

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2519 of 2013

1. M.Maheswari
2. M.Ramesh
3. M.Sujatha
4. Minor M.Latha
5. Kannammal ... Appellants/Petitioners
(Minor represented by mother/next friend 1st appellant)

Vs.

1. A.Purushath
2. The Divisional Manager,
The Oriental Insurance Company Limited,
Jambu Bala Complex,
Arcot Road, Vellore - 632004.
...Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 30.04.2013 made in M.C.O.P.No.41 of 2008 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge's Court) Vellore, Vellore District.

For Appellants : Mr.C.Prabakaran

For Respondents : Notice Ready [R1]
M/s. Elveera Ravindran [R2]

JUDGEMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 30.04.2013 made in M.C.O.P.No.41 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Vellore, Vellore District.

2. By consent of both the parties, this appeal is taken up for final hearing and disposal.

3. The appellants are the claimants in M.C.O.P.No.41/2008 on the file of the Motor Accident

Claims Tribunal, Principal District Judge, Vellore, Vellore District. They filed the above said claim petition, claiming a sum of Rs.4,00,000/- as compensation for the death of one Masila @ Masilamani, who died in the accident that took place on 05.08.2007.

4. 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 Mini Van, belonging to the 1st respondent, insured with the 2nd respondent and directed the respondents to jointly and equally pay a sum of Rs.25,000/- as compensation to the appellants.

5. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the appellants contended that the deceased was working in a brick kiln and was earning a sum of Rs.4,500/- per month. The deceased was aged 45 years at the time of the accident and the Tribunal has not granted any enhancement towards future prospects. The amount awarded by the Tribunal as compensation, is meagre and prayed for enhancement of compensation.

7. Per contra, Mrs.Elveera Ravindran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the avocation and the occupation and monthly income of the deceased, the compensation awarded by the Tribunal, is just and proper. The Tribunal after considering the materials available on record, has awarded compensation, which is not meager. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

9. A perusal of the Award of the Tribunal would disclose that the manner of the accident is not disputed and that the said accident had occurred due to rash and negligent driving of the driver of the vehicle owned by the 1st respondent. It is also not in dispute that the deceased died on 29.08.2007, few days after the accident and that it is the stand of the learned counsel appearing for the 2nd respondent that the deceased himself recused from taking treatment for the injuries sustained in the accident and that the cause of the death was not due to

the accident; but due to hepatic encephalopathy and hepatitis B positive suffered by the deceased. The said contention was not disputed by the prosecution witnesses, viz., the claimants 1 and 5, who are the wife and the mother of the deceased. The deceased was also not subjected to postmortem and in the absence of conducting postmortem and the production of the Postmortem Certificate, this Court, is of the considered view that there is no conclusive proof that the deceased would have succumbed to the injuries sustained by him in the accident which took place on 05.08.2007. The Tribunal, also observed that it ought to have awarded compensation under different heads; however in the absence of details in the form of records, had awarded a consolidated sum of Rs.25,000/- as compensation and there is no error in the finding of the Tribunal warranting interference by this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.25,000/- awarded by the Tribunal as compensation to the appellants/claimants, along with interest and costs is confirmed. The respondents are jointly and equally directed to deposit the award amount, along with proportionate interest and costs, less the amount already deposited, if any, 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.41 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Vellore, Vellore District. On such deposit, the appellants/ claimants are permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

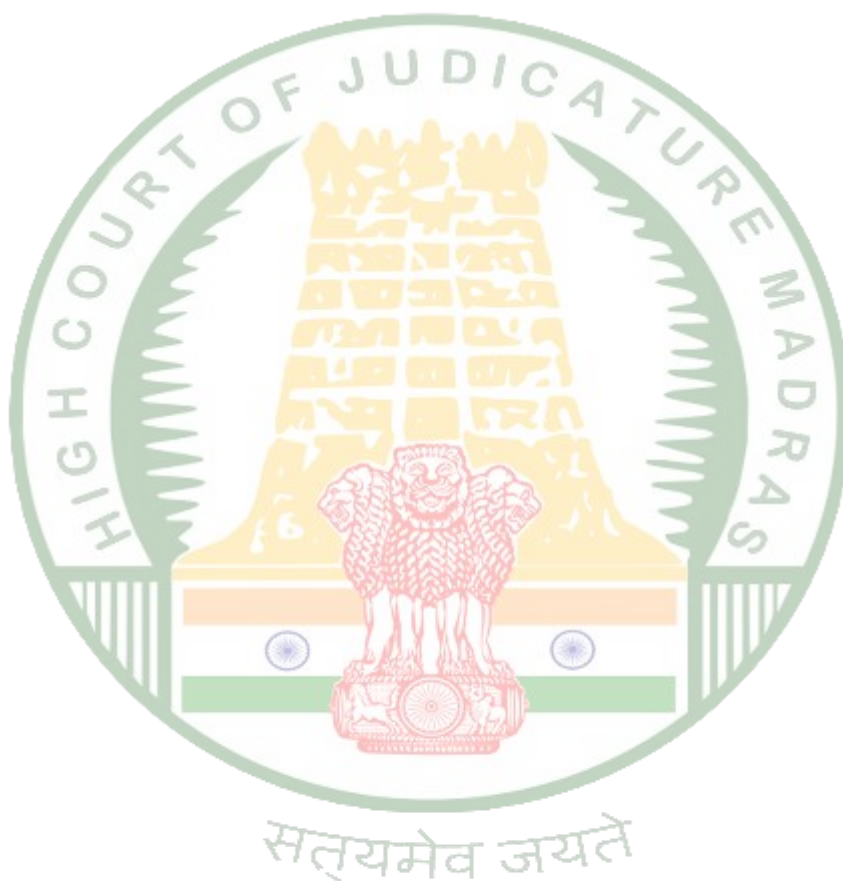
1.The Principal District Judge,
MACT, Vellore,
Vellore District.

2.The Record Keeper,
V.R.Section,
High Court, Madras-104.

+lcc to Mrs.Elveera Ravindran, Advocate, S.R.No.16062
+lcc to Mr.C.Prabakaran, Advocate, S.R.No.16015
+lcc to the Government Pleader, S.R.No.

C.M.A.No.2519 of 2013

JP (CO)
CB (20/08/2020)



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