

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.62 of 2015 and
M.P.No.1 of 2015

The Divisional Manager,
The New India Assurance Company Limited,
Office at No.1, Officers line,
CSI Building, Vellore. .. Appellant/2nd respondent

Vs.

1.Nuziba
2.Rahamunish
3.Auster
4.Shakhana
5.Udaya Kumar
6.Minor.Neelopher .. Respondents
(Minor 6th respondent represented by her
mother and next friend Sajitha Banu)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.12.2011 made in M.C.O.P.No.48 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore.

For Appellant : Mr.K.Vinod
for Mr.Elveera Ravindran

For RR 1 to 4 : Mr.M.Sivakumar
for Mr.C.Prabakaran

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 30.12.2011 made in M.C.O.P.No.48 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore.

2.The appellant is the second respondent in M.C.O.P.No.48 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore. The respondents 1 to 4/claimants filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Ajeer Rahman, husband of first respondent, son of the second respondent and brother of the respondents 3 and 4, who died in the road accident that took place on 06.01.2007.

3.According to respondents 1 to 4/claimants, on 06.01.2007 at 03.15 P.M., while the deceased Ajeer Rahman was riding in his motorcycle on Pallikonda - Gudiyatham road, the fifth respondent drove his mini van in a rash and negligent manner and dashed against the motorcycle and caused the accident. Due to the said accident, the Ajeer Rahman died on the way to hospital due to multiple injuries suffered by him. According to respondents 1 to 4, the deceased was running provisional store and also was selling vegetables and claimed a sum of Rs.30,00,000/- as compensation against the fifth respondent and appellant, being the owner and insurer of the van respectively.

4.The fifth respondent in the counter statement denied that accident occurred due to his rash and negligent driving. He also contended that he was acquitted in the Criminal Case filed against him. A claim petition was already filed in M.C.O.P.No.184 of 2007 before the Principal District Court, Vellore, by the sixth respondent, daughter of the first wife of the deceased, one Sajithabanu and others. The fifth respondent/driver-cum-owner of the van possessed valid driving license at the time of accident. The van was insured with the appellant/Insurance Company and the insurance policy is valid from 06.12.2006 to 05.12.2007 and hence if any liability is fixed, only the appellant/Insurance Company is liable to pay the compensation and prayed for dismissing the claim petition against the fifth respondent.

5.The appellant/Insurance Company filed counter statement and contended that the name of the deceased was Abdul Azeez and he has no other alias name as per the F.I.R. The respondents 1 to 4/claimants did not include all the legal representatives of the deceased. The legal heirship certificate produced by the respondents 1 to 4/claimants is not correct. The deceased had four wives. The respondents 3 and 4 who are the brother and sister of the deceased are not legal heirs of the deceased and are not entitled for any compensation. The accident occurred due to the negligence on the part of the deceased and prayed for dismissal of the claim petition.

6. On behalf of the respondents 1 to 4/claimants, two witnesses were examined and 11 documents were marked as Exs.P1 to P11. On behalf of the fifth respondent and appellant, two witnesses were examined and Investigation Report was marked as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the fifth respondent, who was driver cum owner of the mini van and directed the fifth respondent and appellant/Insurance Company, being the owner and insurer of the mini van to jointly or severally pay a sum of Rs.6,20,000/- as compensation to the respondents 1 to 4/claimants.

8. Against the said award dated 30.12.2011 made in M.C.O.P.No.48 of 2010 granting compensation to the respondents 1 to 4/claimants, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in holding that the accident occurred due to rash and negligent driving by the fifth respondent and erred in awarding excess amount as compensation. A sum of Rs.4,68,000/- awarded by the Tribunal as compensation towards loss of income of the deceased is erroneous. The amounts awarded by the Tribunal under the heads of consortium, loss of love and affection and loss of estate are excessive. The Tribunal failed to consider that all the legal heirs of the deceased are not impleaded as parties to the claim petition and prayed for setting aside the award passed by the Tribunal.

10. Per contra, Mr.M.Sivakumar, learned counsel appearing for the respondents 1 to 4 contended that the respondents 1 to 4 let in both oral and documentary evidence to prove that accident occurred only due to rash and negligent driving by the driver of the van, the fifth respondent herein. The Tribunal, appreciating the oral and documentary evidence by giving valid reason, held that accident occurred only due to rash and negligent driving by the fifth respondent. The deceased was running provisional stores and also was selling vegetables and earning a sum of Rs.25,000/- per month. The Tribunal erred in fixing notional income of the deceased at Rs.4,500/- per month, which is meager. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 4/claimants and perused the entire materials on record.

12. From the materials available on record, it is seen that the respondents 1 to 4/claimants examined one Saleem as P.W.2, who is an eye-witness to the accident and produced certified copy of the F.I.R. as Ex.P1 and Exs.P3 and P4/Motor Vehicle Inspector's report and substantiated their claim that the accident occurred due to rash and negligent driving by the driver of the van, fifth respondent herein. The appellant and fifth respondent have not let in any contra evidence to disprove the evidence let in by the respondents 1 to 4/claimants. R.W.2, witness examined by the appellant is only with regard to legal heirs of the deceased. In view of the same, there is no error in the finding of the Tribunal fixing the negligence on the part of the fifth respondent and liability on the part of the appellant and fifth respondent.

