



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26 .09.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No.593 of 2008

1. Dairiyanathan
2. Mariya

.. Appellant/Petitioner

-vs-

1. J.Madhourai,
2. The Divisional Manager,
National Insurance Co. Ltd.,
No.34, 2nd Floor,
Raja Complex, J.N. Street,
Pondicherry.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accidents Claims Tribunal Principal District Judge (III Additional District Judge)i/c, Pondicherry in M.C.O.P.No.733 of 2003, dated 20.01.2007.

For Appellant : Mr. J. Omprakash

For respondents: R1-Sd-NA

Mr.M.Krishnamoorthy for R2

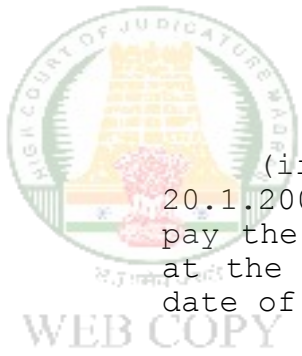
JUDGMENT

The instant appeal has been filed by the claimants seeking enhancement of compensation under the Award dated 20.1.2007 passed by the Motor accident Claims Tribunal (III Additional District Judge) Pondicherry in MCOP.No.733 of 2003.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) One Anthonisamy @ Vinoth, a minor boy aged 9 years died on 8.5.2003 as a result of an accident caused by a bus bearing Registration No.TN-31-E-2899 owned by the 1st respondent which was insured with the 2nd respondent.

(ii) The dependants of the deceased Anthonisamy @ Vinoth are the appellants. They preferred a claim before the Motor Accident Claims tribunal in MCOP.No.733 of 2003 seeking a compensation of Rs.8 lakhs.



(iii) The Motor Accident Claims Tribunal, by its Award dated 20.1.2007 in MCOP.No.733 of 2003 directed the 2nd respondent to pay the appellants a sum of Rs.1,50,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iv) Aggrieved by the Award dated 20.1.2007 passed by the Motor Accident Claims Tribunal in MCOP.No.733 of 2003, the instant appeal has been filed by the claimants seeking enhancement of compensation.

3. Heard Mr.J. Omprakash, learned counsel for the appellants and Mr. M. Krishnamoorthy, learned counsel for the 2nd respondent.

4. According to the learned counsel for the appellants, the compensation awarded by the Tribunal to the appellants is an inadequate compensation. According to him, the deceased was a minor boy aged 9 years at the time of the accident. According to him, the tribunal failed to take note of the fact that the deceased was a non earning member as per schedule 2 of the Motor Vehicles Act and therefore Rs.15,000/- ought to have been taken as loss of earning for non earning member.

5. In support of his contention, he relied on the judgment of the Honourable Supreme Court in the case of Manju Devi and another Vs. Musafir Paswan and another reported in 2004(2) TN MAC (SC), wherein, the Honourable Apex Court has awarded a

compensation of Rs.2,25,000/- for a boy aged 13 years, who was killed in an accident by holding that 'as per the second schedule, he being a non-earning person, sum of Rs.15,000/- must be taken as income'. According to the learned counsel, applying the same yardstick, the tribunal ought to have awarded a higher compensation to the appellants.

6. Per contra, learned counsel for the 2nd respondent would submit that considering the age of the deceased who was only 9 years old at the time of the accident, the compensation awarded by the tribunal under the impugned award is a fair and just compensation.

7. This Court has examined the impugned award.

8. The accident happened in the year 2003. There is a clear finding given by the tribunal that the accident happened only due to the rash and negligent driving by the driver of the vehicle which was insured with the 2nd respondent. In the Supreme Court judgment cited supra, the accident happened in the year 1998 and a compensation of Rs.2,25,000/- was awarded for the death of a minor boy aged 13 years, by taking the income



of the non-earning person as Rs.15,000/- .

9. In the instant case, the accident happened in the year 2003 and the age of the deceased at the time of the accident was 10 years. Applying the same yardstick as laid down by the Honourable Supreme Court in the case of Manju Devi and another Vs. Musafir Paswan and another reported in 2004(2) TN MAC (SC) cited supra, this Court is of the considered opinion that by applying 15 multiplier, as per the second schedule of the Act and taking the income of the deceased boy as Rs.15,000/- per month, (15 x 15000 = Rs.2,25,000) a sum of Rs.2,25,000/- will have to be awarded to the appellants as compensation for the death of their son.

9. In the result,

(i) The Appeal is partly allowed. No costs.

(ii) The compensation awarded by the tribunal under the impugned award is hereby enhanced from Rs.1,50,000/- to Rs.2,25,000/- by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(iii) The 2nd respondent is directed to deposit the entire amount awarded by this Court along with interest at the rate of 7.5 % per annum from the date of claim till the date of realisation to the credit of MCOP, less the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order .

(iv) On such deposit being made, the appellants are permitted to withdraw the same as per the ratio apportioned by the tribunal on making an appropriate application.

Sd/-

Assistant Registrar(Cs VI)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Motor Accidents Claims Tribunal
Principal District Judge, (III Additional District Judge)i/c,
Pondicherry

2.The Record Clerk,

VR Section, High Court, Madras.

+1cc to Mr.A.Tamilvanan, Advocate SR.NO.66496

+1cc to Mr.M.Krishnamoorthy, Advocate SR.NO.66720

NM(CO)

eu:27.11.2018

C.M.A. No.593 of 2008