

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.NO.4546 OF 2019

AND

CMP.NO.25759 OF 2019

K.N.Palanisamy ... Appellant/Respondent

Vs.

1. Vijayalakshmi

2. Mani

3. Arunachalam

... Respondents/Petitioners

PRAYER:-

Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 11.12.2018 made in MCOP No.48 of 2011 on the file of the Motor accident Claims Tribunal III Additional District Court, Tiruppur at Dharapuram.

For Appellant : Mr.N.Ponraj

For Respondents : Mr.Ma.P.Thangavel

J U D G M E N T

Feeling aggrieved with the award passed by the Motor Accidents Claims Tribunal, III Additional District Court, Tiruppur, at Dharapuram, in MCOP No.48 of 2011, the respondent has filed this Appeal.

2. The brief facts leading to file the appeal is as follows:-

It is the case of fatal accident. The claimants are two major daughters and son of the deceased. At the time of accident, the deceased was aged about 65 years. On 02.03.2020, at about 4.00 p.m., while she was walking along with Dharaapuram to Kangayam road, a Maruthi 800 Car bearing Regn. NO.TN 37-C-4466, belongs to the respondent, came in a rash and negligent manner and dashed against the deceased, in which, the deceased sustained fatal injuries

and he was taken to Government Hospital, Dharpuram and thereafter, he was referred to Coimbatore Medical College Hospital, and she succumbed to injuries on the way. Hence, claiming compensation of Rs.10 lakhs the claim petition has been filed.

3. The respondent, owner of the Maruthi Car, contested the claim petition on the ground that the deceased was an old lady and she was walking with the help of stick and when she tried to cross the road, suddenly, without noticing the on coming vehicle, fell down on the road and invited the Accident. Hence, the owner of the car is not liable to pay the compensation and the petitioners are entitled to claim compensation only under the theory of "No fault liability".

4. In order to prove the case, before the Tribunal, the claimants examined two witnesses and marked as many as 7 exhibits. On the side of the respondents, two witnesses were examined and marked as many as 2 exhibits.

5. Considering the materials, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the respondent's Maruthi Car. In respect of quantum of compensation, the Tribunal fixed the monthly income of the deceased at Rs.6,000/- and deducted 1/3 towards her personal expenses, arrived at a notional annual income at Rs.48,000/- and applying the multiplier of 7, arrived at the loss of dependency t Rs.3,36,000/-. That apart, towards funeral expenses a sum of R.20,000/- and towards transport expenses Rs.20,000/- and towards loss of love and affection Rs.50,000/- ordered , in total a sum of Rs.4,26,000/- along with interest at 7.5% per annum has been awarded as total compensation. Aggrieved over the same, the respondent/owner of the Car is before this Court with this appeal.

6. Heard both sides and perused the materials available on records carefully.

7. So far as the negligent is concerned, the accident has taken place at Dharapuram to Kangayam main road. P.W.2, eye witness of the occurrence, is an independent witness. He clearly deposed that due to the rash and negligent act of the respondent's vehicle, the accident has taken place. Even though the respondent contended that the deceased has suddenly crossed the road and fallen down and she herself invited the accident, to prove contributory negligence, no witness was examined on the side of the respondent. The Tribunal rightly fixed the negligence on the driver of the car and I find no illegality in it.

8. So far as the quantum of compensation is concerned, it is contended by the respondent that the deceased was 65 years old and hence, there is no difficulty to hold that she was doing agricultural work, Ex.R1 and Ex.R2 shows that the deceased was registered under 100 days' work scheme for i.e. two days. Considering the above circumstances, Rs.6000/- for the monthly income of the 65 years old lady is on higher side. Hence, this Court is inclined to fix the monthly income of the deceased at Rs.3000/-. Considering the age of the deceased, this Court is not inclined to deduct towards the personal expenses of the deceased. After applying the multiplier of 7, the loss of dependency comes to Rs.2,52,000/- (Rs.3000 x 7 x 12). That apart the claimants, being the married daughters and son a sum of Rs.1,20,000/- is granted towards love and affection and Rs.15,000/- each is granted towards loss of funeral expenses and transport expenses, and the total compensation comes to Rs.4,02,000/-, rounded to Rs.4,00,000/- is awarded as compensation.

