

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM

THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**

C.M.A. No.10 of 2017

1.Grace Geetha
2.Ravikumar

... Appellants

Versus

1.Vivek Transporters,
H.No.99, Sector 17 A,
Gurgaon, Haryana.

2.The Branch Manager,
ICICI Lombard Insurance Company Ltd.,
Vellore.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.07.2016 passed in M.C.O.P. No.717 of 2014 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore.

For Appellants : Mr. C.Prabakaran
For Respondents - 1 : No Appearance
2 : Ms. R.Sreevidhya

JUDGMENT

This appeal is preferred against the award of the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore. in M.C.O.P. No.717 of 2014 dated 02.07.2016.

2. The appellants are the claimants who filed a claim petition before the Motor Accident Claims Tribunal in M.C.O.P. No.717 of 2014 for a sum of Rs.40,00,000/- as compensation for the death of their son. It is not in dispute that the deceased met with an accident while he was travelling in a two wheeler. The accident occurred by vehicles dashing against the others directly. It is admitted that the deceased did not wear helmet at the time of accident. The Tribunal deducted 50% towards contributory negligence for not wearing helmet and for the reason that the accident occurred by head on collision. Towards contributory negligence 25% was deducted for head on collision and another 25% was deducted for not wearing of helmet at the time of accident. Challenging the deduction of 50% towards contributory negligence, the above appeal is preferred by the claimants.

3. It is admitted that as per the First Information Report, the charge was against the driver of the first respondent vehicle for causing the accident. Merely because the accident occurred due to head on collision it cannot be presumed that the drivers of both the vehicles have contributed for the accident. No independent witness was examined to prove any negligence on the part of the deceased for causing the accident. In such circumstances, this Court is unable to approve the view of the Tribunal deducting 25% for contributory negligence merely because the accident was by head on collision. However, the Tribunal is justified in deducting 25% for not wearing helmet at the time of accident. This Court is unable to find any irregularity in the order of Tribunal deducting 25% for not wearing helmet at the time of accident. The appellants have no explanation for not wearing helmet at the time of accident.

4. Learned counsel for the second respondent however challenged the quantum on the ground that there is no proof with regard to income of the deceased as he was not employed at the time of accident. It is admitted that the deceased has just completed his final year in Engineering. It is also

admitted that the deceased appeared for the last semester examination and was waiting for the result at the time of accident. Though the deceased was not employed at the time of the accident, the Tribunal notionally fixed the income of the deceased as Rs.12,000/- taking note of the fact that the accident occurred in the year 2014. The evidence of P.W.1. suggest that the deceased was best in his studies and that he was also a sportsman. Though no certificate was produced to show that the deceased had other talents in sports, the deceased did B.Tech. (Bio-Technology) course during the academic year 2010-2014. The mark sheet was marked as Ex.P.11. and the Tribunal found that the deceased had failed in five subjects. The deceased was therefore held to be an average student as he could not pass out in all the subjects at the time of accident. Though the claim of the claimant that the deceased could earn a sum of Rs.1,00,000/- per month, was not accepted by the Tribunal, however, the Tribunal has given some reasons to accept a sum of Rs.12,000/- as monthly income of the deceased at the time of accident. This Court does not find any good reason to interfere with the conclusion of Tribunal with regard to the notional income of the deceased.

5. Since the deceased was a student who had just written his last semester examinations, there is actual proof for the age of the deceased and multiplier should be 18 as per the judgment of Hon'ble Supreme Court. It is to be noted that the Tribunal has allowed 40% towards future prospects and deducted 50% towards personal expenses. The Tribunal has arrived at a sum of Rs.15,12,000/- towards loss of income and a further sum of Rs.1,00,000/- towards love and affection. The Tribunal has taken 14 as multiplier considering the age of the mother of the deceased. The position is now set right by the judgments of Hon'ble Supreme Court. Even in cases where the claimants are parents, the multiplier should be fixed based on the age of the deceased. Therefore, the proper multiplier that should be adopted by the Tribunal is 18.

6. The appellants are therefore, entitled to get an enhancement in the following manner; The deduction towards contributory negligence should be 25% and not 50% as done by the Tribunal and the multiplier should be 18 instead of 14 as taken by the Tribunal. Allowing 40% towards future prospects and adding a sum of Rs.1,30,000/- under other heads, the

claimants namely the parents of the deceased are entitled to a sum of Rs.19,44,400/-. Deducting 25% from the amount, appellants are entitled to 75% of the above amount which comes to Rs.14,58,300/-. As per the award of Tribunal the appellants are given only a sum of Rs.8,22,000/-. In view of the enhancement, as per this order, the appellants are entitled to a further sum of Rs.6,36,300/- along with interest from the date of filing the petition till the date of deposit.

7. It is represented that the second respondent has already deposited the entire amount as per the award of Tribunal. Hence, this Court directs the second respondent to deposit a further sum of Rs.6,36,300/- along with interest at the rate of 7.5%. The second respondent shall deposit the amount within a period of eight weeks from the date of receipt of a copy of this order. Learned counsel for the appellants submitted that appellants may not be able to withdraw the amount unless this Court pass an order permitting them to withdraw the amount. In order to help the aged parents of the deceased, this Court is inclined to permit the appellants to withdraw the entire amount as per the judgment if they have not withdrawn any amount so far.

