



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.11.2017
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.M.A. (MD) No.171 of 2017

- 1.J.Angayarkanni
- 2.T.Jeyarajan (died)
- 3.J.Karthikeyani

4. Amirthasaraswathi
(4th appellant is suo moto
impleaded vide order dated
10.11.2017)

... Appellants

Vs.

1. K.Vijayakumar
2. K.Ilangovan
3. Nadar Saraswathi Arts and Science College
rep.by its Principal,
Door.No.1100, Periyakulam Road,
Theni town, Theni Taluk,
Theni District.
4. The Oriental Insurance Company Ltd,
Rep.by its Branch Manager,
Door No.1024 B, Sree Vijaya Complex,
Opp.to Old Bus stand, Theni Town,
Theni Taluk, Theni District.
5. United India Insurance Company Ltd,
Rep.by its Branch Manager,
Door No.443, Periyakulam Road,
Theni Town, Theni Taluk.

... Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.11.2016 made in MCOP.No.117 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Theni.

For Appellants	: Mr.T.Antony Arul Raj
For Respondents	: Mr.C.Jawahar Ravindran for R4 Mr.B.Rajesh saravanan for R5 No appearance for R1 to R3.

JUDGMENT

Heard the learned counsel for the parties.



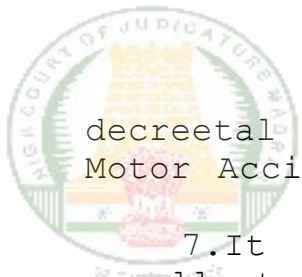
2.The claimants have filed this appeal seeking enhancement of compensation awarded by the Tribunal.

3.Sowmiya, daughter of the first and second appellants and sister of the third appellant was travelling as a pillion rider in the two wheeler which was driven by the second appellant herein on 04.04.2013. When they were waiting for the signal to turn green, the Tractor and trailer belonging to the respondents 1 and 2 herein and insured with the fourth respondent herein was coming from South to North and was being driven in a rash and negligent manner. At the same time, the bus belonging to the third respondent and insured with the fifth respondent herein attempted to over take the tractor. There was a collision between the bus and the tractor. As a result, the tractor dashed against the two wheeler.

4.In the resulting accident, the said Sowmiya died on the spot. F.I.R was registered against the tractor driver as well as the bus driver in Crime No.142/2013 on the file of Thenkarai police station, Periykulam. The same has since been charge sheeted and taken on file in CC.No.136/2014. The said Sowmiya was a student when she died. She was studying in a good school and she was a bright student. The second appellant herein was working as Chief Judicial Magistrate during the relevant time. The deceased child had every prospect making it good in her life. Therefore, seeking compensation for the death of Sowmiya, the appellants herein filed MCOP.No.117 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Theni.

5.The learned Tribunal after a detailed consideration of the material on record, came to the conclusion that the accident occurred on account of the rash and negligent driving of the drivers of the tractor as well as the bus. Negligence was equally fastened on both the drivers. Since both the vehicles were insured with the fourth and fifth respondent herein, liability was equally apportioned between both the insurance companies. Since the deceased was only a student, she must be considered as a non earning member. The Tribunal awarded a sum of Rs.7,50,000/- as compensation.

6.Though this appeal has been filed seeking enhancement of compensation, the learned counsel appearing for the appellants fairly submitted that he is more aggrieved by Clause 5 of the decree. The Tribunal has held that the parents of the deceased are entitled to a sum of Rs.4.50 lakhs. As regards the balance amount of Rs.3.00 lakhs, it was directed to be deposited in a bank account in any nationalised bank and the claimants 1 and 2 were only permitted to withdraw the accrued interest. The parents of the deceased are not minors. Therefore, such a condition ought not have been imposed. I therefore set aside Clause 5 of the



decreetal order made in MCOP.No.117 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Theni.

7.It is now submitted by the learned counsel for the appellants that the father of the deceased also passed away during the pendency of these proceedings. The memo dated 05.06.2017 filed to that effect is taken on record. It is submitted that apart from claimants 1 and 3, the second appellant has one other Class 1 legal heir, namely, Amirthasaraswathi. I *suo moto* implead the said Amirthasaraswathi, mother of the second appellant herein as the fourth appellant. This appeal is accordingly disposed of in the following terms :

(i) The award dated 22.11.2016 made in MCOP.No.117 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Theni is confirmed as regards the quantum of compensation is concerned.

(ii) Clause 5 of the decree restraining the claimants from withdrawing the sum of Rs.3.00 lakhs out of the compensation amount alone is set aside.

(iii) The learned counsel appearing for the insurance company submitted that the entire amount has been deposited.

(iv) The Tribunal is hereby directed to transfer the entire compensation amount by RTGS to the account of the first appellant herein namely, Angayarkanni, Account No.3694597486, State Bank of India, Thevaram Branch immediately. The first appellant Angayarkanni is directed to take a Demand Draft for a sum of Rs.1,00,000/- in the name of Amirthasaraswathi, fourth appellant herein and pay the same to her under due acknowledgment within a period of four weeks thereafter.

(v) The first appellant is directed to file compliance report in the Registry enclosing the photocopy of the Demand Draft together with receipt issued by the mother of the second appellant herein.

8.This Civil Miscellaneous Appeal is partly allowed with the above directions. No costs.

Sd/-

Assistant Registrar(T&P)

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Sub Assistant Registrar



To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Theni.

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

3. The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.
(for verifying the compliance report)

+1cc to Mr.B.Rajesh saravanan, Advocate Sr.No.86398
+1cc to Mr.T.Antony Arul Raj, Advocate sr.No.86617
+1cc to Mr.C.Jawahar Ravindran, Advocate Sr.No.86591

SKM

VB/MR/SAR2/02/01/2018/4P/7C

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