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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.405 & 2928 OF 2014

C.M.A.No.405 of 2014

The New India Assurance Co. Ltd.,
Motor Third Party Cell,
No.45, Moore Street,
Chennai 600 001.

.. Appellant/2nd Respondent

..Vs..

1.Srinivasan

2.Subramanian

3.Rajambal

... Respondents 1 to 3/
Petitioners 1 to 3

4.K.Anbazhagan

.. 4th Respondent/
2nd Respondent

(R4 remained exparte before the Tribunal.)

C.M.A.No.2928 of 2014

1.Srinivasan

2.Subramanian

3.Rajambal

.. Appellants/Petitioners

Vs.

1. K.Anbalagan

2. The New India Assurance Co. Ltd.,
Motor Third Party Cell,
No.45, Moore Street,
Chennai 600 001.

.. Respondents/
Respondents

(R1 remained exparte before the Tribunal.)



Common Prayer:-

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 28.11.2012, made in M.C.O.P.No.2882 of 2010, on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

(In C.M.A.No.405/2014)

For Appellant : Mrs.R.Sree Vidhya
For Respondents : Ms.A.Subadra
for M/s.M.Malar (For R1 to R3)
Mr.P.Saminathan (For R4)

(In C.M.A.No.2928/2014)

For Appellants : Ms.A.Subadra
for M/s.M.Malar
For Respondents : Mr.P.Saminathan (For R1)
Mrs.R.Sree Vidhya (For R2)

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

C.M.A. No.2928 of 2014 is filed for enhancement of the compensation and C.M.A. No.405 of 2014 is filed against the award dated 28.11.2012, made in M.C.O.P. No.2882 of 2010, on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimants filed M.C.O.P. No.2882 of 2010, on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.6,00,000/- as compensation for the death of one Mottai, who died in the accident that took place on 22.03.2010.

5.According to the claimants, on the date of accident viz., 22.03.2010, while the deceased was working in the agricultural



land at Semanagkoor Village, Singaravel land, Villupuram District, 1st respondent, driver-cum-owner of a Harvesting Tractor bearing Registration No.TN-32-R-7726 drove the same in a rash and negligent manner and dashed against the deceased and caused the accident. In the accident, the deceased succumbed to fatal injuries. The accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Harvesting Tractor and hence, the claimants filed the claim petition, claiming compensation against the 1st respondent as driver-cum-owner and 2nd respondent as insurer of the offending vehicle.

6.The 1st respondent remained exparte before the Tribunal.

7.The 2nd respondent-Insurance Company filed counter statement and denied all the averments of the claimants in the claim petition. According to the 2nd respondent, when the Harvesting Tractor was harvesting the paddy field, the deceased invited the accident by crossing the field negligently without minding the horn raised by the 1st respondent. Hence, the deceased contributed negligence to the accident. The 1st respondent did not possess valid driving license to ply the vehicle and the Harvesting Tractor was not insured with the 2nd respondent at the time of accident. In any event, the claimants have to prove the age, avocation and income, injuries sustained and treatment taken by the deceased to claim compensation. In any event, the total compensation claimed by the claimants are excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st claimant examined himself as P.W.1, Jeyaseelan, eye-witness as P.W.2 and marked 4 documents as Exs.P1 to P4. The 2nd respondent examined their Official as R.W.1 and marked one document as Ex.R1.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Harvesting Tractor and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.2,77,000/- as compensation to the claimants.

10.Against the said award dated 28.11.2012, made in M.C.O.P. No.2882 of 2010, the 2nd respondent-Insurance Company has filed C.M.A. No.405 of 2014 and not being satisfied with the amounts awarded by the Tribunal, the claimants have filed C.M.A. No.2928 of 2014, for enhancement of compensation.

11.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal erred in fastening the liability on the 2nd respondent-Insurance Company when the accident has occurred in a private land. The learned counsel



appearing for the 2nd respondent contended that at the time of accident, one Prabhu was driving the offending vehicle and charge sheet was closed as abated. The said Prabhu did not possess driving license and he was not shown as driver of the offending vehicle. By manipulating the records, they have shown the 1st respondent as driver of the vehicle. At the time of accident, the 1st respondent did not drive the offending vehicle and hence, no liability can be fastened on the 2nd respondent-Insurance Company. The Tribunal failed to see that the Harvesting Tractor is not a vehicle as defined under law. In any event, the amount awarded by the Tribunal is excessive. The Tribunal has granted excessive compensation and hence, the claimants are not entitled for any enhancement and prayed for setting aside the award of the Tribunal and dismissal of C.M.A.No.2928 of 2014, filed by the claimants.