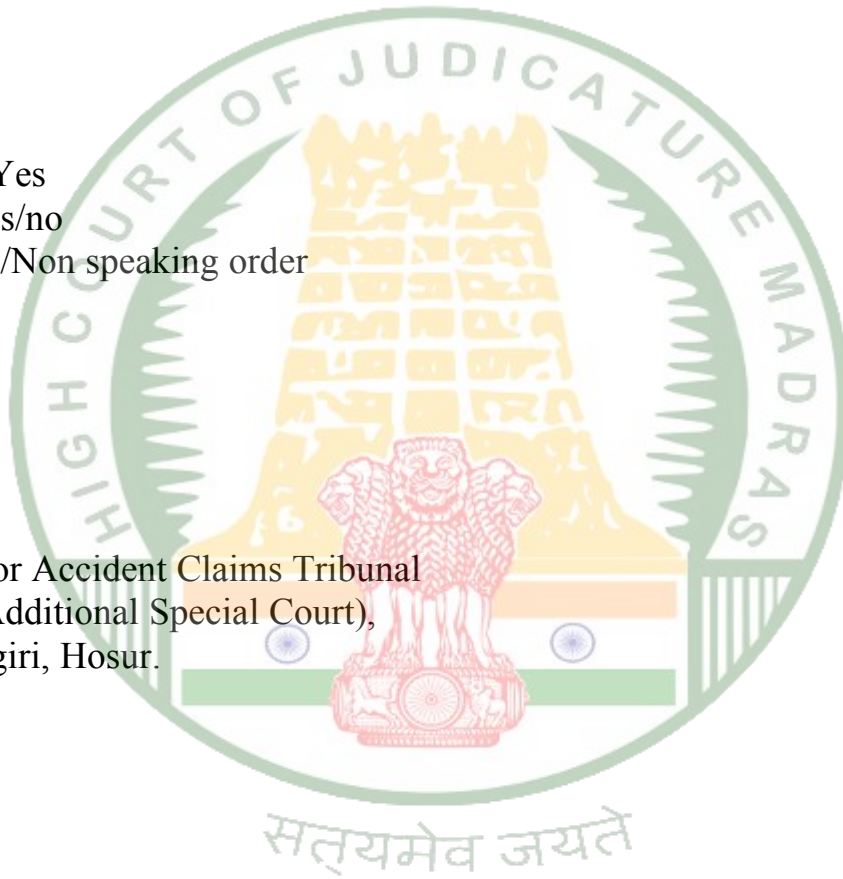
8. This appeal is allowed and the award in M.C.O.P. No.717 of 2014 on the file of Motor Accident Claims Tribunal (I First Additional Sessions Court) is modified to the extent indicated above. No costs.

04.11.2020

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Internet:Yes
Index:Yes/no
Speaking/Non speaking order

To

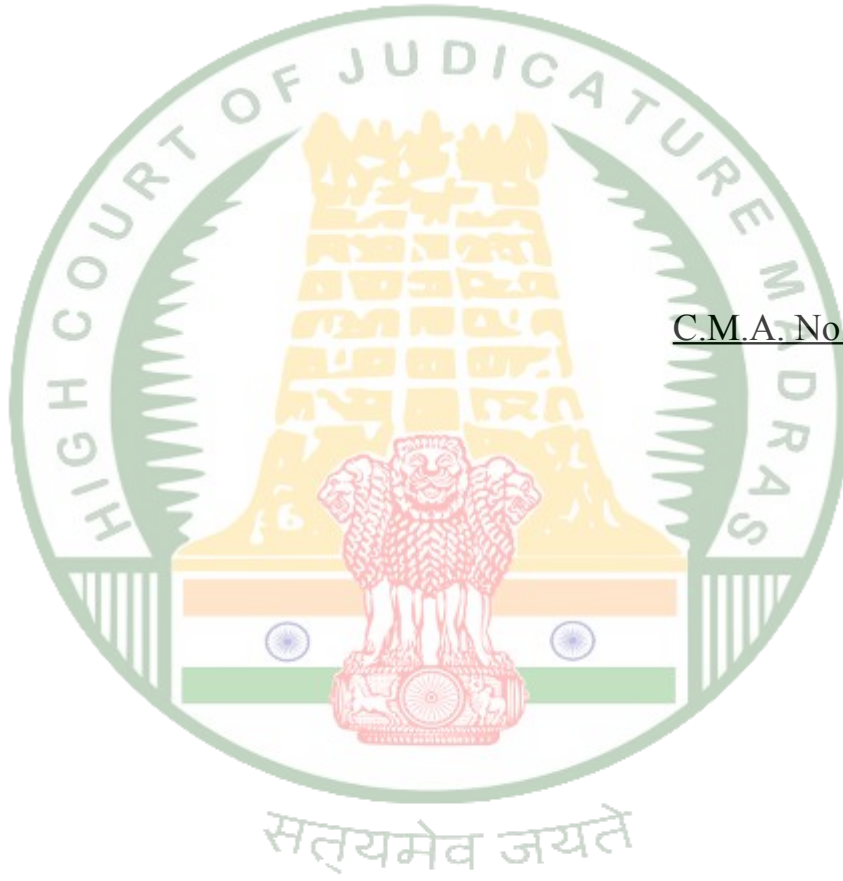
The Motor Accident Claims Tribunal
(Additional Special Court),
Krishnagiri, Hosur.



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S.S.SUNDAR, J.,

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