



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.422 of 2016

1.K.Sembulingam
2.Arockiyamani
3.S.Malarvizhi

.. Appellants/Claimants

Vs.

1. M.Soosai Manickam

2. The Divisional Manager,
IFFCOTOKKIO General Insurance Co. Ltd.,
Service Centre,
10-C, T.B.Road,
Mehaboobpalayam,
Madurai-10.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Fair and Decretal Order, dated 04.11.2015 passed in M.C.O.P.No.15 of 2012, on the file of the Motor Accidents Claims Tribunal and Sessions Judge, Communal Clashes Court, Madurai.

For Appellants	: Mr.K.Rajeshwaran
For R1	: Mr.S.Sundararajan
For R2	: Mr.G.Maruthiah

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants-claimants against the award, dated 04.11.2015, made in M.C.O.P.No.15 of 2012, passed by the Motor Accident Claims Tribunal and Sessions Judge, Communal Clashes Court, Madurai.

2.The appeal is filed by the claimants seeking to set aside the contributory negligence fixed on the deceased and for enhancement of compensation.

3.The Tribunal considering the pleadings, evidence let in by the parties, held that the deceased contributed the negligence of 30% and awarded a total sum of Rs.8,16,000/- towards loss of income but deducted 50% towards contributory negligence and granted a sum of Rs.4,08,000/- to the appellants. In addition to the above, the



Tribunal awarded a sum of Rs.33,000/- under various heads. The Tribunal awarded a total sum of Rs.4,41,000/- as total compensation.

4. From the materials on record, it is seen that the Tribunal held that the deceased also contributed the negligence based on the evidence of P.W.2. The Tribunal has not properly appreciated the evidence of P.W.2. P.W.2 has stated in his cross-examination that after the deceased crossed the road, the Car belongs to the first respondent hit against the deceased and caused accident. On the other hand, the Tribunal has held that the deceased crossed the road with the hope that before oncoming vehicle, passes the road, he can cross the road. The finding is not correct and contrary to the evidence of P.W.2. Though the Tribunal held that the contributory negligence of the deceased is 30%, erroneously deducted 50% from the amounts arrived at for loss of income.

5. Considering the evidence of P.W.2 and other materials on record, the finding of the Tribunal with regard to contributory negligence is erroneous and accordingly, the same is set aside. I hold that the accident occurred only due to the rash and negligent driving by the driver of the first respondent.

6. As far as quantum of compensation is concerned, the Tribunal did not add any amount towards future prospects. The deceased was 26 years at the time of accident and the Tribunal ought to have granted 40% towards future prospects. The deceased was bachelor and 50% has to be deducted towards his personal expenses. The monthly income of the deceased was fixed by the Tribunal as Rs.6,000/- and after adding 40% towards future prospects and deducting 50% towards personal expenses, the monthly income of the deceased would be Rs.4,200/- ($6,000 + 2,400/- - 50\% = 4,200$). The loss of income of the deceased would be $\text{Rs.}4,200 \times 17 \times 12 = \text{Rs.}8,56,800/-$. The appellants are entitled to a sum of Rs.8,56,800/- as loss of income without any deduction. The amounts awarded by the Tribunal in all other heads are confirmed. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed.

7. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	4,08,000	8,56,800	enhanced
2.	For loss of love and affection	10,000	10,000	confirmed

3.	Funeral expenses	5,000	5,000	confirmed
4.	For loss of estate	10,000	10,000	confirmed
5.	For Transportat ion	8,000	8,000	confirmed
	Total	Rs.4,41,000	Rs.8,89,800	By enhancing a sum of Rs.4,48,800/-

8. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.4,41,000/- (Rupees Four Lakhs Forty One Thousand only) to a sum of **Rs.8,89,800/-** (Rupees Eight Lakhs Eighty Nine Thousand and Eight Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs. The appellants are entitled to a sum of Rs.8,89,800/- without any deduction.

(ii) The respondents 1 & 2 are directed to deposit the award amount jointly and severally, less the amount already deposited, if any, along with accrued interest and costs to the credit of M.C.O.P.No.15 of 2012, on the file of the Motor Accidents Claims Tribunal and Sessions Judge, Communal Clashes Court, Madurai, within a period of **eight weeks** from the date of receipt of copy of this judgment;

(iii) The appellants-claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment;

(iv) On such deposit being made, the first appellant is entitled to a sum of Rs.2,89,800/- (Rupees Two Lakhs Eighty Nine Thousand and Eight Hundred only), the second appellant is entitled to a sum of Rs.5,00,000/- (Rupees Five Lakhs only) and the third appellant is entitled to a sum of Rs.1,00,000/- (Rupees one Lakh only), less the amount already withdrawn, if any, with proportionate interest and costs by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-II)



To

1. The District and Sessions Judge,
Motor Accidents Claims Tribunal,
Communal Clashes Court, Madurai.

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

+ 1 CC TO Mr.K.RAJESHWARAN, ADVOCATE IN SR No. 85540

+ 1 CC TO Mr.G.MARUTHIAH, ADVOCATE IN SR No. 85380

AM

TE/BK/SAR-2 : 21/12/2018 : 4P/6C

C.M.A. (MD) No.422 of 2016
19.09.2018