



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2017

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1857 of 2013

1.Lakshmi
2.Uchimahali
3.Minor Esakkimuthu
4.Minor Subbulakshmi
5.Parvathi
(Mionr appellants through their
brother and next guardian
2nd petitioner herein)

... Appellants /Petitioners

Vs.

1.Gurusamy

2.Tata Aig General Insurance Company Ltd.,
Through its Branch Manager,
Peninsula Corporate Park,
Priamal Tower,
9th Floor, Ganpatrao Kadam Marg,
Lower Parel,
Mumbai-400 013.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 22.11.2012 made in M.C.O.P.No.665 of 2012 on the file of the Motor Accidents Claims Tribunal /(III Additional District and Sessions Judge), Tirunelveli.

For Appellant :Mr.T.Selvakumaran

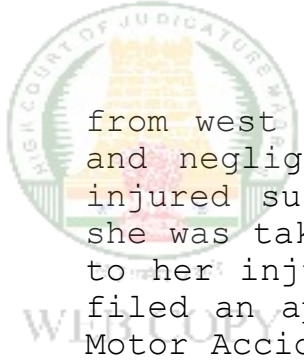
For R-2 :Mr.K.R.Shivashankari
for Mr.S.Srinivasa Raghavan

For R-1 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the Judgment and decree dated 22.11.2012 made in M.C.O.P.No.665 of 2012 on the file of the Motor Accidents Claims Tribunal /(III Additional District and Sessions Judge), Tirunelveli.

2. It is the case of the injured/claimant before the Tribunal that on 25.04.2012, at about 6.45 a.m., when the deceased was walking from West to East on Mukkudal-Pettai main road at Nadukallur, a motorcycle bearing registration No.TN 72 L 9253 belonging to the 1st respondent insured with the 2nd respondent came



from west to east just behind the deceased in a high speed rashly and negligently and hit the deceased, as a result of which, the injured sustained grievous injuries over the head and immediately she was taken to TVMC Hospital at Palayamkottai, where she succumbed to her injuries later on the same day itself. Hence, the claimants filed an application in M.C.O.P.No.665 of 2012, on the file of the Motor Accidents Claims Tribunal/III Additional District and Sessions Judge, Tirunelveli, seeking compensation.

3.Before the Tribunal, the claimants examined three witnesses as P.Ws.1 to 2 and marked four documents as Ex.P.1 to Ex.P.4. The respondents did not let in any oral or documentary evidence before the Tribunal.

4.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 first respondent and therefore, held that the first and second respondents are jointly and severally liable to pay compensation of Rs.4,90,000/-.

5.Against which, the appellant/claimant filed this present appeal seeking enhancement of compensation.

6.The learned counsel for the appellants/claimants would submit that the deceased was doing agriculture coolie work and thereby was earning a sum of Rs.7,500/- p.m., but the Tribunal has fixed her annual notional income only as Rs.4,500/-. The Tribunal has awarded a meager amount towards loss of love and affection and the compensation awarded under the other heads are also lower side and therefore, the appellants have filed this appeal seeking enhancement of compensation.

7.On the other hand, the learned Counsel for the respondent submitted that the Tribunal has considered all the materials on record and awarded the just compensation. Further, he submitted that there is no reason to enhance the compensation awarded by the Tribunal and hence, he prays for the dismissal of this Civil Miscellaneous Appeal.

8.Heard the learned Counsel appearing for the appellants/claimants and the learned Counsel appearing for the respondent and perused all the materials available on record.

9.Though the claimants have not produced any documentary proof with regard to the income of the deceased, considering the nature of her work that she was agriculture work, I am of the view that the Tribunal has rightly fixed notional income of the deceased, as Rs.4,500/- p.m. and the annual income would come to Rs.54,000/- and after deducting 1/4th for her personal expenses, her annual income would come to Rs.40,500/-. If 11 multiplier is adopted, it works

out to Rs.40,500 x 11 = **Rs.4,45,500/-** for loss of income.

10.The Tribunal has also awarded a sum of Rs.5,000/- each, towards loss of love and affection, to the claimants 1, 2 and 5 and Rs.10,000/- each towards loss of love and affection, to the claimants 3 and 4, which are not correct and hence, the same is enhanced to Rs.50,000/- each (**totally a sum of Rs.2,50,000/-**). In all other aspects, the award of the Tribunal is confirmed.

11. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.4,90,000/-** (Rupees Four Lakhs and Ninety Thousand only) to a sum of **Rs.6,95,500/-** (Rupees Six Lakhs Nighty Five Thousand and Five Hundred Only) along with interest at the rate of 8% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The second respondent/Insurance Company is directed to deposit the entire award amount of **Rs.6,95,500/-** (Rupees Six Lakhs Nighty Five Thousand and Five Hundred Only) with accrued interests and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the major claimants are entitled to withdraw their award amount as apportioned by the Tribunal, with proportionate interest and costs, without filing any formal petition before the Court below. The compensation due to the minor claimants shall be deposited in any of the Nationalized Bank till they attained majority. The second appellant/claimant/brother, who is the guardian of the minor claimants is entitled to receive the interest once in six months. No Costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To,

The III Additional District and Sessions Judge,
Motor Accidents Claims Tribunal, Tirunelveli.

+1cc to M/s.T.SELVAKUMARAN Advocate in SR. No. 79141

+1cc to M/s. SRINIVASA RAGHAVAN Advocate in SR. No. 78546

RJ2

JS/KP/SAR.2/26.10.2017/3P-4C

C.M.A(MD) No. 1857 of 2013
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