

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3941 of 2005

1. Jabeen
2. A.Babu

.. Appellants /Petitioners

Vs.

1. M.Ganesan
2. T.Sivakumar

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.07.2005 made in M.A.C.T.O.P.No.973 of 2002 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate No.1) Dharmapuri at Krishnagiri.

For Appellant : Mr.P.Mani

For R2 : No appearance

J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present Civil Miscellaneous Appeal, seeking enhancement of the same.

2. The case in brief is as follows:

On the fateful day, ie. on 13.03.2002, at about 12 Noon, one Karishma, 3 years old girl child, was walking in the road connecting Palacode and Karimangalam at Hanumanthapuram near the shop of H.M.R Agency along with Muniamma, a Tractor-cum-Trailer bearing Registration Nos.TN29 E 2256 and TN29 E 2257 belonging to the second respondent came in a rash and negligent manner and dashed against the pedestrian. As a result of the same, the said Karishma received crush injuries and died on the spot. The appellants/parents of the deceased, filed a claim petition seeking compensation of Rs.3,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.60,000/- with interest at the rate of

9% per annum from the date of petition. Feeling aggrieved, the appellants have preferred this appeal.

3.The learned counsel for the appellants/claimants submitted that the Tribunal erred in awarding a lesser compensation of Rs.60,000/- as against the claim of Rs.3,00,000/- and the same has to be enhanced substantially.

4.Heard the learned Counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Though this appeal was admitted way back in the year 2005, the appellants have not taken proper steps to serve notice on the first respondent. Despite service of notice, there is no representation on behalf of the second respondent. However, having regard to the fact that the appeal is of the year 2005, this Court is inclined to decide this appeal on merits.

6.This is the claimants' appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court would like to deal with the aspect of quantum alone.

7.Before the Tribunal, on the side of the appellants/claimants, the father of the deceased was examined as P.W.1. The appellants stated in their claim petition that the deceased was their only daughter and she was a brilliant student; had she not died in the accident, she would have studied well and earned respectable salary by better employment and supported them financially; because of the accident, in which, the deceased died, they lost the contribution and future earnings of the deceased, besides losing her love and affection. However, during the course of cross examination, P.W.1 deposed that he had four children, out of which, the deceased was a last daughter. Taking note of the contradiction found in the stand of the claimants between the claim statement and the evidence, the Tribunal has rightly rejected the claim of the appellants/claimants towards loss of income. However, the Tribunal has awarded Rs.60,000/- towards loss of love and affection and mental agony, which, in the opinion of this Court, is fair and reasonable and hence, the same is hereby, confirmed.

8.In the result, this Civil Miscellaneous Appeal is dismissed by confirming the award passed by the Tribunal. No costs. The first and second respondents are directed to deposit the entire compensation amount as awarded by the Tribunal along 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 judgment. On such deposit being made, the Tribunal shall transfer the respective shares of the award amount to the savings bank account of the appellants as per the apportionment

made by the Tribunal, through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

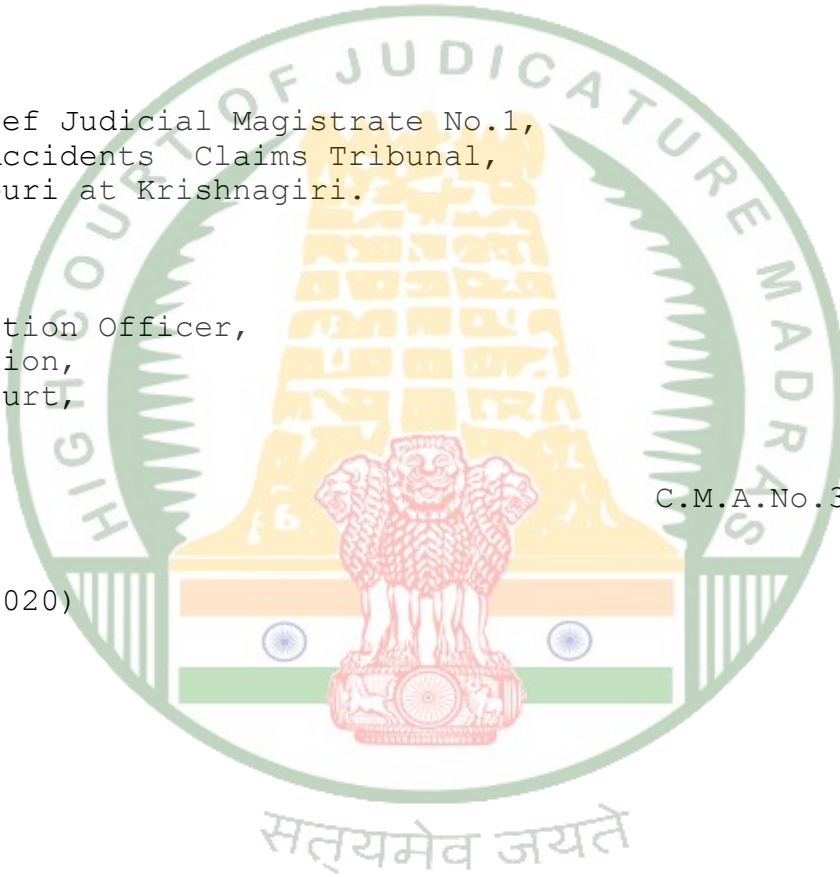
1. The Chief Judicial Magistrate No.1,
Motor Accidents Claims Tribunal,
Dharmapuri at Krishnagiri.

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

C.M.A.No.3941 of 2005

PPA (CO)
GN (29/06/2020)



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