

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2683 of 2015

1.Lakshmi
2.Santhi
3.Amudha
4.Sudha
5.Salamma
6.Vembu
7.Jayaseelan

.. Appellants

Vs.

1.M.Ramasamy

2.Cholamandalam MS General Insurance Co. Ltd.,
Dare House,
2nd Floor,
No.2, NSC Bose Road,
Chennai 600 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 10.03.2015 made in M.C.O.P.No.241 of 2014, on the file of Special District Court, (Motor Accidents Claims Tribunal), Dharmapuri.

For Appellants : Mr.S.Sathiaseelan

For R1 : No appearance

For R2 : Ms.R.Sreevidhya

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the dismissal of the award dated 10.03.2015 made in M.C.O.P.No.241 of 2014, on the file of Special District Court, (Motor Accidents Claims Tribunal), Dharmapuri.

2.The appellants are the claimants who filed M.C.O.P.No.241 of 2014, on the file of Special District Court, (Motor Accidents Claims Tribunal), Dharmapuri, claiming a sum of Rs.10,00,000/- as compensation for the death of one Madhaiyan, husband of the 1st appellant and father of the appellants 2 to 7, who died in the accident that took place on 01.10.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligence of both the deceased as well as the driver of the lorry belonging to the 1st respondent and fixed 50% negligence on the part of the deceased. The Tribunal awarded a sum of Rs.8,54,656/- as compensation to the appellants and directed the 2nd respondent to pay 50% of the same, namely Rs.4,27,328/-.

4.Challenging the portion of the award fixing 50% contributory negligence on the deceased as well as seeking enhancement of the compensation awarded by the Tribunal, the appellants have come out with his appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing 50% contributory negligence on the part of the deceased without appreciating the evidence of eye-witness, P.W.2. The Tribunal ought to have accepted the evidence of P.W.2 and held that accident occurred only due to the rash and negligent driving by the driver of the lorry belonging to the 1st respondent. The Tribunal erred in deducting 50% towards personal expenses of the deceased. The Tribunal ought to have deducted 1/5th, instead of deducting 50% towards the personal expenses of the deceased. The Tribunal ought to have accepted Ex.P11, while fixing transport expenses. The compensation awarded by the Tribunal is meager and prayed for enhancement of the same.

6.Mrs.Sreevidhya, learned counsel took notice for the 2nd respondent and contended that P.W.2 has admitted that accident occurred while the deceased tried to cross the road in the high ways. The Tribunal has given reason for fixing 50% contributory negligence on the part of the deceased. The appellants are not dependents of the deceased and hence, deduction of 50% is correct and amounts granted by the Tribunal under other heads are not excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellant as well as the 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the accident occurred while the deceased tried to cross the national high ways. The Tribunal held that the deceased ought to have been careful while crossing the National High Ways. The Tribunal

failed to consider the evidence of P.W.2, wherein it has been deposed that the deceased only after verifying the on coming vehicle on both the sides, tried to cross the road. In the cross examination, P.W.2 denied the suggestion that the deceased tried to cross the road in a negligent manner. P.W.2 has categorically stated that the deceased tried to cross the road carefully, but accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the 1st respondent. The respondents 1 and 2 have not let in any evidence to show that the accident occurred due to the negligence on the part of the deceased. The contention of the learned counsel for the appellants that the Tribunal failed to properly appreciate the evidence of P.W.2, has considerable force and is acceptable. In view of the same, the portion of the award of the Tribunal fixing 50% contributory negligence on the part of the deceased is set aside.

