

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 28.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANUCMA(MD)No.478 of 2019andC.M.P (MD)No.5601 of 2019

WEB COPY

M/s.Cholamandalam MS General
Insurance Company Limited
2nd Floor, Dare House
2 NSC Bose Road
Chennai

... Appellant/2nd Respondent

vs.

1.Chellammal

... 1st Respondent/Petitioner

2.Satheeshkumar

... 2nd Respondent/1st Respondent

Prayer:Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.92 of 2016 dated 06.12.2018 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Karur.

For Appellant : Mrs.K.R.Shivashankari

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree made in MCOP.No.92 of 2016 dated 06.12.2018 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Karur.

2.It is the case of the first respondent/claimant that on 19.01.2016 at about 1.15 p.m, when the deceased Murthy was riding a motorcycle bearing Registration No.TN-57-AM-0457 from east to west near Thanneerpandal Dharapuram Branch Road, the second respondent's lorry bearing Registration No.TN-37-BA-1575 driven by its driver in a rash and negligent manner, hit the motorcycle from behind and caused accident, by which the rider of the motorcycle namely Murthy died on the spot. The deceased was 29 years at the time of accident. Hence, the first respondent/claimant filed a petition in M.C.O.P.No.92 of 2016 claiming compensation of Rs.30,00,000/-.

3.The appellant/Insurance Company filed a counter by contending that the second respondent's lorry was not insured with the appellant and therefore, the appellant/Insurance Company is not liable to pay compensation. It was further contended that the second respondent's driver did not have valid licence to drive the vehicle and therefore, the appellant/Insurance Company is not liable to pay compensation.



4.Perusal of record shows that during the trial, the same line of defence was not taken and therefore, the learned Judge has proceeded to determine the negligence and quantum.

5.On analysis of oral and documentary evidence, the Tribunal fastened the liability on the appellant to pay compensation and awarded compensation of Rs.24,14,800/- with interest @ 7.5% per annum from the date of petition till the date of deposit. Against which, the appellant/Insurance Company has filed this appeal questioning the quantum alone.

6.It is seen that P.W.1, who is the mother of the deceased, has deposed that the deceased was employed in a Shri Varsha Embroidery Designing Company and earned salary of Rs.20,000/- per month. She has also produced the salary certificate, namely Ex.P5 to show that the monthly salary of the deceased Murthy was Rs.16,000/- per month. Relying upon Ex.P5, the Tribunal fixed the monthly income of the deceased at Rs.16,000/- and applying the Judgment of the Hon'ble Supreme Court reported in **2009 (2) TN MAC 1, Sarla Verma vs. Delhi Transport Corporation**, the Tribunal deducted half of the salary towards personal expenses of the deceased since the deceased was a bachelor at the time of accident and applying '17' multiplier, the Tribunal awarded compensation of Rs.22,84,800/- towards loss of income. In addition to the above, relying upon the judgment reported in **2017(2) TN MAC 609 (SC), National Insurance Company Vs.Pranay Sethi and others**, the Tribunal has awarded a sum of Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral expenses. A sum of Rs.1,00,000/- was also awarded towards loss of love and affection. In total, a sum of Rs.24,14,800/- along with interest at 7.5 % per annum has been awarded as compensation, which in my considered opinion is not excessive and therefore, the order of the learned Judge does not warrant any interference. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, the connected miscellaneous petition is closed.

7.The appellant is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw 50% of the award amount along with accrued interest and costs and the balance amount shall be deposited in a Nationalized Bank as directed by the Tribunal and the interest accrued shall be withdrawn by the claimant once in three months.

Sd/-

Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
/Principal District Judge, Karur.

2. The Section Officer
V.R Section(2 copies)
Madurai Bench of Madras High Court
Madurai

+1 CC to M/s.K.R.SHIVA SHANKARI, Advocate (SR-72331[F] dated
28/06/2019)

CMA(MD)No.478 of 2019
and
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