

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3468 of 2009

National Insurance Company Limited,
Branch Manager,
81-C, Chetty Street,
Tiruchengode, Namakkal.

... Appellant / 2nd respondent

Vs.

1. S.Pazhaniammal

2. Minor S.Lenadevi

Represented by her next friend and
natural guardian S.Pazhaniammal

3. Pappathi

4. K.Subramani

... Respondents / Petitioners 1 to 4

5. P.Saravanan

... 5th Respondent / 1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the award passed in M.A.C.T.O.P.No.299 of 2006 dated 16.09.2008 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant : M/s.N.B.Surekha

For Respondents : Mr.R.Selvakumar

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 16.09.2008 made in M.A.C.T.O.P.No.299 of 2006 on the file of the Additional District Court (Motor Accident Claims Tribunal), Dharmapuri.

2. The case of the appellant is that on 14.10.2004 at 7.00 p.m., one Suresh (deceased) was traveling as pillion rider in Hero Honda bearing Registration No.TN-29E-2334 driven by one Dhanapal and at that time, a Tractor bearing Registration No.TN-29C-0500 belonged to the fifth respondent and driven by its driver in a rash and negligent manner, dashed against the Hero Honda. Due to the impact, the Suresh fell down from the Hero Honda and sustained internal head injuries and injuries on vital organs. Immediately he was taken to the St.John's Medical College Hospital, Bangalore and

admitted as inpatient, there he had taken treatment till 29.10.2004 and in spite of which, he died on 29.10.2004. He was aged about only 30 years at the time of accident, and before the accident, he was a goods vehicle driver and was earning more than Rs.90,000/- per month. Due to his sudden death, the respondents 1 to 4 who are the legal heirs of the deceased suffered from loss of income, hence filed a petition before the Additional District Court (Motor Accident Claims Tribunal), Dharmapuri, claiming Rs.15,00,000/- as compensation under various heads.

3. Denying the allegations, the appellant insurance company filed a counter affidavit before the Tribunal stating that the accident had occurred only due to the rash and negligent driving of the rider of the Hero Honda and there was no fault on the part of the fifth respondent's driver. Further, it has been stated that the driver of the fifth respondent had not valid driving licence at the time of accident, hence they are not liable to pay any compensation to the claimant. Moreover, it has been stated that the alleged age, income and occupation of the deceased are not true and the amount of compensation claimed is very high.

4. During the trial before the Tribunal, on the side of the claimants, the first respondent herself was examined as PW1 and marked certain documents as Exs.P1 to P8 and one Kandasami was examined as PW2. On the side of the appellant and the fifth respondent, no one was examined and no document was marked.

5. The Learned Additional District Judge (Motor Accident Claims Tribunal), Dharmapuri, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded Rs.9,26,852/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Income	6,80,000
2.	Medical Expenses	1,51,852
3.	Loss of Consortium	50,000
4.	Pain and Sufferings	30,000
5.	Funeral Expenses	5,000
6.	Expenses incurred at the time of moving the deceased's body to his native place	10,000
	Total	9,26,852/-

6. Aggrieved by the award, the appellant insurance company has filed this appeal before this Court submitting that the Tribunal has erred in awarding the said sum.

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

8. On perusal of the award dated 16.09.2008 passed by the Learned Additional District Judge (Motor Accident Claims Tribunal), Dharmapuri, it is observed that the respondents 1 to 4/claimants in order to prove that the accident had occurred only due to the rash and negligent driving of the fifth respondent's driver marked FIR copy as Ex.P1 which was against the fifth respondent, but the appellant and the fifth respondent neither marked any document nor examined any witness to disprove the same, and therefore, the Tribunal has come to the conclusion that the fifth respondent's driver was the cause for the alleged accident. Further, it is observed that the respondents 1 to 4/claimants have not marked any document to prove the income of the deceased, but on perusal of the driving licence marked as Ex.P7, the Tribunal has found that the deceased was driving the goods vehicle before the accident and thereby he would have earned minimum Rs.5,000/- per month. Hence, the Tribunal has fixed the monthly income of the deceased as Rs.5,000/-, which comes to Rs.60,000/- per year. If the deceased was alive, definitely he would have taken 1/3 of his income for his personal expenses and only considering the same, the Tribunal has deducted 1/3 of the annual income i.e. Rs.20,000/- for the personal expenses of the deceased from the total annual income of Rs.60,000/-.

