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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.03.2019

Pronounced on :.11.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1091 of 2012

1.D.Kumar
2.K.Sathya

...Appellants/ Petitioners
Vs.

1A.Janakiraman
(was set exparte before the Tribunal)

2.United India Insurance Company Limited,
Motor Third Party Claims - HUB
Silingi Buildings,
No.134,Greams Road,
Chennai-600 006
... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 14.11.2011, in M.C.O.P.No.2829 of 2010 on the file of the V Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellants : Mrs.P.T.Saleem Fathima
for Mr.M.Swamikkannu

For R1 : Ex-parte before the Tribunal
For R2 :No appearance

JUDGMENT

The appellants are the claimants in M.C.O.P.No.2829 of 2010 on the file of the VJudge, Motor Accidents Claims Tribunal, Small Causes Court, Chenani. They have filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.6,00,000/- for the death of one K.Divya Lakshmi in a road accident that took place on 21.12.2008. The claimants 1, 2 are the father and the mother of the deceased respectively.

2. The brief case of the appellants/claimants is as follows:



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(i) The deceased K.Divya Lakshmi, aged 2 1/2 years who is the daughter of the appellants died in a road accident.

(ii) On 21.12.2008, at about 10.30 hours, the deceased was standing at Perumal Koil street near the junction of Periyapalayam Road. At that time, a tractor bearing Registration No. TN 20 AW 9301, belonging to the first respondent, hit her, as a result of which, she sustained fatal injuries and died. According to the appellants/claimants, the rash and negligent driving of the driver of the tractor bearing Registration No. TN 20 AW 9301 was the cause of the accident, and that, since, the said tractor was insured with the second respondent, both the first and second respondents, are jointly and severally liable to pay compensation of Rs.6,00,000/- to them.

3. The owner of the said tractor remained absent before the Tribunal and therefore, he was set ex-parte. The United India Assurance Company contested the claim petition. The learned Tribunal, after analysing the evidence on record, concluded that the accident occurred due to the rash and negligent driving of the driver of the said tractor and awarded a compensation of Rs.2,85,000/- together with interest at the rate of 7.5% per annum to the appellants/claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.P.T.Saleem Fathima, learned counsel appearing for the appellants/claimants relied on the decision in 2018 (2) TNMAC 238 [G.Sumathy & another Vs.K.Anbazhagan] and contended that the Hon'ble Supreme Court had awarded a sum of Rs.5,00,000/- for a student aged 10 years who died in a road accident that took place on 19.07.1992.

5. A perusal of the available records shows that the manner of the accident is not disputed by both the parties. Coming to the point of quantum of compensation, as rightly pointed out by the learned counsel appearing for the appellants, the Hon'ble Supreme Court in the decision in Kishan Gopal & another vs. Lala & others reported in 2013 (2) TN MAC 358 (SC) had awarded a sum of Rs.4,50,000/- for the pecuniary loss and a sum of Rs.50,000/- for the conventional heads i.e., in toto, a sum of Rs.5,00,000/- was awarded for the death of a student aged 10 years.

6. Hence, following the above said decisions, the compensation awarded by the Tribunal is enhanced from Rs.2,85,000/- to Rs.5,00,000/-.

7. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.



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(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,85,000/- to Rs.5,00,000/- which shall carry interest at the rate of 7.5% per annum.

(iii) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent - the New India Assurance Company Limited is directed to deposit the entire compensation of Rs.5,00,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.2829 of 2010, dated 14.11.2011, on the file of the V Judge, the Motor Accidents Claims Tribunal, Small Causes Court, Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(v) The first appellant/first claimant is entitled to a sum of ***Rs.1,50,000/-** together with accrued interests and costs. The ***Second appellant/*Second** claimant is entitled to a sum of ***Rs.3,50,000/-**.

(vi) On such deposit being made by the New India Assurance Company Limited, ***both the Appellants/Claimants are** permitted to withdraw the entire compensation awarded to her.

Sd/-

Assistant Registrar(CS)

Dated : 17/06/2019

***Corrected as per order of this Court
dated 28.08.2019 made in CMA No.1091/12**

***Sd/-**

Assistant Registrar(CS-III)

Dated : 03/09/2019

//True Copy//

Sub Assistant Registrar

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To

- 1.The Motor Accidents Claims Tribunal,
V Judge, Small Causes Court, Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Chennai.

**To be substituted
the order already
dispatched on
01.08.2019**

+lcc to Mr..M.Swamikkannu , Advocate SR.No. 35623

C.M.A.No.1091 of 2012

A.SK(30/07/2019)

GMV (04/09/2019P