9.As far as the quantum of compensation is concerned, the Tribunal has fixed Rs.10,000/- per month as notional income of the deceased. In the absence of any documents, the Tribunal has fixed Rs.10,000/- per month, which is in order. The contention of the learned counsel appearing for the appellants is that the Tribunal has not awarded any amount towards future prospects. Hence, 10% towards future prospects is added to the notional income of the deceased. The claimants are 7 in number. The Tribunal erred in deducting 50% instead of deducting 1/5th towards personal expenses of the deceased. In view of the above contention and applying the multiplier of '9' for the deceased who was aged 60 years at the time of accident, the amount awarded by the Tribunal under the head, 'loss of income' is modified as Rs.9,50,400/- {[Rs.10,000/- + Rs.1000 (10% of Rs.10,000)] x 12 x 9 x 4/5}. The Tribunal has granted a sum of Rs.2,10,000/-, under conventional heads. The said amount is excessive and the same is reduced to Rs.70,000/- as per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) [National Insurance Company Vs. Pranay Sethi & others]. The Tribunal considering Ex.P13, medical bills, has granted a sum of Rs.4,656/- towards medical expenses, which is confirmed. The amounts granted under all other heads are set aside. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	5,40,000	9,50,400	enhanced

2.	Loss of consortium	1,00,000	-	Set aside
3.	Loss of love and affection	1,75,000	-	Set aside
4.	Medical expenses	4,656	4,656	confirmed
5.	Transportation	10,000	-	Set aside
6.	Funeral expenses	25,000	-	Set aside
7.	Conventional head	-	70,000	granted
	Total	8,54,656/-	10,25,056/- Rounded off to Rs.10,25,000/-	Enhanced by Rs.1,70,344 to /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,54,656/- is hereby enhanced to Rs.10,25,000/-, with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

gsa

To

1. The Special District Judge,
(Motor Accidents Claims Tribunal), Dharmapuri.

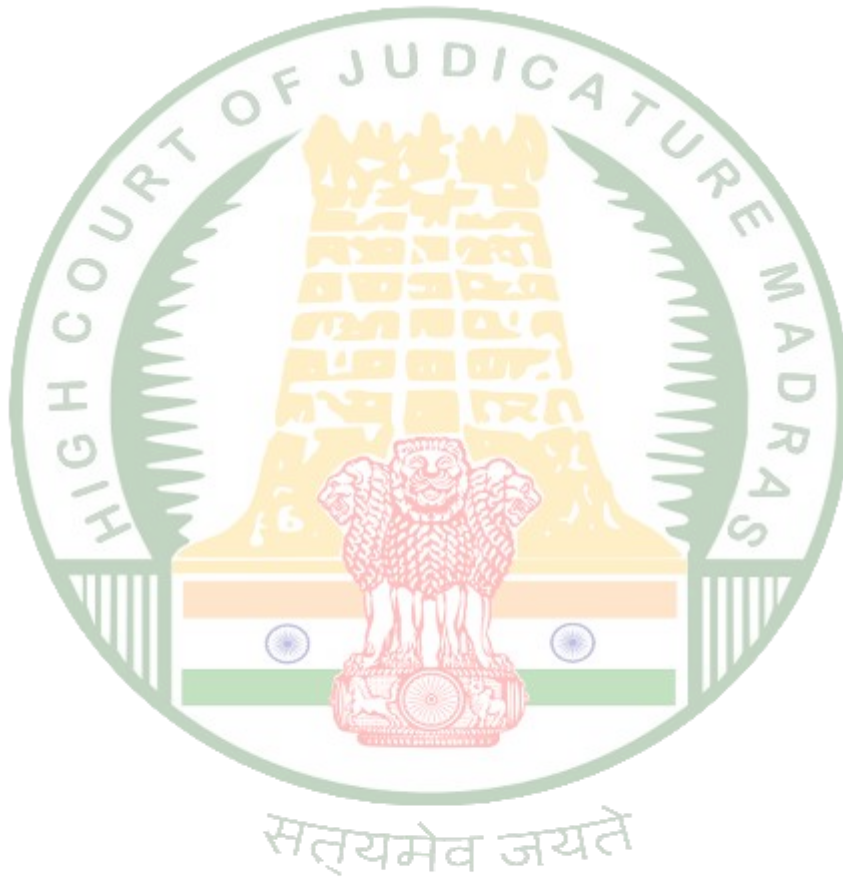
2.The Section Officer, VR Section, Madras High Court.

+1cc to M/s.R.Sreevidhya, Advocate SR.No.85782

+1cc to Mr.S.Sathiaseelan, Advocate SR.No.84912

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CNR (CO)
GMY (11/04/2019)



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