

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2841 of 2016
and C.M.P.No.20559 of 2016

Royal Sundaram Alliance Insurance
Company Limited,
3rd Floor, DB Plaza,
Whites Road, Chennai.

.. Appellant/2nd Respondent

Vs.

1.Kuppusamy
2.Vedhammal

..Respondents 1 & 2/
Petitioners

3.Mahalingam
(R3 remained exparte before Tribunal)...3rd Respondent/1st
Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.03.2016 made in M.C.O.P.No.504 of 2014 on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

For Appellants : Mr.E.Raja Durai for

For Respondents : Mr.V.Vijaya Raghavan
for R1 & R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 31.03.2016 made in M.C.O.P.No.504 of 2014 on the file of Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

2.The appellant is the second respondent in M.C.O.P.No.504 of 2014 on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.30,00,000/-

as compensation for the death of one Arunachalam, who died in the accident that took place on 15.05.2013.

3. According to the respondents 1 & 2, on the date of the accident i.e. On 15.05.2013, at about 12.30 p.m., while the deceased was riding in the motorcycle proceeded in the Arur to Morappur road, nearing Muniappan kovil, the TATA ace, which came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle driven by the deceased and caused the accident. Due to the said impact, the deceased Arunachalam died. Therefore, the respondents 1 & 2 have filed above claim petition claiming compensation.

4. The 3rd respondent owner of the lorry remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 & 2 and contended that the accident has occurred only due to negligence on the part of the deceased, who suddenly lost his control and entered into the wrong side. The driver of the TATA ace swerved his vehicle and stopped the same at the road edge on the left side to avert any accident. In spite of the same, the deceased hit front side bumper of the TATA ace. Therefore, contributory negligence has to be fixed on the part of the deceased.

6. Before the Tribunal, the 2nd respondent, father of the deceased examined himself as P.W.1 and one Velayutham was examined as P.W.2 and marked eleven documents as Exs.P1 to P11. On the side of the appellant/Insurance Company, one Ramasamy was examined as RW.1 and marked two documents as Exs.R1 and R2.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Ace belonging to the third respondent and directed the appellant, as insurer of the said vehicle to pay a sum of Rs.13,74,000/- as compensation to the respondents 1 and 2 /claimants.

8. Challenging the said award dated 31.03.2016 made in M.C.O.P.No.504 of 2014 fastening liability on the appellant-Insurance Company as well as quantum of compensation awarded to the respondents 1 and 2, 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 has failed to consider that only due to negligent act of the deceased, who came in the wrong

side, the accident has occurred. The Tribunal has failed to appreciate the evidence of the Insurance Officer, who was examined as RW.1, Ex.R1(Rough Sketch) and the statement given by the father of the deceased, which proves that the accident was due to the negligent driving of the deceased. The Tribunal ought to have fixed the entire negligence on the part of the deceased. In any event, the quantum of compensation granted by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

10. The learned counsel appearing for the respondents 1 and 2 contended that the first respondent has examined himself as P.W.1 and marked the First Information Report which was registered against the driver of the Tata Ace to prove that the accident occurred only due to the rash and negligent driving by the driver of the Tata Ace. The appellant did not examine the driver of the Tata Ace or any eye witnesses to disprove the evidence of PW.2 and contents of the FIR. The deceased was working as Sales Executive in Saravana Enterprises and was earning a sum of Rs.25,000/- per month. The respondents 1 and 2 have produced the salary certificate (Ex.P.10) of the deceased, to prove the avocation and income. The Tribunal did not accept Ex.P.10 / Salary Certificate and fixed a sum of Rs.12,000/- as monthly income of the deceased, which is meagre. The deceased was aged about 27 years at the time of the accident. The Tribunal has not granted any amount towards future prospects. The amount granted by the Tribunal is not excessive and prayed for dismissal of the appeal.

11. It is the contention of the respondents 1 and 2 that while the deceased was riding his motor cycle, the driver of the Tata Ace belonging to the third respondent, drove the vehicle in a rash and negligent manner and dashed against the motor cycle, which was driven by the deceased. Due to the injuries sustained in the accident, he died. To substantiate their contention, the first respondent examined himself as PW.1 and PW.2 eyewitness and marked the First Information Report, which was registered against the driver of the Tata Ace. The appellant did not examine the driver of the Tata Ace or any independent eyewitness to disprove the evidence of PW.2 and contents of the First Information Report. They examined only RW.1, official of the Insurance Company, who was not an eyewitness. The Tribunal, considering the evidence of PW.2 and Ex.P1/First Information Report, rejected the evidence of RW.1 as well as the Ex.R1 / Rough Sketch. The Tribunal has given valid reason for holding that the accident occurred only due to the rash and negligent driving by the driver of the Tata Ace. There is no error in the

said findings of the Tribunal warranting interference by this Court.

