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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.03.2019
Pronounced on : 27.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1827 of 2005

1.R.Suseela

2.R.Geetha

.. Appellants/Petitioners

Vs.

1.C.Shanmugham

2.S.K.Bansal

3.The New India Assurance Company Limited,
Sahidabad - 321 604.
New Delhi.

(1st Respondent given up in this C.M.A)

.. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.08.2004 made in MC.O.P.No.1412 of 2000 on the file of the Motor Accidents Claims Tribunal/First Additional District Court, Erode.

For Appellant: Mr.N.Manokaran

For R1 : Given up

For R2 : Not ready in notice

For R3 : Mr.J.Chandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 10.08.2004 made in MC.O.P.No.1412 of 2000 on the file of the Motor Accidents Claims Tribunal/First Additional District Court, Erode.

2. The averments made in the claim petition in brief are as follows:-

The appellants are wife and daughter of the deceased P.Ramasamy. The appellants filed this Claim Petition against



the respondents for the Motor Vehicle accident which took place on 04.04.1996 at about 7.30 p.m near Ragupathinaickanpalayam Bus Stop along the Kangayam to Erode main road. The deceased was driven his Hero Honda Motor Cycle bearing Registration No.TN 33 C 3652 carefully, diligently and observed all the road rules and regulations and keeping left side of the road from South to North along the Kangayam Erode Main Road, towards North.

ii) While, the deceased came near at Ragupathinaickanpalayam bus stop, the first respondent drove the Maruthi car in the same direction bearing Registration No.D.L 2C 6547 in a rash and negligent manner, without observing the road rules and regulations and without blowing horn and hit the back side of the Motor-cycle of the deceased Ramasamy.

(iii) Due to the heavy impact, the deceased Ramasamy was thrown out from his Motor-cycle and he sustained head injury and grievous multiple injuries all over his body. Immediately, he was taken to the Government Hospital, Erode and admitted as in-patient inspite of the treatment he was succumbed to death due to the injuries on the same day.

(iv) The accident was occurred due to the rash and negligent driving of the 1st respondent while he was under the employment of the second respondent and the 2nd respondent is the insurer of the car. Hence, all the respondents are jointly and severally liable to pay the compensation to the appellants.

3. Before the Trial, P.W.1 and P.W.2 were examined and Exhibits P1 to P15 were marked. On behalf of the respondents, R.W.1 was examined and Exhibits R1 and R2 were marked.

4. The Tribunal, based upon P.W.2 occurrence witness coupled with Exhibit P1 - F.I.R, Exhibit P2 - Rough sketch, Exhibit P4 - Observation Mahazar and Exhibit P5 - Motor Vehicle Inspector's Report has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle and accordingly, held the respondents are jointly and severally liable to pay the compensation and awarded a sum of Rs.1,24,000/- and hence, the appeal.

5. It is seen from the evidence that P.W.2 occurrence witness has categorically stated about the manner of the accident and coupled with Exhibit P1, Exhibit P2 and Exhibit P4, this Court finds that the finding of the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the first respondent vehicle is hereby confirmed.



6. On the point of quantum, both the parties are heard.

7. Based upon Exhibit P3 - Postmortem Certificate, the Tribunal has fixed the age of the deceased at '48' and adopted the multiplier of '13'.

8. The learned counsel appearing for the appellant would submit that the Tribunal has wrongly rejected Exhibits P8 to P14 which shows that the deceased was earning several thousands of rupees in the real estate and poultry business and draw my attention to Exhibits P8 to P14.

9. Per contra, as per the finding of the Tribunal, it is found that the account notebooks are not filed along with the claim petition and it has been filed before the Tribunal at the time of trial only and it was a very new note books and hence, the authenticity of the account books are found to be doubtful. It is unbelievable to accept the same was maintained in the regular course of business and Auditor was not examined to prove the authenticity of the same and hence the Tribunal has rightly rejected Exhibits P8 to P14.

10. Taking into consideration that at the time of the filing of those documents during trial it appears to be very new one and in the absence of non-examination of the auditor who audited those documents, the reason assigned by the Tribunal is rejecting those documents is well considered and well merited does not warrant any interference, this Court at the appellate stage. In this view of the matter, the plea raised by the appellant's counsel is hereby stands rejected.

11. Taking into consideration of the date of the accident, the notional annual income is taken as Rs.18,000/- and taking into consideration, the age of the deceased at the time of the accident, '13' multiplier is arrived and accordingly, Rs.18000*13=Rs.2,34,000/- under the head 'loss of income' and the first claimant being the wife is entitled to Rs.40,000/- as consortium and Rs.15,000/- is awarded for funeral expenses and Rs.15,000/- for loss of estate and the second claimant being the unmarried daughter is entitled to Rs.50,000/- towards 'loss of love and affection'. Hence, total compensation is hereby enhanced to Rs.3,54,000/- from Rs.1,24,000/- as awarded by the Motor Accidents Tribunal. The amount awarded is hereby tabulated:

Heads	Trial Court	High Court
Loss of Income	Rs. 1,17,000	Rs. 2,34,000/-



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Heads	Trial Court	High Court
Loss of love and affection	Rs. 5,000/-	Rs.50,000/-
Funeral expenses	Rs. 2,000/-	Rs.15,000/-
Loss of consortium	-----	Rs.40,000/-
Loss of estate	-----	Rs.15,000/-
Total	Rs. 1,24,000/-	Rs.3,54,000/-

12. The learned counsel for the Insurance Company stated that the entire award amount has already been deposited the amount awarded by the Tribunal and the Insurance Company shall deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this judgment. Interest at the rate of 7.5% with regard to the enhancement of amounts shall accordingly be calculated for payment. The claimant is not entitled to interest for the breakup period mentioned in the award of the Tribunal.

13. With the above enhancement in the amount awarded by the Tribunal, this Civil Miscellaneous Appeal is partly allowed. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. On such deposit, the claimants are permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal/
First Additional District Court,
Erode.

2. The Section Officer,
V.R.Section, High Court, Chennai.

+1cc to Mr.J.Chandran, Advocate SR.29275
+1cc to Mr.N.Manoharan, Advocate SR.29375

C.M.A.No.1827 of 2005

NMI (CO)
CB(03/01/2020)