12.The learned counsel appearing for the claimants contended that when the deceased was working in her agricultural land, a Harvester Tractor driven in a rash and negligent manner, dashed on the deceased and due to the injuries sustained, she died. The learned counsel appearing for the claimants further contended that the accident has occurred in the agricultural land while using the Harvesting Tractor and agricultural land deemed to be a public place. The 2nd respondent has not taken a stand in the counter statement that accident occurred in the private land. The 'Tractor' is defined in Section 2 (44) of the Motor Vehicles Act and Harvesting Tractor is also a vehicle as defined under the Section. The 2nd respondent in the counter statement has not taken a stand that Harvesting Tractor is a not a vehicle. The learned counsel appearing for the claimants further contended that the deceased was an Agricultural Coolie and was earning a sum of Rs.200/- per day. The Tribunal erroneously fixed a meagre sum of Rs.4,500/- per month as notional income and awarded meagre amounts towards pecuniary loss. The amounts awarded towards loss of love and affection, loss of consortium and funeral expenses are meagre. The Tribunal has not granted any amount towards loss of estate and prayed for enhancement of the compensation and dismissal of the appeal filed by the Insurance Company.

13.Heard learned counsel appearing for the claimants as well as the 2nd respondent and perused the materials available on record.

14.From the materials on record, it is seen that it is the contention of the claimants that accident has occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Harvesting Tractor and due to the injuries sustained in the accident, the deceased died. The claimants by examining P.W.2, eye-witness and marking FIR as Ex.P1, has



proved that the accident has occurred only due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Harvesting Tractor. It is the contention of the 2nd respondent in the appeal, that accident has occurred in the private land and Harvesting Tractor is not a vehicle defined under law. So that contentions are without merits. It is the case of the claimants that accident has occurred while the deceased was working in the agricultural land. Whether the said agricultural land is a public place or private place can be determined as per Section 2 (34) of the Motor Vehicles Act, which defines 'public place'.

15. In Motor Vehicles Act, public place is defined in Section 2(34) and in the Old Act in Section 2(24). Section 2(34) reads as follows:

"2(34) 'Public place' means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage."

16. A Full Bench of Bombay High Court considered the issue of public place as per Section 2(24) of Old Act and referring to judgment of a Division Bench of this Court reported in 1982 ACJ Supplementary 203 Madras, held that a public place defined in Motor Vehicles Act is a place, where members of public have an access. The emphasis placed by the Full Bench is on the words 'access of public to a place'. The Full Bench of this Court and two Division Benches of this Court considered the issue of public place and in all the three judgments, it has been held that when the public have access to a place by a right or by permission and even without permission, is a public place.

17. The relevant portion of three judgments are extracted hereunder:

(i) A Full Bench judgment of this Court reported in 1999 ACJ 1520 Full Bench Judgment (United India Insurance Co. Ltd., Vs. Parvathi Devi and others), wherein this Court at paragraph Nos. 16 & 17, held as follows:

"...16. The definition of 'public place' is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation has to be construed in the benefit of public. In the



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overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word 'public 'place', wherever used as a right or controlled in any manner whatsoever, would attract Section 2 (24) of the Act. In view of this, as stated, the private place used with permission or without permission would amount to be a 'public place'.

17. In view of what we have discussed above, we hold that the expression 'public place' for the purpose of Chapter VIII of the Motor Vehicles Act, 1939 will cover all places including those of private ownership where members of the public have an access whether free or controlled in any manner whatsoever."

(ii) A Division Bench judgment of this Court reported in 2000 (I) CTC 145 (G.Bhuvaneswari and 3 others Vs. M.Sornakumar and 2 others), wherein this Court at paragraph Nos.5 & 6, held as follows:

"...5. Section 2(24) of the Act defines 'Public Place' as a road, street, way or other places whether a thoroughfare or not, to which the public have a right of access and includes any stand at which passengers are picked up or set down by a stage carriage. In the above decision a full Bench of this Court has held that the definition of public place is very wide. A perusal of the same reveals that of the public at large has a right to access though that right is regulated or restricted as the definition under the Act uses the expression 'right of access' what, is significant is that under the present definition even a place the right to use of which is restricted is a public place.

6. In the instant case, the accident had happened in the factory premises. The place is accessible to the members of the public and available for the use of public, who have dealings... Following the decision of the Full Bench of this Court, we are of



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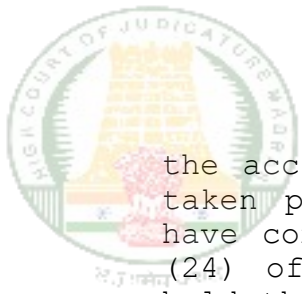
the view that the place where the occurrence had happened is a public place and the second respondent Insurance Company is liable to pay the compensation as per the provisions of the Act."

(iii) A Division Bench judgment of this Court reported in 2004 (5) CTC 485 (National Insurance Company Limited, Branch Office, 88 F, Bye Pass Road, Dharmapuri - 636 701 Vs. Chitra and others), wherein this Court at paragraph Nos.6 & 7, held as follows:

"...6. There is no dispute that in the above referred Division Bench decision, placing reliance on the decision of the Full Bench reported in 1999 T.N.L.J. 144 (UNITED INDIA INSURANCE CO. LTD. VS. PARVATHI DEVI AND OTHERS), the Division Bench has held that public place includes where public have an access whether free or controlled in any manner.