12. As far as the quantum of compensation is concerned, the respondents 1 and 2 have contended that the deceased was working as Sales Executive in Saravana Enterprises and was earning a sum of Rs.25,000/- per month. They produced salary certificate (Ex.P10) of the deceased, but the Tribunal did not accept the same on the ground that the respondents 1 and 2 have not examined author of the said Ex.P10 or any official from the said company. Under such circumstances, the Tribunal has fixed the notional income of the deceased at Rs.12,000/- per month. The accident occurred in the year 2012. The deceased was aged about 27 years at the time of the accident. The Tribunal has not granted any amount towards future prospects. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards transportation and Rs.25,000/- towards funeral expenses. In view of the fact that the Tribunal has not granted any amount towards future prospects and loss of estate, the amounts granted by the Tribunal under the conventional heads are not interfered with.

13. In the result, the Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.13,74,000/- along with interest and costs is confirmed. The appellant/ Insurance Company is directed to deposit the award amount 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.504 of 2014 on the file of Motor Accidents Claims Tribunal, Special District Court, Dharmapuri. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. No costs. Consequently, connected Miscellaneous appeal is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vkr

To

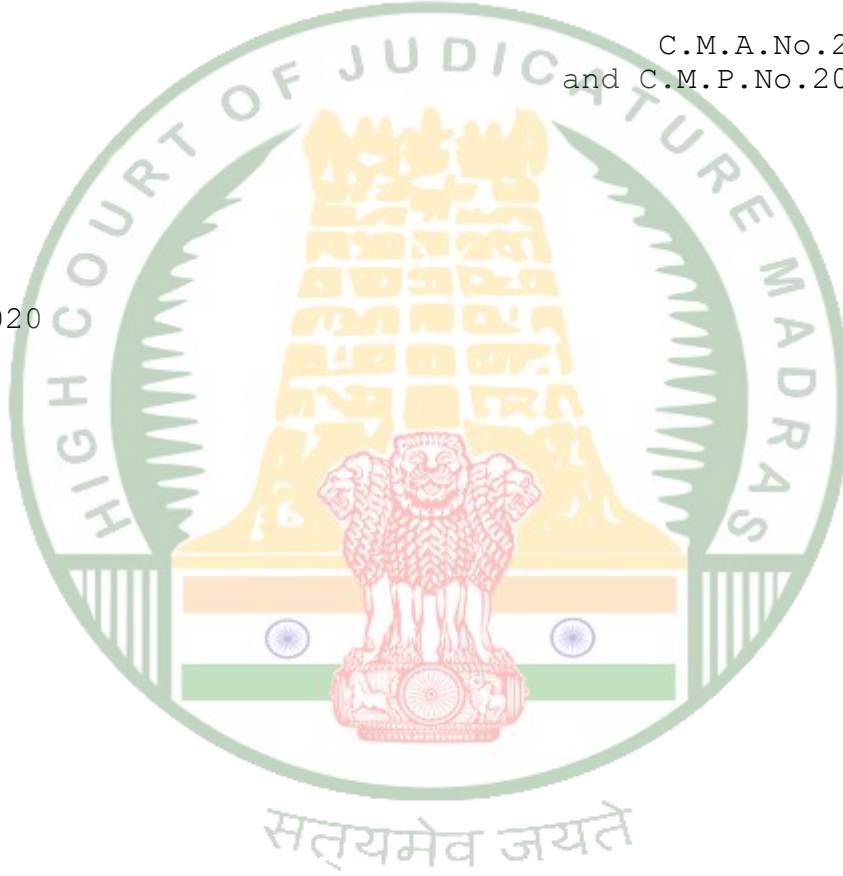
1.The Motor Accidents Claims Tribunal,
The Special District Court,
Dharmapuri.

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

+1 cc to M/s.V.Sakkarapani Advocate sr105937
+1 cc to Mr.N.Vijayaraghavan Advocate sr106747

C.M.A.No.2841 of 2016
and C.M.P.No.20559 of 2016

sj (co)
aa12/08/2020



WEB COPY