

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1585 of 2018

Manoharan (Died)

1.Tamilarasi

2.Deepa

3.Revathi

4.Nandhini

5.Minor Sakthivel

6.Bakkiyam

..Appellants/Petitioners

(Minor Petitioner No.5 is rep
by his next friend Guardian
Mother Tamilarasi)

Vs.

The Managing Director,

TamilNadu State Transport Corporation Limited,

Bye-Pass Road, Coimbatore.

..Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.16 of 2013 dated 20.03.2018 on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Tiruchengode.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-claimant, challenging the award dated 20.03.2018, made in MCOP.No.16 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tiruchengode.

2. One Manoharan has filed the claim petition in MCOP.No.16 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Tiruchengode, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.07.2012. Pending claim petition, the said Manoharan died and the legal representatives of the

deceased were impleaded as petitioners 2 to 7 who are the appellants 1 to 6 herein as per the order I.A.No.1088 of 2015 dated 03.03.2016.

3. 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 bus belonging to the respondent and directed the respondent to pay a sum of Rs.1,09,753/- as compensation to the appellants.

4. Not being satisfied with the award of the Tribunal, the appellants have come out with the present appeal for enhancement of compensation.

5. The learned counsel appearing for the appellants contended that the deceased Manoharan was a self-employed, power loom worker and was earning a sum of Rs.10,000/- per month. The Tribunal erroneously fixed the monthly income of the deceased Manoharan at Rs.5,000/- per month. The Tribunal, without considering the evidence of PW2 doctor and Ex.P6, discharge summary, reduced the percentage of disability from 25% to 15%. The amounts awarded under the heads pain and suffering, transportation, and extra nourishment are meagre and the total amount awarded by the Tribunal is meagre and prayed for enhancement of compensation.

6. Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the respondent would submit that the appellants did not examine the Doctor, who treated the deceased Manoharan and P.W.2-Doctor issued certificate only based on the medical records of the deceased Manoharan. In view of the same, the Tribunal has rightly reduced the percentage of disability to 15% from 25%. Further, the 1st appellant has not proved that the deceased sustained any functional disability and that he is not able to do the work as he was doing earlier. The total compensation awarded by the Tribunal are excessive and the appellants, being the legal representatives of the deceased Manoharan are not entitled for any enhancement for the injuries sustained in the accident and prayed for dismissal of the appeal.

7. Heard, the learned counsel for the appellants and the learned counsel appearing for the respondent and perused the materials available on record.

8. The present appeal is filed by the appellants/claimants for enhancement of the compensation granted to them for the injuries sustained by the deceased Manoharan, in the accident that occurred on 03.07.2012. Pending claim petition, the said Manoharan died. From the materials on record, it is seen that the appellants have claimed compensation for the bodily injuries

suffered by the deceased Manoharan. In view of the death of Manoharan, the legal heirs of the deceased Manoharan are not entitled for any enhancement for the bodily injuries of the deceased Manoharan.

9. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.1,09,753/- along with interest and costs is confirmed. The respondent is directed to deposit the award amount, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order to the credit of MCOP.No.16 of 2013. On such deposit, the appellants 1 to 4 and 6 are permitted to withdraw their respective shares of award amount along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The Tribunal is directed to deposit the share of the minor/5th appellant in any one of the Nationalized Bank, till the minor attains majority and the guardian/1st appellant is permitted to withdraw the interest accrued once in six months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Subordinate Judge,
Tiruchengode.

+1 cc to M/s.K.J.Sivakumar, Advocate, S.R.No.15659

+2 ccs to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.16332

RR(CO)
SSM(24/09/2019)

C.M.A.No.1585 of 2018

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