13. As far as quantum of compensation is concerned, the respondents 1 to 4/claimants have contended that the deceased was earning a sum of Rs.25,000/- per month by running provisional store and also was selling vegetables. Except oral evidence, they have not produced any documents to substantiate their claim. The accident occurred in the year 2007. The Tribunal fixed the monthly income of the deceased at Rs.4,500/- and granted compensation for loss of income, which is just and reasonable and the same is confirmed by this Court. The Tribunal has granted a sum of Rs.50,000/- towards loss of consortium and a sum of Rs.10,000/- each for respondents 1 to 4 and 6 towards loss of love and affection. The Tribunal having awarded a sum of Rs.50,000/- towards loss of consortium to the first respondent, erred in awarding compensation of Rs.10,000/- to the first respondent towards loss of love and affection. The said amount of Rs.10,000/- granted to first respondent towards loss of love and affection is set aside. The respondents 2 to 4 and 6 are entitled to get a sum of Rs.10,000/- each towards loss of love and affection. The Tribunal has granted a sum of Rs.50,000/- towards loss of consortium and the same is reduced to Rs.40,000/-. The Tribunal has granted a sum of Rs.50,000/- towards loss of estate, which is excessive and the same is reduced to Rs.15,000/-. A meager sum of Rs.2,000/- granted by the Tribunal towards funeral expenses is enhanced to Rs.15,000/-. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl .N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	4,68,000/-	4,68,000/-	Confirmed
2.	Loss of consortium	50,000/-	40,000/-	Reduced
3.	Loss of love and affection	50,000/-	40,000/-	Reduced
4.	Funeral expenses	2,000/-	15,000/-	Enhanced
5.	Loss of estate	50,000/-	15,000/-	Reduced
	Total	Rs.6,20,000/-	Rs.5,78,000/-	reduced by Rs.42,000/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,20,000/- is hereby modified to Rs.5,78,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company and the fifth respondent are jointly or severally directed to deposit the modified award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.48 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore. On such deposit, the respondents 1 to 4 are permitted to withdraw their respective share of the modified award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor sixth respondent is directed to be deposited in any one of the Nationalized Bank, till the minor sixth respondent attains majority. On such deposit, Sajitha Banu, mother and natural guardian of the minor sixth respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor sixth respondent. The appellant-Insurance Company is permitted to withdraw their share of the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.48 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track

Court, Vellore, if the entire amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

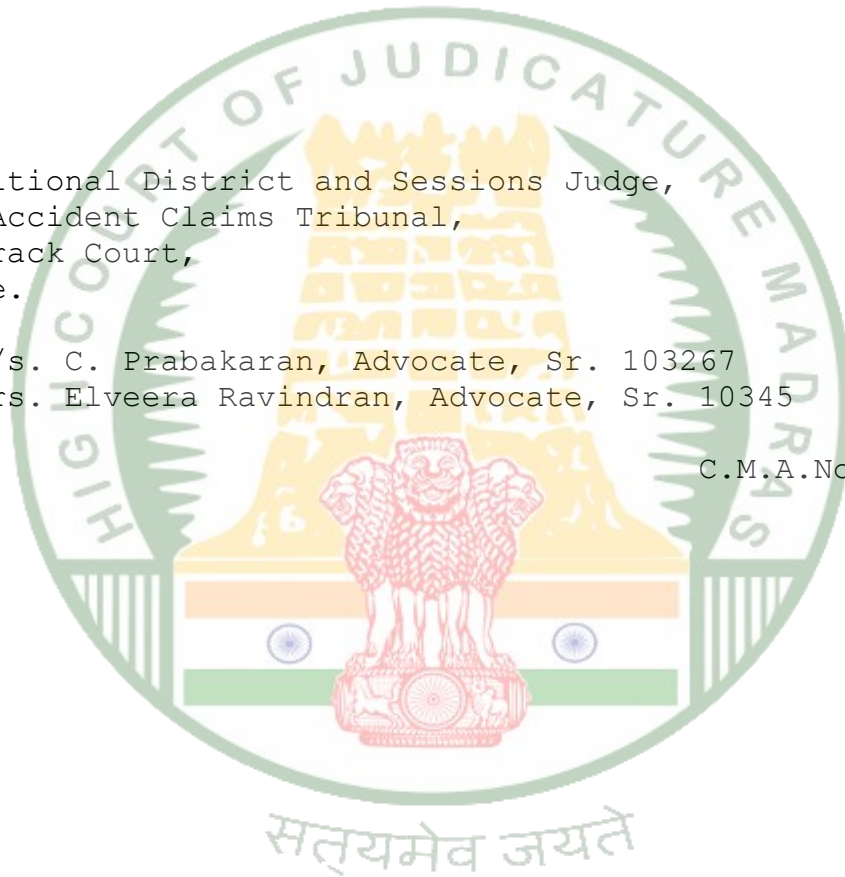
The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Track Court,
Vellore.

1 cc to M/s. C. Prabakaran, Advocate, Sr. 103267

1 cc to Mrs. Elveera Ravindran, Advocate, Sr. 10345

C.M.A.No.62 of 2015

PPA (CO)
kk 4/1



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