



IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21.08.2018
JUDGMENT PRONOUNCED ON : 06 .09.2018

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CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
Civil Miscellaneous Appeal No.12 of 2011
MP.NO.1/2011

ICICI Lombard General
Insurance Co., Ltd.,
Salem Branch, Swarnambiga Plaza,
6/5, Block No.7, Omalur Main Road,
Salem-9.Appellant/ 2nd petitioner
Vs

1.Mariammal, W/o Kandasamy,
2.Kandasamy @ Chinnasamy,
S/o. Periya Gounder,
3.Chandramathi, D/o. Kandasamy.
4.M. Murugesan,
M/s. M.G.M. Transports (Madras) Pvt.Ltd.,
Wall Tax Road,
Chennai-600 003. ...Respondents/ petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 25.02.2010 made in M.C.O.P. No. 521 of 2008 on the file of the Motor Accident Claims Tribunal / I Additional District Judge, Salem.

For Appellant : M/S. SreeVidhya
: Mr. T.M. Venkataraman
For Respondents : Mr. R.Neelakandan - R1 to R3
R4 - Ex-Partee

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal, (I Additional District Judge, Salem) in M.C.O.P.No. 521 of 2008, the appellant herein, who is the second respondent in the claim petition filed this appeal, in which, he is seeking the relief to set aside the order passed by the Claims Tribunal. In the Claim Tribunal, the respondents 1 to 3 had filed a Claim Petition under Section 166 of the Motor Vehicles Act, in which, they claimed compensation of Rs.10,00,000/-. The respondents 1 and 2 here in are the parents of the deceased Parama Sivam @ Chettu , and the 3rd respondent is the sister of the



deceased. After elaborate enquiry, the Claims Tribunal awarded compensation of Rs.3,85,700/- with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred.

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2. In the Claims Tribunal, the case of the respondents 1 to 3 is as follows:

3. On 22.10.2007, at about 10.00 p.m., in order to attend his personal work, the deceased proceeded to Mettur in his Hero Honda Bike, bearing registration No. TN 30 AA 7965, and after, attending the work, on the next day morning around 10.45 a.m. when the deceased was near to the railway station bus stop, a lorry bearing registration No. TN 04 K 4010 came in a rash and negligent manner, and hit against the deceased. Due to the said accident the deceased sustained with multiple fractures, and finally on the same day he was died in the Government Hospital Mettur, for that a case has been registered against the driver of the lorry in Crime no. 311 of 2007 under Section 279, 304 (A) IPC. According to the claimants, the appellant herein is the insurer and the 4th respondent, is the owner of the vehicle, and both of them are jointly and severally liable to pay the compensation.

4. In the Claim Tribunal the 3rd petitioner has been examined as PW1. Further one Chandran has been examined as PW2 both of them had stated in their evidence that only due to the rash and the negligence of the lorry driver the alleged accident had happened. In order to prove their contention in the Claim Tribunal, the copy of the First Information Report, Postmortem certificate, Legal heir certificate and the family card, pertaining to the family of deceased were marked as Ex.P1 to Ex.P4 respectively. Even though, on the side of the respondents they disputed the liability and negligence of the driver. In order to, prove the said fact none has been examined on the side of the respondents.

5. The Claim Tribunal after analyzing the evidence given by PW1 Chandira mathi, PW2 Chandhira, and after going through the Ex.P1 to Ex.P4 came to the conclusion, that the alleged accident had happened, due to the rash and negligent driving of the lorry driver. Further, held that the owner of the vehicle and the appellant being the insurer are jointly and severally liable to pay compensation, finally Rs.3,89,700/- was fixed as a total compensation under various heads.



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10. Coming to the choice of multiplier, at the time of accident, the deceased Paramasivam was aged about 29 years, the same was proved through the Postmortem Certificate of the deceased, which was marked as Ex.P2. Taking into consideration of the age of the deceased, the Tribunal had adopted 17 as proper multiplier. Now, in the case of SARALA VERMA our honourable Apex Court has held if the deceased is aged about 29 years 17 is the appropriate multiplier. Accordingly, the loss of dependency is calculated as follows:

Loss of Dependency :: Rs.3,850 x 12 x 17
:: Rs.7,85,400/-

in so far as the conventional damages, as per the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, the respondents 1 to 3 are entitled to get Rs.15,000/- under the head of Funeral Expenses and Rs.15,000/- towards the Loss of Estate. Thus the compensation awarded by the Tribunal is enhanced to Rs.8,15,400/- as under:

HEAD	AMOUNT (RS.)
Loss of Dependency	7,85,400/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Total	8,15,400/-

11. Accordingly, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.8,15,400/-. The modified compensation of Rs.8,15,400/- has to be apportioned among the claimants equally. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. Though the Insurance Company has filed this appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, the award of the Tribunal is enhanced to 8,15,400/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme Court in Nagappa v. Gurdayal singh reported in 2004(2) TN MAC 398 (SC).

12. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and



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costs after deducting the amount already paid, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the respondents 1 to 3 / claimants through RTGS/NEFT within a period of one week.

13. In the result, the Civil Miscellaneous Appeal is disposed of enhancing the compensation as Rs.8,15,400/-. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(Cccc)

//True Copy//

Sub Assistant Registrar

sbn

To,

The Motor Accident Claims Tribunal /I Additional District Judge,Salem.

Copy to

The section officer,

VR Section,

High court

Madras

+1cc to Mr.R.Neelakandan , Advocate SR.No. 61912

+1cc to M/S. SreeVidhya , Advocate SR.No. 62562

Civil Miscellaneous Appeal No.12 of 2011

ASK(30/10/2018)