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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3287 of 2012

and

M.P.No.1 of 2012

M/s. National Insurance Company Ltd.,
638, Cuddalore Main Road,
Attur & Taluk.

... Appellant/2nd Respondent

.. Vs ..

1. Saroja
2. Arul
3. Karthikeyan
4. Thenmozhi
5. Kalal Rahaman

... Respondent 1 to 4/Claimants 1 to 4
... 5th Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 02.03.2012 made in M.C.O.P.No.45 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Virudhachalam at Cuddalore District.

For Appellant : Mr.J.Chandran

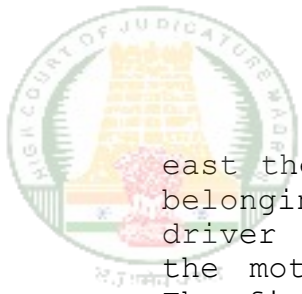
For RR-1 to 4 : A.Murugan

For R-5 : Not Ready in notice

JUDGMENT

Insurance Company has filed this appeal challenging the liability as well as on the quantum.

2. The accident in this case happened on 16.12.2010 at about 13 hours on the Athoor road near Narashingapuram Bharathipuram power house. On the date of accident, while the deceased drove the TVS motorcycle along with his wife/first claimant namely, Saroja as pillion rider towards east, just behind from west to



east the vehicle viz., TATA ACE bearing Registration No.54/Y7221 belonging to the fifth respondent herein was driven by its driver in a very rash and negligent manner and dashed against the motorcycle of the deceased and caused death of Maruthai. The first claimant/first respondent herein, who is the wife of the deceased, second and third claimants/respondent 2 and 3 herein, who are the sons of the deceased and the fourth claimant, who is the daughter of the deceased have filed a claim petition claiming a sum of Rs.10,00,000/- as compensation from the respondents before the Tribunal.

3. Before the Tribunal, on the side of the claimants, first claimant examined herself as P.W.1 and document Exs.P.1 to P.15 were marked. On behalf of the respondents, no witness was examined and no document was marked.

4. After considering both oral and documentary evidence adduced on behalf of the claimants and also taking note of the documentary evidence Ex.P.1-FIR, Ex.P.2-Xerox copy of motor vehicle inspection report, Ex.P.3-Post mortem certificate of the deceased, Ex.P.4-Final Report and P.6-Xerox copy of driving license, the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving of the TATA ACE vehicle bearing Registration No.54/Y7221. The Tribunal also held that at the time of the accident, as per Ex.P.6, the driver has valid driving license and the vehicle has been duly insured with the appellant/insurance company and therefore, both the owner of the vehicle as well as the insurance company are jointly and severally liable to pay compensation to the claimants and this point is answered accordingly.

5. In the decision of this Court reported in 2018 (1) TN MAC 592 (DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others], the Division Bench has held that though the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, the Court could take suo motu decision for enhancing the compensation amount awarded by the Tribunal, by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33 C.P.C. and Section 151 CPC as well as Article 227 of the Constitution of India. The relevant paragraph No.9 of the above said decision is extracted hereunder:-

"9.Though the Appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the Compensation awarded by the Tribunal from Rs.14,57,000/- to Rs.17,83,600/- by re-appreciating the



evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33, C.P.C., and Section 151 C.P.C., as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are beneficial in nature and what is required to be awarded is Just and Reasonable Compensation. Therefore, even in the absence of Appeal/Cross-Appeal by the Claimants, this Court has got power and jurisdiction to enhance the Compensation, which has been recognised by the Honourable Supreme Court in Nagappa v. Gurdayal Singh, 2004 (2) TN MAC 398 (SC)."

6. As to the point of quantum of compensation, it appears that the married daughter and married son have been shown as dependents. The Tribunal has fixed the monthly income of the deceased at Rs.6,500/- and after deducting 1/4 towards his personal expenses, the loss of income has been fixed as Rs.58,500/- per annum. This Court is of the considered view that 1/4th deduction is hereby modified as 1/3 deduction and the loss of income is calculated at Rs.52,000/- per annum. Considering the age of the deceased as 60, the Tribunal has rightly applied multiplier of 9. Accordingly, the amount granted under the head of loss of income is reassessed at Rs.4,68,000/- [52,000 x 9].

7. The Tribunal has awarded a total sum of Rs.40,000/- [each Rs.10,000] towards loss of love and affection to the claimants 1 to 4. This Court is of the view that the claimants 2 to 4, who are the sons and daughter, are entitled to a sum of Rs.40,000/- each [Totally Rs.1,20,000/-] towards loss of love and affection and the award amount of Rs.10,000/- granted by the Tribunal to the first claimant/wife under the said head is deleted. The Tribunal has awarded a sum of Rs.25,000/- to the first claimant towards loss of consortium and the same is enhanced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses and the same is enhanced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards transport charges and the same is hereby deleted. The Tribunal has not awarded any amount under the head of loss of estate and this Court is of the view that it is just and proper to award a sum of Rs.15,000/- towards loss of estate. In all, respondents 1 to 4 herein/claimants are entitled to a sum of Rs.6,58,000/- as total compensation.

8. Accordingly, the award of the Tribunal stands modified as follows:-



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Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of income	Rs. 5,26,500/-	Rs. 4,68,000/-
2.	Loss of love and affection to claimants 2 to 4	Rs. 40,000/-	Rs. 1,20,000/-
3.	Loss of consortium to the first claimant/wife	Rs. 25,000/-	Rs. 40,000/-
4.	Funeral Expenses	Rs. 5,000/-	Rs. 15,000/-
5.	Transportation charges	Rs. 5,000/-	Nil
6.	Loss of estate	Nil	Rs. 15,000/-
	Total	Rs. 6,01,500/-	Rs. 6,58,000/-

9. In the result,

I. This Civil Miscellaneous Appeal is dismissed enhancing the compensation from Rs.6,01,500/- to Rs.6,58,000/- with proportionate costs.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The appellant-Insurance Company is directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit, respondents 1 to 4 herein/claimants are permitted to withdraw the enhanced award amount with proportionate interest, as apportioned by the Tribunal, less the amount already withdrawn, if any.

V. The claimants shall pay necessary Court fee, if any, on the enhanced compensation.



VI.No order as to costs. The connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

Jr1

To

1. Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Virudhachalam at Cuddalore.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.23756

+1cc to Mr.A.Murughan, Advocate SR.No.24132

C.M.A.No.3287 of 2012

VBA(CO)
GMY(22/08/2019)