



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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C.M.A.No.1073 of 2013

and

M.P.Nos.1, 1 of 2013 & 2014

The Divisional Manager,  
United India Insurance Company Limited,  
Having Office at No.46-51,  
T.K.M. Complex, Katpadi Road,  
Vellore.

.. Appellant/2<sup>nd</sup> Respondent in Tribunal

Vs.

1.Elumalai  
2.Saravanan  
3.Latha  
4.M.Muthuramalingam

.. Respondents/Claimants 1 to 3 and  
1<sup>st</sup> Respondent in Tribunal

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.10.2012 made in M.C.O.P.No.123 of 2011 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.S.Arunkumar  
For RR 1 to 3 : Mr.M.Sivakumar  
for Mr.C.Prabakaran

#### J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 16.10.2012 made in M.C.O.P.No.123 of 2011 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

3.The appellant is the 2<sup>nd</sup> respondent in M.C.O.P.No.123 of 2011 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. The respondents 1 to 3 filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Parthiban, who died in the road accident that took place on 04.11.2010.

4.According to the respondents 1 to 3, on 04.11.2010 at about 21.00 hours, while the deceased was trying to cross the road near Karukambathur bus stop, the driver of the car



belonging to the 4<sup>th</sup> respondent drove the car in a rash and negligent manner and dashed against the deceased and caused the accident. In the accident, the said Parthiban sustained grievous fatal injuries and immediately he was admitted in C.M.C.Hospital, Vellore and thereafter he was shifted to Government Hospital, Chennai. In spite of treatment, the said Parthiban succumbed to injuries. Therefore, the respondents 1 to 3 filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation against the 4<sup>th</sup> respondent and appellant-Insurance Company, being the owner and insurer of the car respectively.

5.The 4<sup>th</sup> respondent-owner of the car remained exparte before the Tribunal.

6.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 3. According to the appellant, the accident has not occurred as alleged by the respondents 1 to 3. The driver of the 4<sup>th</sup> respondent's car drove the same with utmost caution at a normal speed in the National Highways and only the deceased suddenly crossed the divider in the National Highways without observing the oncoming car, came in contact and invited the accident. Hence, the accident has occurred only due to the negligence on the part of the deceased. Therefore, the appellant is not liable to pay any compensation to the respondents 1 to 3. Charge sheet was not filed against the driver of the 4<sup>th</sup> respondent's car because in the final report it has been mentioned that accident occurred only due to negligence on the part of the deceased. The respondents 1 to 3 have to prove the age, avocation and income of the deceased by producing valid documents. The respondents 1 to 3, who are the brothers and sister of the deceased are not the legal heirs of the deceased and hence, they are not entitled to any compensation. In any event, the quantum of compensation claimed by the respondents 1 to 3 are highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1<sup>st</sup> respondent examined himself as P.W.1 and one Kumaravel, who is an eye-witness to the accident was examined as P.W.2 and 5 documents were marked as Exs.P1 to P5. On behalf of the appellant-Insurance Company, one P.Ramesh was examined as R.W.1 and three documents were marked as Exs.R1 to R3.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to the 4<sup>th</sup> respondent and directed the 4<sup>th</sup> respondent and appellant-Insurance Company to jointly or severally pay a sum of Rs.5,63,000/- as compensation to the respondents 1 to 3.

9.Against the said award dated 16.10.2012 made in



M.C.O.P.No.123 of 2011, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the Tribunal erred in holding that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to 4<sup>th</sup> respondent. The Tribunal failed to consider the evidenc of R.W.1 and Exs.R1 to R3 in proper perspective. The Tribunal failed to see that respondents 1 to 3 are elders of the deceased and they are not dependants of the deceased. The respondents 1 to 3 failed to prove the avocation and income of the deceased. In the absence of materials, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased and applied multiplier '18' and granted compensation towards loss of dependency. The sum of Rs.75,000/- awarded by the Tribunal towards loss of love and affection is excessive and prayed for setting aside the award of the Tribunal.

11.The learned counsel appearing for the respondents 1 to 3 made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials on record.

13.It is the contention of respondents 1 to 3 that when the deceased was crossing the road, the driver of the 4<sup>th</sup> respondent's car drove the car in a rash and negligent manner and dashed against the deceased and caused the accident. Due to the injuries sustained in the accident, the said Parthiban died. To prove the said contention, the 1<sup>st</sup> respondent examined himself as P.W.1 and one Kumaravel was examined as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the car belonging to 4<sup>th</sup> respondent. On the other hand, it is the contention of the appellant that the accident has occurred when the deceased suddenly crossed the National Highways without seeing the oncoming vehicle and invited the accident. The appellant has not let in any evidence or examined any eyewitness or the driver of the car to prove the said contention. They have relied on the evidence of R.W.1 and Exs.R1 to R3, Investigation Report, copy of the Final Report and copy of the Referred Charge Sheet, dropping charges against the driver of the car and final report. The Tribunal considering both the oral and documentary evidence, held that in Ex.R2/final report, the investigator of Police nowhere has stated that deceased suddenly crossed the road without seeing the oncoming car. It was stated that accident took place due to carelessness of the deceased. The Tribunal considering the evidence of P.W.2/eyewitness, did not



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accept the final report filed by the Police and held that accident occurred only due to rash and negligent driving by the driver of the car belonging to the 4<sup>th</sup> respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, the Tribunal considering the date of accident and in the absence of evidence with regard to avocation and income, fixed notional income of the deceased at Rs.4,500/- per month. The accident occurred in the year 2010 and the notional monthly income fixed by the Tribunal is not excessive. The Tribunal applied multiplier '18' as the deceased was aged 27 years. The correct multiplier applicable is '17'. The Tribunal has not awarded any amount towards future prospects. In view of the fact that the Tribunal has not granted any enhancement towards future prospects, the multiplier applied by the Tribunal is not interfered with. The contention of the learned counsel appearing for the appellant that the respondents 1 to 3, who are the brothers and sister of the deceased and are not entitled to get compensation is without merits. Even elder brothers can be the dependants of the younger brothers and younger brother will support them. The respondents 1 to 3 are the legal heirs of the deceased. If the deceased is alive, he would have contributed to his family, even to his elder brothers and sisters.

15.For the above reason, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.5,63,000/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs is confirmed. The 4<sup>th</sup> respondent and appellant-Insurance Company are jointly or severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited, 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.123 of 2011 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. On such deposit, the respondents 1 to 3 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, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge,  
Motor Accident Claims Tribunal,  
Vellore.

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Copy To

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.39129

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 39126

C.M.A.No.1073 of 2013

RSV(CO)  
GN(17/08/2021)