

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.3049 of 2019
and
C.M.P.No.16694 of 2019

The Manager,
Reliance General Insurance Company Ltd.,
Chennai. Appellant/II Respondent

Vs.

1. MoorthyIst Respondent/Ist Petitioner
2. SelviIIInd Respondent/II Petitioner
3. ShanmugasundaramIIIrd Respondent/I Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.07.2018 made in M.C.O.P.No.93 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

For Appellant : Mrs. C. Bhuvanasundari

For R1 & R2 : Mr. N. Manokaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 19.07.2018 made in M.C.O.P.No.93 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

2.The appellant is 2nd respondent in M.C.O.P.No.93 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi The respondents 1 and 2 filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Sharma, who died in the accident that took place on 22.02.2016. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing Reg. NO. TN 50-J-5558 owned by

the 1st respondent/3rd respondent herein and being the insurer of the said vehicle, directed the appellant herein to pay the compensation of RS.16,73,000/- to the claimants and recover the same from the owner of the vehicle/3rd respondent herein. Against the said award dated 19.07.2018 made in M.C.O.P.No.93 of 2016, the appellant-Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

3.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing monthly income of the deceased at Rs.8000/- and the contributory negligence fixed at 15% on the part of the deceased is also very meagre when there is clear evidence that the accident occurred due to the negligence on the part of the deceased. The tribunal erroneously deducted 1/3 towards personal expenses, when in this case the deceased was a bachelor and parents are aged about 43 and 30 who should be gainfully employed being the legal heirs, hence 1/2 deduction is the binding precedent. The sum awarded under the other heads viz., Funeral expenses, love and affection are also stated as excessive. In any event, the compensation awarded by the Tribunal along with the interest at the rate of 7.5% per annum is on the higher side and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents 1 and 2 contended that the Tribunal has considered all the materials available on record and awarded just compensation and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as respondents 1 and 2 and perused the materials available on record.

6. It is seen from the records that on the claimants PW1 to PW3 were examined and Ex.P1 to P.12 were marked. On the side of Respondents RW1 & RW2 were examined and Exhibits R1 to R6 were marked.

7. Further it is seen from the award of the Tribunal, the deceased was aged 23 years at the time of accident and the same is evident from Exs.P3-postmortem certificate and P4-Adhar Card of the deceased. The Tribunal taking into account the age of the deceased as 23 years, applied multiplier 18, which is proper. As per evidence of PW3, who has stated that the deceased was working as Lecturer and was earning Rs.8000/- per month, for which he has produced salary certificate marked as EX.P11 and Service Certificate -Ex.P12-. The Tribunal considering the above materials on record, has fixed a sum of Rs.8000/- per month as monthly income of the deceased, applied multiplier 18, deducted

1/3rd towards personal expenses and by adding 40% towards Future Prospects, awarded a sum of Rs.18,42,480/- towards loss of dependency, which is proper and need not be interfered with. Similarly, the sum awarded by the tribunal under the heads Funeral expenses and Loss of love and affection is not excessive and just compensation. In the above circumstances, this Court is not inclined to interfere with the award of the Tribunal.

8. Further the tribunal by considering the evidence of RW1 and RW2 who have clearly deposed that at the time of accident, the alleged vehicle was insured with the Insurance company/appellant herein and also considering the fact that owner and driver of the said vehicle were not examined before the tribunal, ordered Pay and recovery, which is proper and reasonable. Further on considering the evidence of the PW1, the father of the deceased who have deposed in his cross examination that his son (deceased) did not wear the helmet at the time of the accident, has fixed the contributory negligence at 15% on the part of the deceased, which is also very much proper and reasonable. This Court finds no error in the award made by the tribunal.

9. In the result, the Civil Miscellaneous Appeal is dismissed and the compensation and the contributory negligence made by the Tribunal is confirmed.

10. The appellant-Insurance Company is directed to deposit a sum of RS.16,73,000/- (85% of the compensation) 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 and recover the same from the owner of the vehicle/3rd respondent herein later on. On such deposit, the respondents 1 and 2-claimants are permitted to withdraw their respective shares of the award amount as per the apportionment made by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

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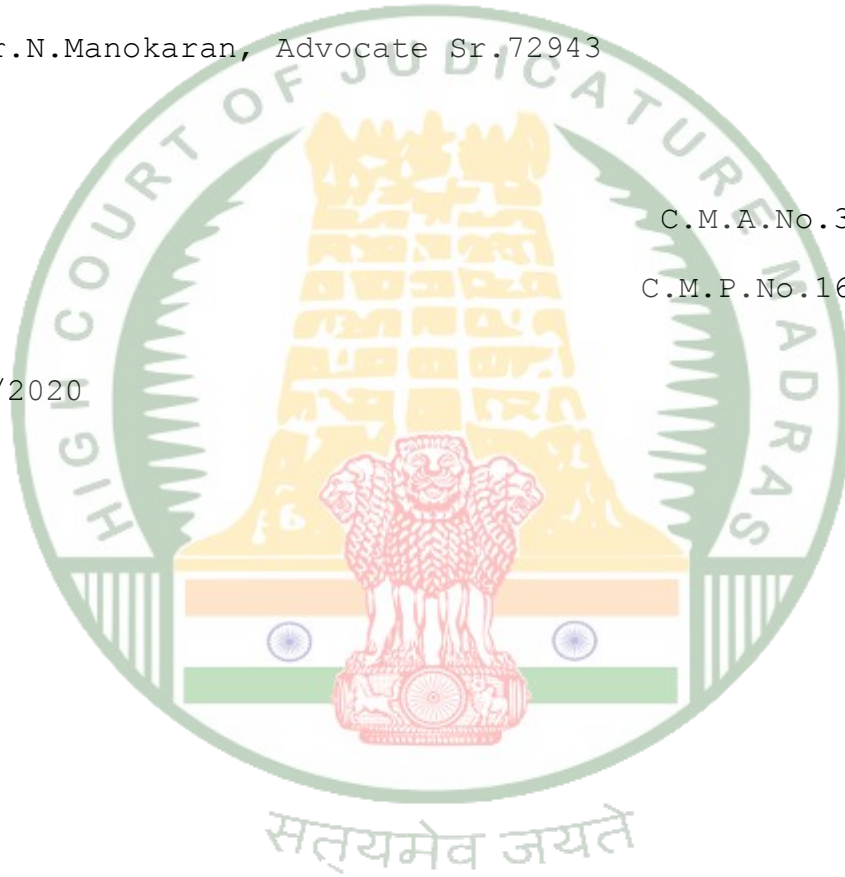
1.The III Additional District Court,
(Motor Accident Claims Tribunal)
Kallakurichi.

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

+1cc to Mr.N.Manokaran, Advocate Sr.72943

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