



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 1405 of 2013

1.S.Kalaiselvi
2.Minor. S.Sivasankari
3.K.Vijayalakshmi
4.K.Krishnamoorthy
(Minor 2nd petitioner represented
by her natural guardian and mother
1st petitioner) ... Appellants /Petitioners

Vs.

1.R.Karthikeyan
2.IFFCO TOKIO General Insurance Company Ltd., Tulsi Tower,
3rd Floor, 195, T.V.S.Swami Road, (West),
R.S.Puram, Coimbatore.
3.Hebrert Anthony Abraham
4.Iffco-Tokio General Insurance Company Ltd.,
41, 2nd Floor,
Next to Mandavi Motors,
Cristu Complex, Lavelle Road,
Bangalore. ... Respondents/ Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.209 of 2010 on the file of the Motor Accidents Claims Tribunal (District Judge), Karur, dated 16.04.2012.

For Appellants :Mr.T.Selvakumaran
For R1 :No Appearance
For R2 and R4 :Ms.K.R.Shivashankari
for Mr.S.Srinivasa Raghavan
For R3 :R.Arvind Raj

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants against the Judgment and Decree made in M.C.O.P.No.209 of 2010 on the file of the Motor Accidents Claims Tribunal (District Judge), Karur, dated 16.04.2012.



2.The case of the claimants before the Tribunal is that on 25.04.2010 at about 12.45 mid day in Karur to Salem NH-7 bye pass road opposite to Hotel Dolphine, the driver of a tipper lorry bearing registration No.TN 47 J 7215 drove the said lorry in a rash and negligent manner from South to North and turned towards right side and dashed against the victim Senthil Kumar, who was proceeding in his motor cycle bearing registration No.TN 47 M 4365 in the same direction, from behind the said lorry. As a result of which, the victim was fell down on the nearer Salem to Karur road. At that time, the driver of Qualiz car bearing registration No.KA 01 7 1062 drove the said Qualiz in a rash and negligent manner from North to South and dashed against the victim. Due to that, the victim sustained multiple grievous injuries in his body and died on the spot. The claimants filed an application in M.C.O.P.No.209 of 2010 on the file of the Motor Accidents Claims Tribunal (District Judge), Karur,, seeking compensation.

3.Before the Tribunal, the claimants examined four witnesses as P.Ws.1 to 4 and marked sixteen documents as Ex.P.1 to Ex.P.16. The respondents did not let in any oral or documentary evidence.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellants and the respondents and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the lorry, which is insured with the second respondent and directed the the second respondent/Insurance Company to pay a sum of Rs.9,40,000/-, as compensation.

5.Against which, the appellants/claimants have filed this present appeal for enhancement.

6.The learned counsel appearing for the second respondent/ Insurance Company contended that the Tribunal awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is to be dismissed.

7.The learned counsel for the appellants/claimants by relying upon the Judgement of this Court in **SYED SADIQ v. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD.**, reported in **2014 (1) TN MAC 459**, would submit that the Tribunal has not considered the future prospects and that the same may be granted.

8.Heard the learned counsel appearing on both sides and perused the materials available on record.



9. Based upon the Judgement of this Court reported in **2014 (1) TN MAC 459 (stated supra)**, 50% of the income is taken for future prospects, which comes to Rs.10,167/- (Rs.6778/- + Rs.3389/-). After deducting 1/3 towards his personal expenses, the monthly income of the deceased would come to Rs.6,778/-. If 15 multiplier is adopted, the loss of income would come to **Rs.12,20,040/- (Rs.6,778/- x 12 X 15)**.

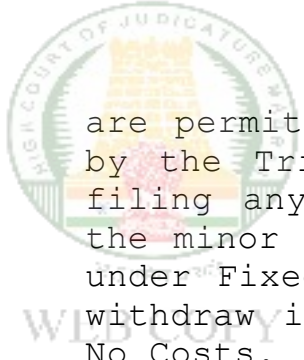
10. The Tribunal awarded Rs.10,000/- (Rupees Ten thousand only) towards loss of consortium and since the same is very low, this Court awards **Rs.1,00,000/- (Rupees one lakh only)**. The Tribunal has also awarded a sum of Rs.10,000/- for the wife and daughter each towards love and affection and the same is hereby enhanced to **Rs.1,00,000/-** and a sum of Rs.7,500/- each awarded for the parents towards love and affection is enhanced to **Rs.1,00,000/-**. The Tribunal awarded a very meagre amount of Rs.10,000/- (Rupees ten thousand only) for funeral expenses and therefore, the same is enhanced to **Rs.25,000/- (Rupees twenty five thousand only)**.

11. Total compensation is awarded in the following manner:

Heads	Amount
Loss of income	Rs. 12,20,040/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection for the wife and daughter	Rs. 1,00,000/-
Loss of love and affection for the parents	Rs. 1,00,000/-
Funeral Expenses	Rs. 25,000/-
Total	Rs. 15,45,040/- rounded off to Rs.15,45,000/-

But in the appeal, the appellants/claimants have restricted their claim to Rs.5,00,000/-. Hence, the appellants/claimants are entitled to a sum of Rs.14,40,000/- (Rs.9,40,000/- + Rs.5,00,000/-).

12. In the result, this Civil Miscellaneous Appeal is partly allowed enhancing the award of the Tribunal from **Rs.9,40,000/-** (Rupees Nine Lakhs Forty Thousand only) to a sum of **Rs.14,40,000/-** (Rupees Fourteen lakhs Forty 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 and the award made in M.C.O.P.209 of 2010 dated 16.04.2012, on the file of the Motor Accidents Claims Tribunal (District Judge), Karur, is modified as above. The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the major claimants



are permitted to withdraw their respective shares, as apportioned by the Tribunal, with proportionate interests and costs without filing any formal application before the Tribunal. The share of the minor shall be deposited in any one of the nationalized banks under Fixed Deposit. The first claimant/mother of the minor shall withdraw interest once in three months till she attain majority. No Costs.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To,

- 1.The District Judge,
Motor Accidents Claims Tribunal, Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,Madurai.

+1cc to M/S.T.SELVA KUMARAN, Advocate SR.No.73584
+1cc to M/S.S.SRINIVASA RAGHAVAN, Advocate SR.No.73748

rj2
MAS/MR-KKR/SAR4:03.11.2017:4P-5C

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