



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2017

Pronounced on : 09.04.2018

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1402 of 2015
and
CMP (MD) No.7295 of 2017

1.S.Latha

2.Minor S.Karthikeyan ... Appellants/Respondents 4 & 5
(rep.through his Mother and guardian/1st Appellant)

Vs.

1.R.Duraisamy

2.Arasayee Ammal

3.N.Anbazhagan

4.K.Ravikumar

5.National Insurance Company
Limited,
Rep. by its Assistant Administrative
Officer,
(Code Number 650 401),
T.Chetty Street, Thiruchengode,
Namakkal District.

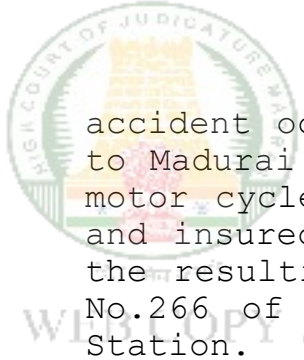
... Respondents/Respondents 1 to 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and degree dated 30.10.2010 made in M.C.O.P No.851 of 2004 on the file of the Additional District Judge, Fast Track Court, Dindigul.

For Appellants : Mr.V.Chandrasekar
For Respondents : Mr.D.Sivaraman for R5
R1 to R4 - No appearance.

JUDGMENT

(Judgment of the Court was delivered by G.R.Swaminathan, J.)



accident occurred near Chettiyapatti Seeniammal Thottam on Dindigul to Madurai District. The deceased was riding a Hero Honda Splendor motor cycle when a lorry belonging to the fourth respondent herein and insured with the fifth respondent hit the said two wheeler. In the resulting accident, Sakthi Ganesan died. In this regard, Crime No.266 of 2004 was registered on the file of Ambaathurai Police Station. The parents of the deceased filed MCOP.No.851 of 2004 on the file of the Motor Accidents Claims Tribunal/Fast Track Court, Dindigul. The appellants herein were shown as fourth and fifth respondents. In fact, they remained exparte.

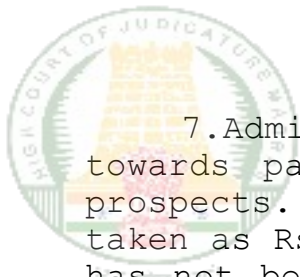
2.The Tribunal held that the accident in question took place on account of the rash and negligent driving of the lorry driver. The said finding has not been questioned by the fourth respondent herein or the insurer. The said finding has therefore become final. The Tribunal awarded a sum of Rs.7,10,000/- in all. The parents were ordered to be paid Rs.75,000/- each. The first appellant herein, namely, the wife of the deceased was awarded a sum of Rs.3,60,000/- while the minor son, the second appellant herein was awarded a sum of Rs.2,00,000/-. The lorry driver, vehicle owner and the insurer were fastened with joint and several liability to pay the said sum with interest at the rate of 7.5% per annum from the date of petition till the date of payment. Contending that the compensation payable to them ought to have been higher, this appeal has been filed.

3.Heard the learned counsel on either side.

4.The learned counsel appearing for the appellants pointed out that the first appellant is the wife while the second appellant is the minor son of the deceased. He therefore wanted this Court to take an indulgent view and consider their claim notwithstanding the fact that they remained exparte before the Tribunal. It was further submitted that the deceased was selected for the post of Constable in the Police Department and that before completion of the training period, he lost his life in the road accident. He was aged about 39 years.

5.The learned standing counsel appearing for the insurer submitted that the award passed by the Tribunal is a fair and reasonable one and does not warrant any interference.

6.The appellants had filed an additional typed set of papers enclosing the pension drawn by the deceased in his capacity as an Ex-Army man and the pay certificate issued by the Police Department. It can be seen that the deceased was getting a sum of Rs.4,070/- as pension. Now, the first appellant/wife of the deceased is getting a sum of Rs.2,035/- as family pension. Therefore, the pensionary component of the income drawn by the deceased is not taken into account for computational purposes.



7. Admittedly, the deceased was drawing a sum of Rs.4,656/- towards pay as Constable. 50% should be added towards future prospects. Therefore, the monthly income of the deceased can be taken as Rs.6984/-. Since the pensionary component of the deceased has not been taken into account, this Court would not be justified in making any deduction towards the personal expenses of the deceased. The deceased was aged about 39 years. Therefore, the relevant multiplier is 15. The annual income loss to the family would therefore be Rs.12,57,120/-. (6984X15X12). The claimants would be entitled to conventional damages at Rs.70,000/-. (As per National Insurance Company Ltd. vs. Pranay Sethi and others reported in 2017 SCC Online SC 1270).

8. Thus the total compensation payable is Rs.13,27,120/-. The compensation awarded by the Tribunal is enhanced from Rs.7,10,000/- to 13,27,120/-. The award passed by the Tribunal dated 30.10.2010 made in M.C.O.P No.851 of 2004 on the file of the Fast Track Court Dindigul is modified accordingly.

9. The respondents 3, 4 and 5 are directed to deposit the entire compensation amount jointly and severally with interest at the rate of 7.5% per annum from the date of petition till date of realization, and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the parents of the deceased namely, Duraisamy and Arasayee Ammal, the first and second respondents herein are permitted to withdraw a sum of Rs.2.00 lakhs each and the wife of the deceased, namely, the first appellant herein is entitled to withdraw a sum of Rs.5.00 lakhs by filing proper application before the Tribunal, less the amount already withdrawn by them, if any. The minor son, namely, the second appellant herein is entitled to a sum of Rs.4,27,120/- His share shall be deposited in any one of the nationalized bank and the first appellant/the mother of the minor is entitled to withdraw the interest once in a period of three months directly from the bank, till the minor attains majority.

10. The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge, Fast Track Court,
<https://hcservices.ecourts.gov.in/heservices/>
Dindigul.



2.The Record Keeper, (V.R.Section),
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+2cc to M/S.V.Chandrasekar, Advocate SR.No. 60420
+1cc to M/S.D.Sivaraman, Advocate SR.No. 60426

C.M.A. (MD) No.1402 of 2015
and
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09.04.2018

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JM/SKN RSK/SAR 4/25.06.2018/4P/7C