

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.809 and 1661 of 2011
and
M.P.No.1 of 2011

1.Lakshmi Bai
2.Baskar
3.Dhanalakshmi
4.Murali Krishnan

... Appellants in
C.M.A.No.809 of 2011

National Insurance Company Limited,
Vijay Plaza, C-32, 2nd Avenue,
Anna Nagar, Chennai- 40. ...Appellant in C.M.A.No.1661
of 2011

Vs.

1.C.Thenmozhi
2.National Insurance Company Limited,
Vijay Plaza, C-32, 2nd Avenue,
Anna Nagar, Chennai-40. ... Respondents in
C.M.A.No.809 of 2011

1.Lakshmi Bai
2.Baskar
3.Dhanalakshmi
4.Muralikrishnan
5.C.Thenmozhi

... Respondents in C.M.A.No.1661
of 2011

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.10.2010 made in M.C.O.P.No.283 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court - 1, Poonamallee.

For Appellants : Mr.G.Mannar Mannan
in C.M.A.No.809 of 2011

:Mr.S.Arunkumar
in C.M.A.No.1661 of 2011

For R1 :Not ready in notice in
C.M.A.No.809 of 2011
For R2 :Mr.S.Arunkumar
in C.M.A.No.809 of 2011

For R1 to R4 :Mr.G.Mannar Mannan
in C.M.A.No.1661 of 2011
For R5 : Not ready in notice
in C.M.A.No.1661 of 2011

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the order and Decree dated 27.10.2010 made in M.C.O.P.No.283 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court - 1, Poonamallee.

2. The case of the claimants is that on 09.08.2007 at about 5.10 hours, when the deceased was travelling as a passenger in share auto bearing Reg.No.TN-05-S-7548 from West to East, the driver of the share auto drove the vehicle in a rash and negligent manner and dashed against the van, as a result of which, the share auto got capsized and caused the fatal accident resulting in the death of the deceased. The first claimant is the wife of the deceased and the second to fourth claimants are the sons and daughter of the deceased. The claimants claimed Rs.20 lakhs as compensation and restricted their claim to Rs.15 lakhs.

3. The learned counsel for the Insurance Company would submit that the deduction of 50% of the income is bad in law and correct multiplier was not adopted in the case of fatal accident and the learned counsel for the Insurance Company would submit that in the absence of date of birth, the Tribunal has erroneously adopted the age as '55' based on the Post-mortem Certificate Ex.P-1 and multiplier of '11' was wrongly adopted.

4. After perusing the evidence adduced before the Tribunal, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the auto in which, the deceased was travelling as passenger and P.W.2 was the co-passenger and said finding is hereby confirmed.

5. After going through Ex.P7 I.D card issued by the Southern Railways, it is seen that the date of birth of the deceased is

10.08.1953 and at the time of the accident, he was 54 years old. Accordingly, the Tribunal had adopted the multiplier '11' as per the decision of the Supreme Court reported in 2009 (2) TN MAC 1 (SC) (Sarala Varma and others Vs. Delhi Transport Corporation) and the income has been assessed at Rs.13,425/- as per Ex.P3 pay slip and the dependency was accordingly calculated and the loss of dependency was fixed by the Tribunal at Rs.8,86,050/-. Accordingly, this Court re-assessed the pecuniary loss sustained by the legal representatives of the deceased is $13425 \times (1/2) \times 12 \times 11 = \text{Rs.}8,86,050/-$ and the same is hereby confirmed. In respect of all the other heads, the compensation awarded by the Tribunal appears to be reasonable and the same are intact and hereby confirmed.

6. Accordingly, both the appeals are dismissed. No costs. The Insurance Company shall deposit the award amount, if not deposited, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. The claimants are permitted to withdraw the compensation amount in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court - 1, Poonamallee.

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

+1cc to Mr.S.Arunkumar, Advocate Sr.17722
+1cc to Mr.G.Mannar Mannan, Advocate Sr.17948

C.M.A.Nos.809 and 1661 of 2011 and
M.P.No.1 of 2011

ak[co]
srg 14/06/2019