

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3560 of 2008

1. Valli

2. Minor Arulanandhan

3. Minor Sandhiya
(Minor Appellants 2 and 3 represented
by natural guardian, Mother/1st Appellant)

4. ThirumalaiAppellants/Petitioner 1 to 4

Vs

1. M.R.Kumaraswamy 1st Respondent/1st Respondent

2. National Insurance Company Limited,
Branch Office,
1631/-1/B, Bhavani Main Road,
Sankagiri. 2nd Respondent/2nd Respondent

Prayer:

This Appeal has been filed under Section 173 of Motor Vehicles Act,1988 against the Judgment and award dated 14.09.2007 passed in M.C.O.P.No.478 of 2005 on the file of the Motor Accident Claims Tribunal (I Additional District Judge) Dharmapuri at Krishnagiri.

For Appellant : Mr.P.Mani

For Respondent 2 : Mr.D.Bhaskaran

JUDGMENT

The facts of the case are that on 14.12.2004 at about 3.00a.m., one Samuvel was travelling as a cleaner in a Lorry bearing Registration No.KA01 AE 1015, belonging to the first respondent herein and insured with the 2nd respondent herein. The driver of the said lorry drove the same in a rash and negligent

manner and dashed against the stationed lorry bearing Registration No. KA 02 AA 9559, as a result of which the said Samuvel died on the spot. According to the appellants/claimants, the deceased Samuvel was working as cleaner and earning a sum of Rs.3,500/- per month in addition to batta and the deceased used to contribute Rs.2000/- per month to the family. Stating so, the claimants/legal representatives of the deceased have filed a claim petition before the claims Tribunal claiming a sum of Rs.7,00,000/- as compensation. The claim was disputed by the 2nd respondent/Insurance company. The Tribunal based on the witnesses and the documents produced by both sides, fixed the negligence on the part of the first respondent herein/owner of the vehicle, whose vehicle was insured with the 2nd respondent herein/insurer. The Tribunal has ultimately quantified the compensation at Rs.3,90,000/- with interest at the rate of 7.5% per annum from the date of petition.

2. Being dissatisfied with the quantum arrived at, the claimants/appellants are before this Court for enhancement of compensation.

3. Heard the learned counsel for the appellants as well as the 2nd respondent.

4. The learned counsel for the appellants has submitted that the award passed by the Tribunal is too low. He further submitted that considering the fact that the deceased was working as a cleaner and got salary and batta, the amount of Rs.2,500/- fixed as monthly income by the Tribunal is on the lower side and hence the same has to be enhanced.

5. Per contra the learned counsel for the 2nd respondent submitted that the petition before the Tribunal itself is not maintainable. He further submitted that the deceased Samuvel had not travelled as a cleaner in the first respondent vehicle, but he travelled only as a gratuitous passenger; in any event the 2nd respondent is not liable to pay the compensation to the claimants.

6. An analysis of the award of the Tribunal would go to show that the Tribunal has considered the evidence of P.W.2, who was the eye-witness to the accident. The evidence of P.W.2 corroborates the contents of Ex.P1/F.I.R, which supports the case of the claimants rather than the respondents. Also, there is no contra evidence adduced by the respondents herein to disprove the documents or evidence marked on the side of the appellants herein. Therefore, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the first respondent, does not require any interference.

7. In respect of the quantum of compensation, the Tribunal has taken the monthly income of the deceased at Rs.2,500/- which in the considered view of this Court, is too low. In the judgment of the Supreme Court reported in 2014 (1) TN MAC 459 (SC) (Syed Sadiq etc., vs. Divisional Manager, United India Insurance Company Limited) even for the worker who was working in an unorganised sector, the Supreme Court has taken the monthly income of the claimant at Rs.6,500/-. Hence the monthly income of the deceased for the accident of the year 2004, in the present case, can safely be taken at Rs.3,500/- per month and it would be appropriate to deduct 1/4th of the amount towards personal expenses of the deceased. If Rs.3,500/- is taken as monthly income and 1/4th is deducted towards personal expenses, the monthly contribution of the deceased to the family works out to Rs.2,625/-. Thereafter, adopting the multiplier of 16, as rightly done by the Tribunal, the loss of income works out to Rs.5,04,000/- and the same is hereby awarded. However, there is no modification with regard to the compensation awarded by the Tribunal towards transport expenses, loss of consortium and loss of love and affection to the respondents 2 and 3 and 4th respondent at Rs.5,000/-, Rs.20,000/-, Rs.20,000/- and Rs.5,000/- respectively and the same is hereby confirmed as such. Thus, the compensation awarded by the Tribunal is hereby enhanced from Rs.3,90,000/- to Rs.5,54,000/-. It is made clear that the enhanced sum of Rs.1,64,000/- shall carry interest at 7.5% per annum only from the date of filing of this appeal.

