

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2430 of 2012

and

MP No.1 of 2012

M/s.ICICI Lombard Motor Insurance
Company Limited,
Mumbai.

....Appellant/3rd Respondent

Versus

1. C. Natesan

2. N.Padma

3. K.V.Murugesan

4. K.Seerangan

..R1 & R2 Claimants

....Respondents 3 & 4/Respondents 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.03.2011 made in MCOP No.61 of 2008 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Bhavani, Erode District.

For Appellant
For Respondents

: Mrs.R.Sreevidhya
: Mr.N.Manokaran
for R2
Mr.E.C.Ramesh
for R3 & R4
R1 - Left

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 04.03.2011 passed by the Motor Accidents Claims Tribunal, Subordinate Judge, Bhavani in MCOP No.61 of 2008.

2. The appellant / Insurance Company has challenged the impugned award on the ground that a) the deceased was also guilty of contributory negligence for the cause of the accident and b) the compensation awarded by the Tribunal is excessive.

3.The details of the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency	8,10,000/-
Love and affection (Rs.1,00,000 x 2)	2,00,000/-
Medical expenses	5,000/-
Transportation	5,000/-
Funeral expenses	2,000/-
Total	10,22,000/-

4. Heard Mrs.R.Sreevidhya, learned counsel for the appellant, Mr.N. Manokaran, learned counsel for the second respondent and Mr.E.C.Ramesh, learned counsel for the third and fourth respondents.

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. Before the Tribunal, the claimants have filed twelve documents, which were marked as Exs.P1 to P12 and three witnesses were examined on their side viz., Padma, the mother of the deceased (PW1); Murugesan, an eye witness to the accident (PW2) and R.Senthilkumar who is the employer of the deceased (PW3). However, on the side of the appellant / Insurance Company, neither any witness was examined nor any document was filed before the Tribunal.

7. The contention raised by the appellant / Insurance Company is that there is a contributory negligence on the part of the deceased. The same is unsustainable in view of the fact that the FIR (Ex.P1) has been registered only against the insured lorry. Though the contention of the appellant / Insurance Company that the motor cycle in which, the deceased was the rider was also responsible for the cause of the accident, no evidence has been placed by them before the Tribunal to that effect. The Tribunal has rightly appreciated the evidence available on record which has been consistent all through the award that it is only the driver of the insured lorry, who was responsible for the cause of the accident, which resulted in the death of N.Sathish Kumar. Therefore, with regard the first contention raised by the appellant that there is contributory negligence on the part of the deceased also is unsustainable.

8. Insofar as the quantum of compensation awarded by the Tribunal is concerned, the deceased was a Computer Operator in Ambly Engineering Corporation, Chennai. The claimants have also filed the salary certificate of the deceased which has been marked as Ex.P9 and Ex.P12, which confirms that he was earning 5,000/- p.m. at the time of the accident but considering the future prospects of the deceased, the Tribunal has fixed the same at Rs.9,000/-p.m. The employer of the deceased viz., R.Senthilkumar has also been examined as a witness (PW3) before the Tribunal, which supports the contention of the claimants that the deceased was earning Rs.5,000/-p.m. at the time of the accident. The Tribunal instead of granting loss of future prospects to the claimants and in lieu of the same has fixed the salary of the deceased at Rs.9,000/-p.m. This Court does not find any infirmity in the findings of the Tribunal with regard to the assessment of monthly income of the deceased.

9. The Tribunal has awarded a sum of Rs.1,00,000/- towards Love and Affection to each of the claimants; Rs.5,000/- towards medical expenses; Rs.5,000/- towards Transportation and Rs.2,000/- towards Funeral expenses and the same is a just compensation. There is no scope for interference with regard to the compensation awarded by the Tribunal under various heads are concerned since the same is not excessive.

10. For the foregoing reasons, this Court does not find any merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.61 of 2008, on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge, Bhavani, Erode District), within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first and second respondents / claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

vsi2

To

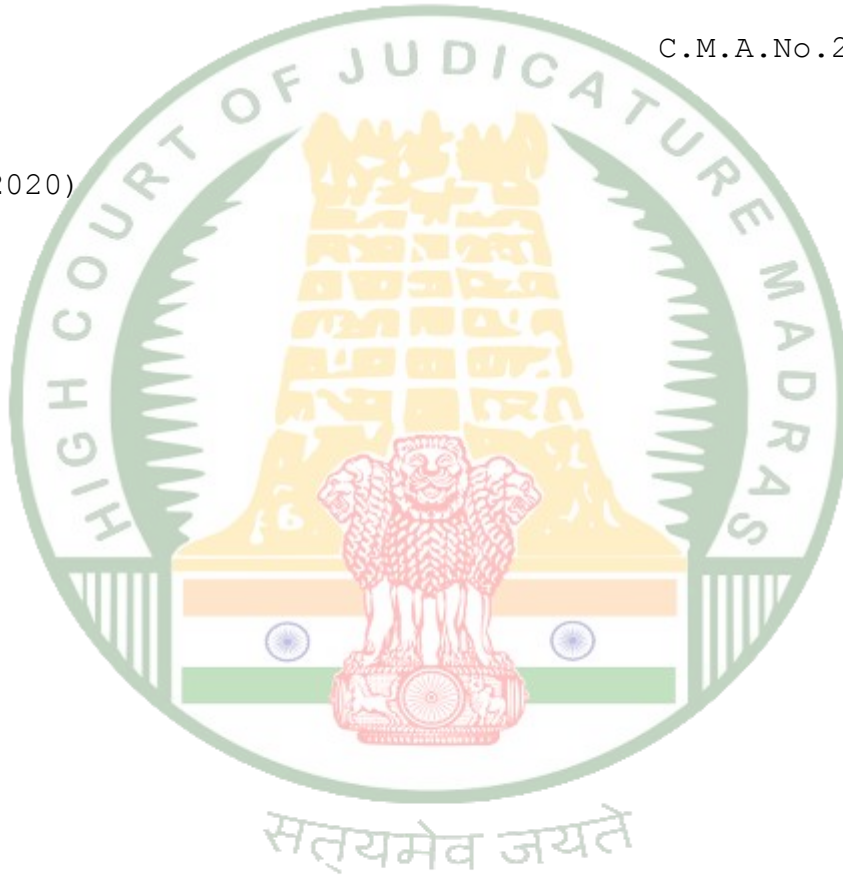
1. The Subordinate Judge,
Bhavani, Erode District.

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.

+1 CC to Mr.N.Manokaran, Advocate sr 25228.

C.M.A.No.2430 of 2012

SPD(CO)
SP(08/09/2020)



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