7. In the light of the law laid down by the Full Bench having been followed by the earlier Division Bench referred to above, the only objection raised by the learned counsel for the appellant Insurance company cannot be sustained. Though the appellant has questioned the quantum of compensation arrived at by the Tribunal in the memo of grounds of appeal, learned counsel appearing for the appellant is not serious in disputing the same before this Court."

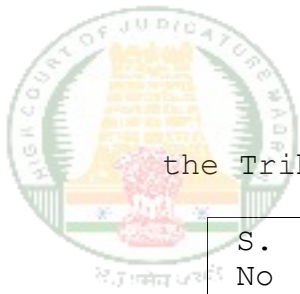
18. A Division Bench of Kerala High Court considered the issue of public place recently. In the judgment reported in 2019 1 TNMAC 76 (DB) (Ker.) [Hasna S.K. Vs. S.K. Haridas and others] the Division Bench of Kerala High Court held that Court yard of a house inside a compound wall is a public place as driver of the van while taking the van to reach public road, the accident has occurred and held that Insurance Company is liable to pay compensation. Similarly, in a judgment of the High Court of Gujarat reported in 2019 1 TNMAC 645 (Guj.) [Asgarali Hasanali (since decd.) through Heirs and others Vs. Shamji Nanji Solanki (deleted) and others], the Gujarat High Court held that Oil Mill is a public place as loadman had access to the Oil Mill to load oil in the vehicle. When the accident had occurred inside the compound wall of the Oil Mill and the loadman was involved in



the accident, the Gujarat High Court has held that accident has taken place in a public place. In all these judgments, Courts have considered the definition of public place as per Section 2 (24) of the Old Act and Section 2(34) of the present Act and held that when the public had access to a place either by right or by permission or without permission, the said place is a public place.

19. In the present case, the accident has occurred while the deceased was working in agricultural field. She had access to work in the land. In view of the same, the agricultural land where the accident has occurred is only a public place. As far as the contention of the learned counsel appearing for the 2nd respondent-Insurance Company that the Harvesting Tractor is not a vehicle defined under law is concerned, such a stand was not taken in the counter statement filed by them. The 2nd respondent has stated that to drive Harvesting Tractor, a special driving license is required. The 'Tractor' is defined under Section 2 (44) of the Motor Vehicles Act. There is no restriction in the category of the Tractors which are deemed to be a vehicle as per provisions of the Motor Vehicles Act. Therefore, the Harvesting Tractor is also a Tractor as defined under the Motor Vehicles Act. For the above reason, there is no error in the award of the Tribunal holding that the respondents are liable to pay compensation.

20. As far as the quantum of compensation is concerned, the claimants have contended that the deceased was working as Agricultural Coolie and was earning a sum of Rs.200/- per day. They failed to substantiate the income of the deceased. In the absence of any material evidence, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident has occurred in the year 2010, while the deceased was working in the agricultural field. The notional income fixed by the Tribunal at Rs.4,500/- per month is meagre. A sum of Rs.6,500/- per month is fixed as notional income of the deceased. The deceased was aged 65 years at the time of accident. The Tribunal rightly applied multiplier '7'. Hence, the amounts granted by the Tribunal towards pecuniary loss is modified as Rs.3,64,000/- [Rs.6,500/- x 12 x 7 x 2/3]. The Tribunal has awarded a meagre sum of Rs.10,000/- towards loss of consortium to the 1st claimant, who is a husband. The 1st claimant is entitled to a sum of Rs.40,000/- towards loss of consortium. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are also meagre. The claimants 2 and 3 who are the children of the deceased are entitled to a sum of Rs.10,000/- each towards loss of love and affection and Rs.15,000/- towards funeral expenses. The Tribunal failed to award any amount towards loss of estate. A sum of Rs.15,000/- is awarded under the said head. Thus, the compensation awarded by



the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	2,52,000/-	3,64,000/-	Enhanced
2.	Loss of consortium to the 1 st claimant	10,000/-	40,000/-	Enhanced
3.	Loss of consortium to the claimants 2 & 3	10,000/-	20,000/-	Enhanced
4.	Loss of estate	-	15,000/-	Granted
5.	Funeral expenses	5,000/-	15,000/-	Enhanced
	Total	2,77,000/-	4,54,000/-	Enhanced by Rs.1,77,000/-

21. In the result, C.M.A.No.405 of 2014 is dismissed and C.M.A.No.2928 of 2014 is partly allowed. The amount awarded by the Tribunal at Rs.2,77,000/- is enhanced to Rs.4,54,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with 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.2882 of 2010. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court, 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(CS IX)

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Sub Assistant Registrar

gsa



To

1. Motor Accident Claims Tribunal
The VI Judge, Court of Small Causes,
Chennai.

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Copy To
The Section Officer,
V.R Section,
High Court, Madras.

+2cc to M/s.M.Malar, Advocate, S.R.No.37210, 37211
+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.37195

C.M.A.Nos.405 & 2928 of 2014

VBA (CO)
CS/23/08/2021