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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1169 of 2016

and

CMP.No.8843 of 2016

1. The Divisional Manager,
United India Insurance Co. Ltd.,
C.G.Complex, No.139, Kumaran Road,
Tiruppur.

... Appellant/2nd Respondent
-vs-

1.Malarvizhi

2.Arunachala Ramanan

3.Arunachala Sivamani

4.K.Abuthaheer

5.D.Tamilmani

6.The Branch Manager,
The New India Assurance Co. Ltd.,
Branch Office, No.39-C, Bye-pass Road,
Dharmapuri - 636 701.

... Respondents/ 1 to 3 Petitioners and RR1,3,4,

(R3 Declared as major and his mother viz
Malarvizhi discharged from the guardianship vide court
date 05.09.2018 in CMA.No.1169/16)

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988 against the judgment and decree dated
03.11.2015 made in MCOP.No:466/2013 on the file of the MACT
(Spl. District Judge) at Krishnagiri.

For Appellant : Mr.T.Ravichandran

For Respondents: No appearance for R1 to R3, R5 & R6
R4- Not ready notice

J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]

The appeal is at the instance of the Insurance
company which suffered an award for payment of
Rs.49,15,000/- towards compensation for the death of one
Ponnusamy who died in the motor accident that occurred on
12.04.2012. Contending that the deceased was working as a



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Government School Teacher earning a sum of Rs.36,965/- per month, the claimants sought for a compensation of Rs.1,00,00,000/-. The Tribunal arrived at a sum of Rs.49,15,000/- as compensation for the death of said Ponnusamy and the Tribunal apportioned the compensation between the two Insurance companies at 50% each.

2. Challenging the said apportionment as well as the quantum of compensation, the Insurance company which was the 2nd respondent in MCOP No. 466 of 2013 is before us by way of this appeal. The case of the claimants before the Tribunal was as follows:

3. The deceased Ponnusamy was working as a Headmaster in the Panchayath Union Middle School, Chandirapuram. On 12.04.2012 when the deceased was proceeding in his Hero Honda Motor Cycle bearing registration No.TN-29-C-5165 on Harur to Uthangarai road towards Uthangarai at about 14:30 hours, a lorry bearing registration No.TN-29-AY-1276 belonging to the 3rd respondent and insured with the 4th respondent was driven by its driver came in a high speed in the same direction hit on the left side footrest of the motor cycle, as a result of the impact, the rider of the two wheeler namely Ponnusamy was thrown out of the vehicle, fell on the road and the goods vehicle TATA ACE bearing registration No.TN-39-AU-5818 which was coming in the opposite direction dashed against the deceased causing instantaneous death. Claiming that the accident occurred due to the rash and negligent driving of both the vehicles, the claimants sought for a compensation of Rs.1,00,00,000/- from both the Insurance companies. The 2nd respondent who was the insurer of the goods vehicle namely TATA ACE bearing registration No.TN-39-AU-5818 resisted the claim contending that the accident occurred only due to the rash negligent driving of the lorry driver as well as deceased Ponnusamy who was riding the two wheeler. Claiming that the driver of the TATA ACE bearing registration No.TN-39-AU-5818 was not negligent, the 2nd respondent sought to avoid the liability.

4. The Tribunal on a consideration of the evidence on record concluded that both the vehicles namely, lorry bearing registration No.TN-29-AY-1278 and the goods vehicle bearing registration No.TN-39-AU-5818 were responsible for the accident. The Tribunal also apportioned the liability at 50% each.



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5. On the quantum, the Tribunal awarded a sum of Rs.46,80,000/- towards loss of dependency, Rs.1,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.5,000/- towards transport, Rs.5,000/- towards loss of clothing and articles and Rs.25,000/- towards funeral expenses. In all, the Tribunal awarded Rs.49,15,000/-. Aggrieved by the apportionment of the liability at 50% as well as the quantum of compensation, the Insurance company is before us by way of this appeal.

6. We have heard Mr.T.Ravichandran for the appellant/Insurance company. Though the respondents/claimants have been served has no one appeared for the respondents. The Tribunal had concluded that both the vehicles, namely the lorry and the goods vehicle had contributed equally to the accident. The First Information Report, however, discloses that the accident had occurred due to the negligence of the driver of the goods vehicle. The fact that the lorry was involved in the accident is not in dispute. From the rough sketch marked as Ex.P10, the Tribunal has concluded that the accident had occurred due to the negligence of both the vehicles namely lorry as well as the goods vehicle (TATA ACE). PW2 was examined on the side of the claimants to prove the accident. He claims to be an eye-witness to the accident. From the evidence of PW2 also, the Tribunal found that both the vehicles were equally responsible for the accident. It is also seen that the Insurance company has not examined the driver of the goods vehicle or the driver of the lorry. We, therefore do not think that the appellant Insurance company has made out a case to enable us to interfere with the said factual finding of the Tribunal.

7. On the quantum, the Tribunal had fixed the monthly income of the deceased at Rs.36,000/- after deducting a certain amount towards income tax, adding 25% towards future prospects, the Tribunal arrived at the monthly loss of dependency at Rs.45,000/-, deducting 1/3rd towards personal expenses and applying a multiplier of 13. The Tribunal arrived at the loss of dependency at Rs.46,86,000/-. Mr.T.Ravichandran would contend that the fixation is on the higher side, but he is unable to justify his contentions. Only claim of Mr.Ravichandran is that the Tribunal has not deducted any amount towards income tax. The Tribunal has found that the salary as evidenced by the salary slips which have filed as Ex.P12, P15 and P16 is Rs.36,965. The Tribunal has taken only Rs.36,000/- towards his salary. Therefore, the Tribunal has deducted about Rs.12,000/- per annum which could be adjusted towards the income tax. We, therefore do not find any ground to



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interfere the fixation of loss of dependency made by the Tribunal. We, however, find that the amount awarded by the Tribunal towards loss of consortium, loss of love and affection are on the higher side. The amount awarded towards loss of love and affection and loss of consortium is reduced to Rs.40,000/- each. The Tribunal has awarded a sum of Rs.25,000/- as funeral expenses, Rs.5,000/- towards transportation, Rs.5,000/- towards loss of clothing and articles the same is confirmed. The Tribunal has not awarded any amount towards loss of estate. We award a sum of Rs.15,000/- towards loss of estate. Thus, the total award works out to Rs.47,10,000/-. Hence, the appeal is partly allowed, the award of the Tribunal is modified and reduced to Rs.47,10,000/- with 7.5% interest from the date of petition till date of payment with proportionate costs. The Insurance company has deposited 50% of the award amount pursuant to the interim order granted by this court. The Insurance company is directed to deposit the balance amount within the period of 4 weeks from the date of receipt of the copy of this judgment. It is seen that the minor claimant who was aged about 14 years at the time of the filing of petition in 2013 has attained majority. The compensation is apportioned amongst the claimants as follows:

The 1st respondent wife will take sum of Rs.18,10,000/- with proportionate interest and entire cost, petitioners 2 and 3 would each be entitled to Rs.14,50,000/- with proportionate interest. On such deposit, the claimants are entitled to withdraw the entire compensation apportioned as above. There shall be no order as to cost in this appeal.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

kkn

To

The Motor Accident Claims Tribunal,
(Spl. District Judge)
Krishnagiri.

+1cc to Mr.T.Ravichandran , Advocate SR.No. 61596

CMA.No.1169 of 2016
and

CMP.No.8843 of 2016

A.SK(13/05/2019)