8. In the result, the Appeal is partly-allowed. No costs. The second respondent/Insurance company is directed to deposit the entire compensation amount as awarded by this Court, with interest and costs, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of the copy of this Judgment. The second minor claimant would have attained majority by now. Hence, on such deposit being made, the claimants 1, 2 and 4 are entitled to withdraw their respective shares, as per the ratio of apportionment made by the Tribunal, on making proper application. As far as the third minor claimant is concerned, the Tribunal shall invest her share in a nationalised bank till she attains majority and the interest accrued thereon shall be permitted to be withdrawn by the first claimant/mother once in three months.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

srk/smn

To

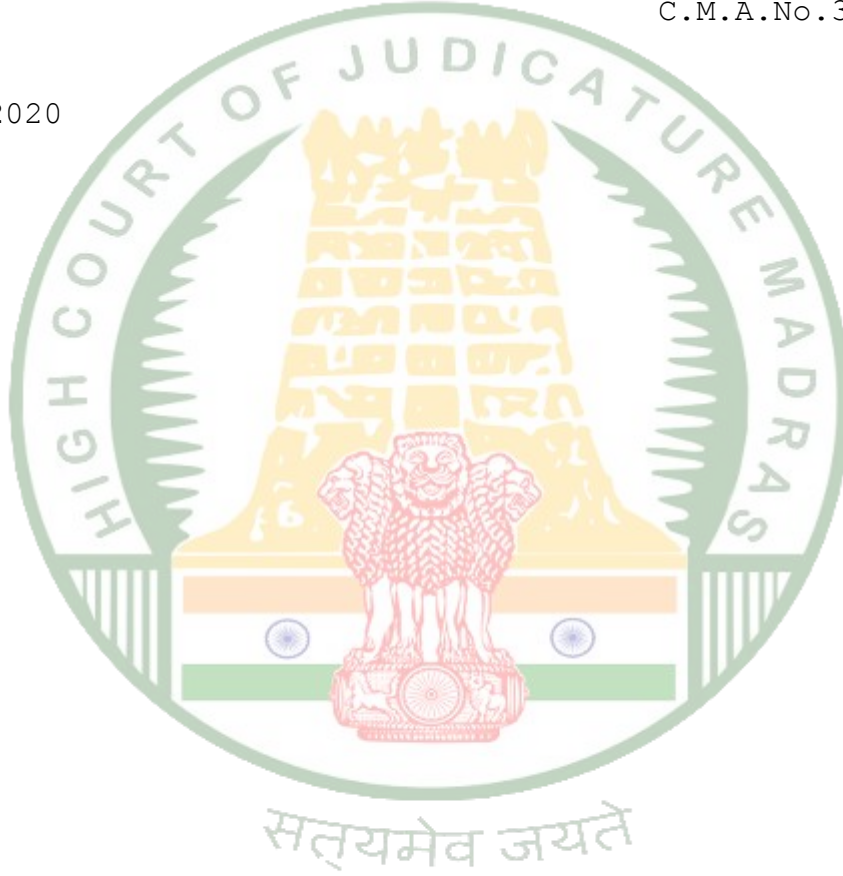
1. The Motor Accident Claims Tribunal,
I Additional District Judge, Krishnagiri at Dharmapuri.
2. The Section officer,
VR Section, High Court,
Madras -104.

+lcc to Mr.D.Bhaskaran, Advocate, S.R.No.62701

+lcc to Mr.P.Mani, Advocate, S.R.No.62899

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GMR (CO)
CS/28/10/2020



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