9. It is also observed that the age of the deceased at the time of accident has been found as 35 in the Postmortem Certificate marked as Ex.P3 and therefore, the Tribunal has fixed the same as the age of the deceased. As per the case reported in 2009 ACJ 1298 [Sarla Verma and Others vs Delhi Transport Corporation and Another], the multiplier to be adopted for a person aged between 30 to 35 years is 16, but the Tribunal has wrongly taken the 17 multiplier and awarded Rs.6,80,000/- towards Loss of income and this Court is inclined to modify the same. Moreover, it is observed that the respondents 1 to 4/claimants have marked the medical bills of the deceased as Ex.P8 to prove the expenses made for the treatment and only after considering the same, the Tribunal has awarded Rs.1,51,852/- towards Medical Expenses and the same is hereby confirmed. The sum awarded under all other heads i.e. Rs.50,000/- for Loss of Consortium, Rs.30,000/- for Pain & Sufferings, Rs.5,000/- for Funeral Expenses and Rs.10,000/- for the expenses made for moving the deceased's body to his native place, is reasonable awarded by the Tribunal, hence, the same is also hereby confirmed.

10. In view of the above observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

Monthly Income	5,000
Annual Income (5000 x 12)	60,000
Deductions of 1/3 for personal expenses of the deceased (60,000 - 20,000 X 16)	6,40,000
Medical Expenses	1,51,852
Loss of Consortium	50,000
Pain & Sufferings	30,000
Funeral Expenses	5,000
Expenses incurred at the time of moving the deceased's body to his native place	10,000
Total	8,86,852

11. Accordingly, the appellant and the fifth respondent are directed to deposit the said amount of Rs.8,86,852/- jointly or severally with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. After the entire amount has been deposited by the appellant and the fifth respondent, the respondents 1, 3 and 4/claimants shall withdraw their respective shares as per the apportionment made by the Tribunal by filing a formal petition before the Tribunal, less the amount if any, already withdrawn. The award amount of the minor respondent 2 / claimant shall be deposited in a fixed deposit in any one of the nationalized banks till she attains majority. As a natural guardian of the second respondent, the first respondent is entitled to receive the accrued interest once in 3 months directly from the bank for the maintenance of the minor child.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

raja

To

The Additional District Court
(Motor Accident Claims Tribunal),
Dharmapuri.

Copy To

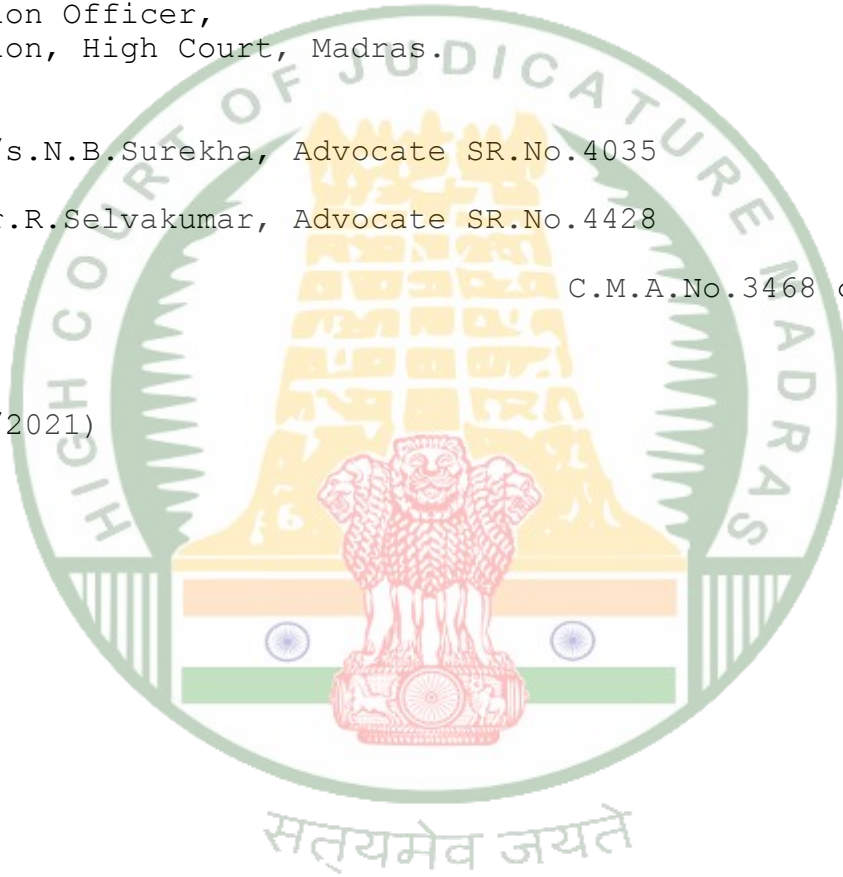
The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.N.B.Surekha, Advocate SR.No.4035

+1cc to Mr.R.Selvakumar, Advocate SR.No.4428

C.M.A.No.3468 of 2009

VG I(CO)
GMY(11/05/2021)



WEB COPY