

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.656 of 2013

1. S. Selvi
 2. S. Ashvini (minor)
 3. S. Ajith Kumar (minor)
(minors rep. by their mother & N.F,
the 1st petitioner S.Selvi)
 - 4.M.Sakunthala
- ...Appellants/Petitioners

Vs.

1. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Chennai - 600 002.
2. E. Iyyappan
3. The New India Assurance Co. Ltd.,
Motor Third Party Cell
No.45, Moore Street, Chennai 600 001 ...Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.11.2012 MACT.O.P.No.1914 of 2006, on the file of the II Judge, Small Causes Court (Motor Accident Claims Tribunal) Chennai

For Appellant: Mr.S. Jayanthi
for M/s.n.M.Muthurajan

For R1 : Mr.K. Moorthi

For R2 : Ex. Parte

For R3 : Mr. E. Rajadurai for Mr.M.B.Gopalan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants-claimants against the Judgment and Decree dated 06.11.2012 made in MACT.O.P.No.1914 of 2006, on the file of the II Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai.

2.The case of the claimants are that on 07.03.2006, when the deceased was travelling as a pillion rider in a Motor Cycle

bearing Registration No: TN-07-R-7518 from Perungalathur to Tambaram along G.S.T. Road, the first Respondent's Transport Corporation bus bearing Registration No. Tn-01-N-2782 came behind and hit against the Motor Cycle. In the result the deceased fell down and succumbed to the injuries sustained in the accident. The accident occurred due to the rash and negligent driver of the bus. Hence, the legal heirs of the deceased filed a claim petition in MACT.O.P.No.1914 of 2006, on the file of the II Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai claiming a sum of Rs.12,00,000/- as compensation.

3.Before the Tribunal 3 witnesses (P.W.1 to P.W.3) were examined and 8 Exhibits (Ex.P.1 to Ex.P8) were marked on the side of the claimants. On the side of the respondent one witness was marked and no exhibits were marked. The Tribunal considering the pleadings, oral and documentary evidence, awarded a sum of Rs.7,80,000/- to the claimants as compensation.

4.Not being satisfied with the award passed by the Tribunal, the appellants/claimants have come out with this appeal.

5.The learned counsel appearing for the appellants contended that due to the sudden demise of the sole bread winner of the family, the other family members who are the dependents of the deceased are in a indigent circumstances. He would further contend that the monthly income arrived by the Tribunal is very low. In any event the award passed by the Tribunal is very low for the death of a person and prayed for enhancement of the award amount.

6.The learned counsel appearing for the 1st respondent/Transport Corporation contend that at the time of accident the rider of the two wheeler lost his balance and in the two wheeler there were 2 pillion riders and they were in the drunken mood. Therefore, the Tribunal ought to have fixed contributory negligence on the part of the rider.

7.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Insurance Company is not liable to indemnify the liability to the pillion rider as per the Insurance policy. The accident took place due to the negligent act of the driver of the bus and there was no negligence on the part of the rider of the Motor cycle. In the absence of any documentary proof regarding the income of the deceased, the amount awarded by the Tribunal towards loss of pecuniary benefits is very high and prayed for dismissal of this appeal.

8.Heard the learned counsel on either side and perused the

materials available on record carefully and meticulously.

9. Before the Tribunal wife of the deceased/S. Selvi was examined as P.W.1 and P.W.2/ Inbaraj was the eye witness to the occurrence and both of them deposed that the accident was occurred due to the rash and negligent act of the driver of the bus. The oral evidence of P.Ws. 1 and 2 corroborates with Ex.P.1 copy of F.I.R., Ex.P.2/ copy of plan and Ex.P.5/ copy of charge sheet. The Tribunal had gone through the witness and evidence adduced before it was also seen that one of the pillion rider died. Ultimately the Tribunal has fixed the negligence aspect on the part of the driver of the first respondent. The findings rendered by the Tribunal are persuasive which cannot be brushed aside easily. No new fact is forthcoming to assail the reasonings rendered by the Tribunal. Hence, the findings on negligence by the Tribunal are confirmed as such.

10. With regard to quantum, wife of the deceased deposed that the deceased is doing Masonary work and earning Rs.300/- per day. P.W.3. Mr. K. Venkatesan Co-worker of the deceased was examined and deposed that the deceased worked as Mason and was earning Rs.300/- to Rs.400/- per day. In the absence of any documentary proof, considering the evidence of P.W.3, the monthly income of the deceased is fixed at Rs.5,000/- and 1/4th was deducted towards personal expenses Rs.3,750/- (Rs.5,000/- Rs.1,250/-) and considering the age of the deceased multiplier '16' is adopted and quantified Rs. 7,20,000/- (Rs.3,750x12x16) as loss of pecuniary benefits. Apart from this Rs.10,000/-, Rs.20,000/- and Rs.30,000/- was awarded towards loss of consortium, funeral expenses and loss of love and affection. Thus, the total compensation was quantified to Rs.7,80,000/-. This Court is of the view that the finding of the Tribunal with regard to quantum is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

11. Therefore, there is no infirmity or irregularity to interfere with the award passed by the Court Below. Hence, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is affirmed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn
To

1.The Motor Accidents Claims Tribunal
II Judge, Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.M.B.Gopalan, Advocate Sr.No. 8761
+1 cc to M/s.N.M.Muthurajan, Advocate Sr.No. 8703
+1 cc to M/s. K.Moorthy, Advocate Sr.No. 8286

C.M.A.No.656 of 2013

PP (CO)
RMP (17/12/2020)



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