JUDGMENT

The claimants have filed this appeal seeking enhancement of the compensation awarded by the Tribunal.

2.The son of the appellants 1 and 2 herein viz., Silambarasan was travelling in a bus belonging to the first respondent and insured with the second respondent. The accident took place on 04.10.2009. It is alleged that when the deceased stretched his



head out of a van, his head dashed against the electric pole causing his death. This version is found in the police complaint. On this basis, the Tribunal held that contributory negligence must be fixed on the deceased to the extent of 50%. It awarded a sum of Rs.2,25,500/- to the claimants after duly apportioning between them.

3.The learned counsel for the appellant would contend that on the side of the respondents, no evidence was adduced. The driver of the van in question was not examined. Therefore, the Tribunal could not have fastened contributory negligence on the deceased.

4.I find force in the said submission. Merely on the strength of photocopy of the FIR, the Tribunal could not have come to the conclusion that the deceased was at fault equally. Therefore, this Court interferes with the finding of contributory negligence fixed on the deceased. The entire negligence has to be fixed only on the driver employed by the first respondent herein. The Tribunal came to the conclusion that the deceased was earning around Rs.4,500/- per month. Since he was a bachelor, 50% of deduction will have to be made. Considering the age of the parents, multiplier of 13 can be adopted. Therefore, the pecuniary loss is fixed at Rs.2250 x 13 x 12 = Rs.3,51,000/-. A sum of Rs.5,000/- can be awarded towards transport expenses. For funeral expenses Rs.25,000/- can be awarded. Apart from the parents, the brother and sister are also there. Each can be awarded a sum of Rs.10,000/- towards loss of love and affection. Thus, the compensation payable by the second respondent can be reworked as follows:-

Sl.No.	Head	Award Amount in Rs.
1.	Loss of Income	3,51,000
2.	Loss of Love and affection	40,000
3.	Funeral Expenses	25,000
4.	Transport expenses	5,000
5.	Total	4,21,000

5. The compensation awarded to the claimants is enhanced from Rs.2,25,500/- to Rs.4,21,000/- (Rupees Four lakhs and twenty one thousand only). The respondents are directed to deposit the balance of the enhanced amount within 12 weeks from the date of receipt of a copy of this order along with interest @ 7.5.% per annum from the date of petition till the date of realization. The claimants are entitled to withdraw the said amount in the same proportion as fixed by the Tribunal.



6.The Civil Miscellaneous Appeal is partly allowed as indicated above. No costs.

Sd/-

Assistant Registrar(CO)

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/True Copy/

Sub Assistant Registrar

To

1.The District and Sessions Judge,
Communal Clash cases Court,
Motor Accident Claims Tribunal, Madurai

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

+ 1 cc TO Mr.R.Pon Karthikeyan, Advocate in SR No. 83218

Arul

AE/SV MMS/SAR1/21.11.2017/3P/4C

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