

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2019
CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A.No.492 of 2010
and
M.P.No.1 of 2010

The National Insurance Company,
Represented by its Branch Manager
having Office at No.52, T.S.R.Big Street,
Kumbakonam. ...Appellant/2nd respondent

Vs

1. Chellakannu
2. Mythilidevi
3. Abarna Lakshmi
4. Senthilkumaran ...Respondents 1 to 4/ Petitioners
5. Jayanthi ...5th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act
against the Judgment and Decree made in M.C.O.P.No.191 of 2007
on the file of the Motor Vehicle Accident Claims Tribunal,
Subordinate Court, Mannargudi dated 05.11.2008.

For Appellant : N.B.Surekha
For Respondents : No appearance

JUDGMENT

This appeal is preferred by the Appellant/ Insurance Company
against the Judgment and Decree made in M.C.O.P.No.191 of 2007
on the file of the Motor Vehicle Accident Claims Tribunal,
Subordinate Court, Mannargudi dated 05.11.2008.

2.The case in brief, is as follows:

On the fateful day, ie. on 02.06.2007 at about 4.30 a.m when
the deceased Kaliyaperumal was riding his motor cycle bearing
Registration No.TN-49-AA-2208, a lorry bearing Registration
No.TN-50A-5355 came in the opposite direction and dashed against
the motor cycle of the deceased. Due to the impact the deceased
died on the spot itself. Therefore, the legal heirs of the
deceased filed a claim petition before the Tribunal and the
Tribunal, on a consideration of the materials and evidence

available on record, has arrived at the total compensation of Rs.6,00,000/- with interest at the rate of 9% p.a., from the date of petition till the date of deposit.

3. Challenging the same, the appellant Insurance Company, has filed the present Civil Miscellaneous Appeal.

4. The learned counsel for the appellant/Insurance Company contended that the Tribunal erred in holding that the driver of the lorry is the cause for the accident. He further contented that in the absence of any relevant proof regarding the age, avocation and income of the deceased, the award of the tribunal is on the higher side, which requires interference by this Court.

5. Despite serving notice on the respondents and their names printed in the cause list, there is no appearance on behalf of the respondents. Hence, the appeal itself taken up for final disposal, since the disposal of this case will not affect the respondents in any manner

6. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7. Before the Tribunal, wife of the deceased was examined as P.W.1, who has deposed that the accident had taken place due to the inattentive attitude of the driver of the lorry. The evidence of P.W.1 corroborates with the contents of Ex.P1/F.I.R, which supports the case of the claimants rather than appellant. This Court is of the view that the findings rendered by the Tribunal are based upon the weightage of evidence, probabilities of case and settled principles of law and hence the same are confirmed as such.

8. As regards the quantum of compensation awarded by the Tribunal is concerned, in the claim petition it was stated that the deceased was working as auditor in Co-operative Society and earning a sum of Rs.9,000/- per month. Based on the avocation of the deceased, the tribunal has fixed the annual income of the deceased at Rs.1,08,000/- and 1/3rd amount (Rs.36,000/-) was deducted towards personal expenses and arrived at Rs.72,000/- (Rs.1,08,000/-Rs.36,000/-) as annual income. The age of the deceased was 59 and applied the multiplier '8' and quantified Rs.5,76,000/- under the head loss of earnings. Further the Tribunal has awarded Rs.2,000/-, Rs.10,000/-, and Rs.2,000/- towards funeral expenses, loss of love and affection and Transportation charges Respectively. The first respondent has lost her companion, hence Rs.10,000/- was awarded towards loss of consortium. Thus the total compensation was quantified at Rs.6,00,000/-.

9. It is seen from records that the claimants have not produced any proof regarding the income of the deceased. In the absence of relevant proof regarding the income of the deceased, this Court is of the view to take Rs.5,500/- as monthly income of the deceased and thereby annual income was arrived at Rs.66,000/- (Rs.5,500x12) and 1/3rd (Rs.22,000) was deducted towards personal expenses. The age of the deceased was 59 years at the time of accident, hence '8' multiplier was applied and quantified Rs.3,52,000/- (Rs.44,000x8) as compensation under the head loss of income and all other heads remains intact. Thus, the modified compensation is tabulated hereunder:

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of earnings	Rs.5,76,000/-	Rs.3,52,000/-
2	Funeral expenses	Rs.2,000/-	Rs.2,000/-
3	Loss of love and affection	Rs.10,000/-	Rs.10,000
4	Transportation	Rs.2,000/-	Rs.2,000/-
5	Loss of Consortium	Rs.10,000/-	Rs.10,000/-
	Total	Rs.6,00,000/-	Rs.3,76,000/-

9. In the result, the Civil Miscellaneous Appeal is partly allowed and the appellant/Insurance Corporation is directed to deposit the modified award amount with interest and costs, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. Hence on such deposit being made, the Tribunal is directed to transfer the deposited amount to the claimants/respondents as per the ratio of apportionment fixed by the Tribunal, through RTGS within one week thereafter. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

To

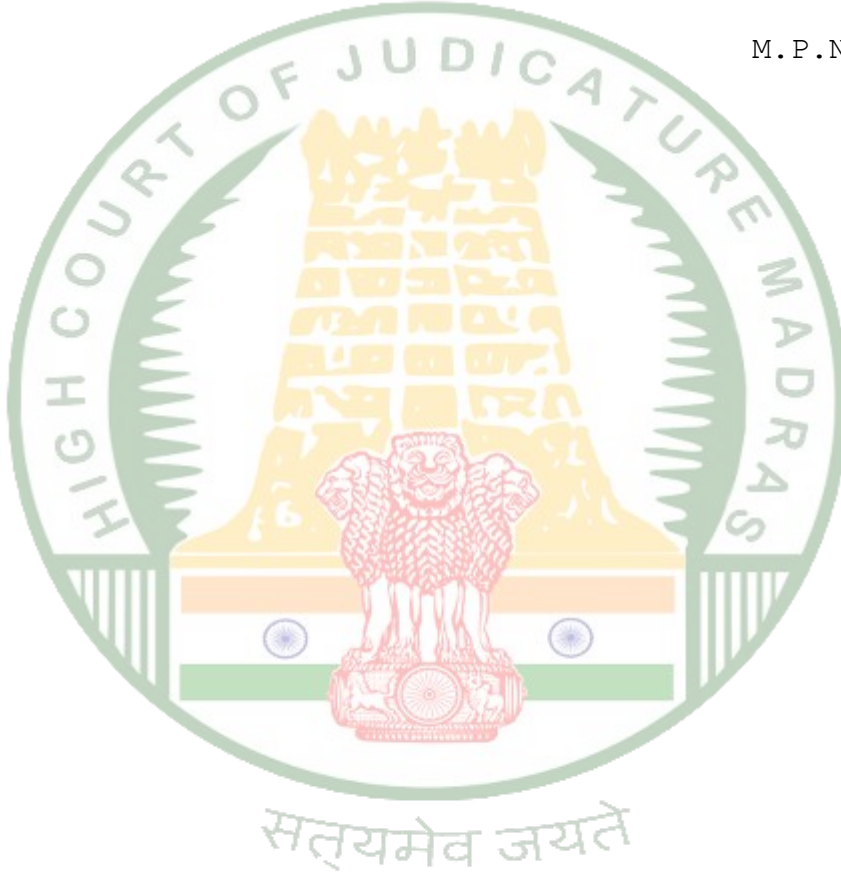
1 .The Subordinate Judge,
Mannargudi.

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

+1 cc to M/s.N.B.Surekha, Advocate,sr.81662.

rsi(co)
krd 28/9

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