9. Further considering the fact and circumstances of the case, this Court is inclined to fix a sum of Rs.1,00,000/- towards interest payable to the claimant, totalling to a sum of Rs.5,00,000/-. Hence, the respondent/claimants are entitled for a sum of Rs.5 lakhs in total along with interest.

10. Now the learned counsel appearing for the appellant would submit that since the appellant is not in a position to pay the entire amount in one lump sum, he prayed to deposit the said sum in two installments.

11. Considering the request, the appellant is directed to deposit a sum of Rs.3,00,000/- (Rupees Three lakhs only) before the Tribunal on or before 08.02.2021 and deposit the remaining sum of Rs.2,00,000/- (Rupees Two Lakhs) on or before 08.03.2021. On such deposit, the respondents/claimants are permitted to withdraw the same as apportioned by the Tribunal.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,26,000/- is hereby reduced to Rs.4,00,000/-. The appellant is directed to pay a sum of Rs.1,00,000/- towards interest and in total a sum of Rs.5,00,000/- awarded and the appellant is directed to deposit a sum of Rs.3,00,000/- (Rupees Three lakhs only) before the Tribunal on or before 08.02.2021 and deposit the remaining sum of Rs.2,00,000/- (Rupees Two Lakhs) on or before 08.03.2021. On such deposit, the respondents/claimants are permitted to withdraw the same as apportioned by the

Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrp

To:

The Motor Accidents Claims Tribunal,
III Additional District Judge,
Tiruppur at Dharapuram.

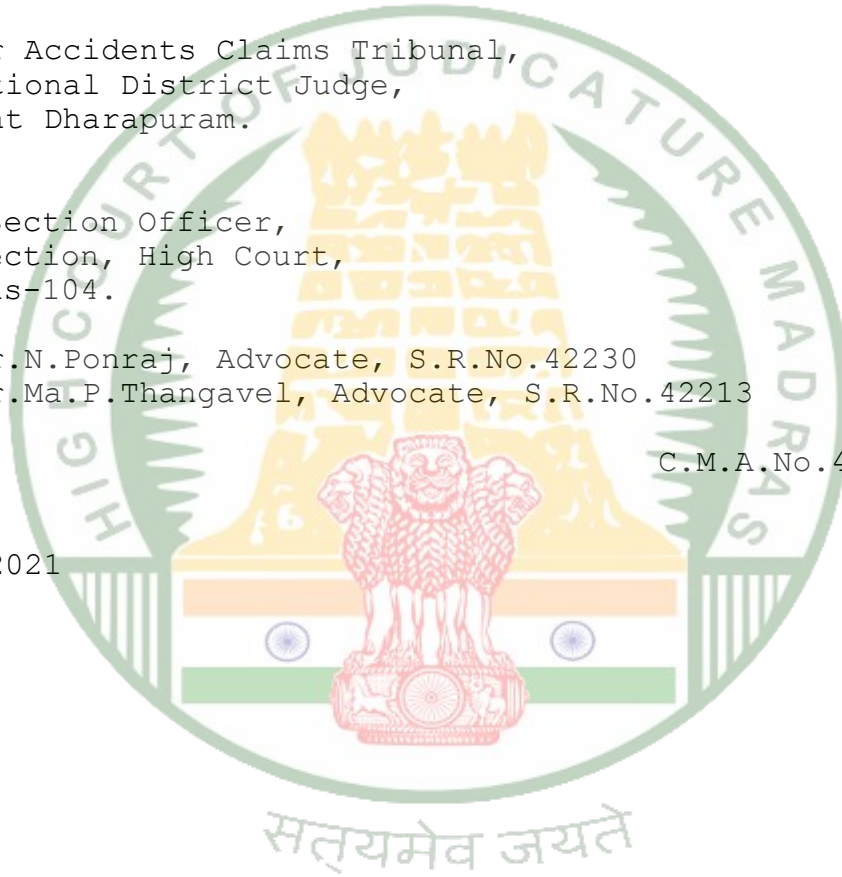
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The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.N.Ponraj, Advocate, S.R.No.42230

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.42213

C.M.A.No.4546 of 2019

CS(CO)
CS/29/01/2021



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