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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA. No.1111 of 2011
and CMP.SR.88199 of 2018
and Cross Objection SR.88195 of 2019

- 1.The Assistant Director,
Office of the Animal Disease Intelligence Unit,
Bretts Road,
Salem-600001.
 - 2.The District Collector,
Collector's Office,
Salem-600001.
 3. The Assistant Director,
Office of the Assistant Director of Animal Husbandry,
Bretts Road,
Salem-600001. ... Appellants
- ..vs..

- 1.Annamalachi,
W/o Palanisamy,
- 2.Kulanthayee Ammal,
W/o Arunachalam,
- 3.Prakasam,
S/o Palanisamy,
- 4.Sridharan,
S/o Palanisamy,
- 5.A.Mahalingam,
S/o Arumugam ... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.04.2010 made in M.C.O.P.No.735 of 2007, on the file of the Motor Accidents Claims Tribunal (1st Additional District Judge), Salem.

For Appellant	:	Mr.Devnarendran GA (CS)
For Respondent No.1 to 4	:	Mr.A.V.Arun
Respondent No.5	:	No Appearance



J U D G M E N T

Dissatisfied with the judgment and decree, dated 22.04.2010, passed by the tribunal awarding compensation of Rs.6,09,700/- along with interest at the rate of 7.5% per annum, the Appellants are before this Court to set aside the judgment and decree by the tribunal.

2. It is the case of the claimants that on 23.05.2007 at about 4.45 p.m, the deceased-Palanisamy was riding his motorcycle bearing no. TN-30-H-9709 along with one Chandran from Salem towards their residence, keeping extreme left of the road on Salem to Yercaud Ghat road near bridge at 17th Hair Pin Curve, at the time, a Mahendra Van Appellant van bearing no. TN-27-G-1350, which was driven by its driver at high speed in rash and negligent manner hit against the deceased vehicle. Due to the accident the deceased Palanisamy and the Pillion rider Chandran sustained grievous injuries. Immediately, after accident the aforesaid two persons were rushed to the Government Mohan Kumaramangalam Medical College Hospital, Salem, where the Palanisamy was declared died. Subsequently, the Pillion rider Chandran also succumbed to the injuries. The legal heirs of the deceased Palanisamy have filed the claim petition before the tribunal, claiming compensation of Rs.20,00,000/-.

3. Before the Tribunal, witnesses P.W.1 to P.W.4 were examined and Exhibits P1 to P16 were marked on the side of the claimants whereas R.W.1 was examined and no documents were marked on the side of the respondents. After analyzing both oral and documentary evidences, the tribunal has concluded that the accident had occurred only due to the negligence on the part of the driver of the appellants Van and the appellants being officials of the department are directed to pay the compensation of Rs.6,09,700/- along with interest at the rate of 7.5% p.a from the date of petition till realization.

4. The main contention of the learned Government Advocate (CS) appearing for the appellants is that the accident has occurred only due to the negligence of the deceased. The deceased rode his motor cycle rashly and negligently at a high speed and without observing the vehicle approaching in the opposite, he hit against the van. So it is purely negligent on the part of the deceased. The tribunal failed to note that vicarious liability will not arise when the claim is made by the tortfeasor and the claimants cannot claim compensation from the owner of the vehicle.

5. The learned Government Advocate (CS) appearing for the appellants submitted that the tribunal failed to see that the evidence of PW4 who was the cleaner has categorically deposed that the lorry owned by the deceased was not used for any transport at the time of death of the deceased. The



tribunal misconceived the evidence of PW1 and PW4, thereby awarded huge amount of compensation. Therefore, the compensation awarded by the tribunal is liable to be dismissed.

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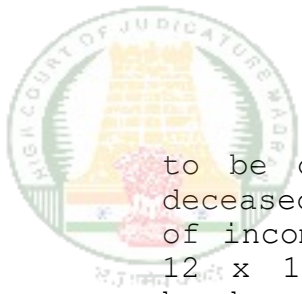
6. On the other hand, the learned counsel appearing for the Claimants/Respondents No.1 to 4 denied the negligence on the part of the deceased and furthermore contented that the accident happened only because of the Appellant's vehicle and justified the award passed by the tribunal is reasonable and fair and therefore, does not warrant interference by this Court.

7. Heard the learned Government Advocate (CS) appearing for the appellants and the learned counsel appearing for the Claimants/Respondents No.1 to 4 and perused the materials available on record.

8. It is seen from the award that tribunal based on the Ex.P1/FIR, Ex.P2/Accident Register and Ex.P4/Motor Vehicle Inspector's Report and also on the evidence of eyewitness/PW4, the tribunal has concluded that the due to the negligence on the part of the appellants' driver and thus the appellants herein are liable to pay compensation. Since the liability and negligence fixed by the tribunal is based on the evidence and documents, this court also confirms the liability and negligence fixed by the tribunal.

9. As far as quantum of compensation is concerned, the claimants/respondent 1 to 4 have claimed that the deceased was doing lorry business and earning a sum of Rs.20,000/- per month and also marked documents to substantiate their claim. On a perusal of the documents marked by the claimants, it is seen that only RC Book of the 3rd party was marked and no other materials were marked to substantiate that the deceased was doing lorry business at the time of the accident. Therefore, based on the materials, this Court feels that the monthly income fixed by the tribunal at Rs.3,800/- is fair and reasonable.

10. The next contention of the respondents 1 to 4/claimants is that the tribunal has not awarded future prospects as per the decision of the Hon'ble Supreme Court in Pranay Sethy's Case. It is true that the tribunal has not added future prospects while calculating loss of income, therefore in the light of the decision of the Hon'ble Supreme Court in Pranay Sethy's Case, as per the age of the deceased who was aged 35 years, 40% of the total income to be added towards future prospects. The learned Government Advocate appearing for the appellant has also not raised any objections for adding future prospects. Accordingly, as per the decision of the Hon'ble Supreme Court in Sarala Verma's case, considering the age of the deceased the correct multiplier is 16 and considering the number of claimants 1 /4 of the income



to be deducted towards personal and living expenses of the deceased. Hence, by applying the above principles, the loss of income is calculated at Rs. 7,66,080/- ($3800 \times \frac{1}{4} + 40\% \times 12 \times 16$). Insofar as the compensation awarded under other heads are concerned, this Court feels that the compensation under other heads are inadequate and requires to be enhanced.

11. Accordingly, the compensation under the head loss consortium to the wife/1st respondent herein is reduced to Rs.25,000/- from Rs.30,000/-. The compensation awarded under the head 'Loss of Love and Affection to the children/3rd & 4th respondents at Rs.30,000/- is enhanced to Rs.40,000/- (Rs.20,000/- each). The tribunal failed to award compensation to the mother of the deceased/2nd respondent under the head Loss of Love and Affection, hence a sum of Rs.15,000/- is granted under the said head. The tribunal has also not awarded under the head loss of estate, hence a sum of Rs.15,000/- under the said head. The sum granted under the head Funeral Expenses at Rs.2,500/- is enhanced to Rs.10,000/-. Thus the compensation awarded by the tribunal is modified as follows:

Heads	Compensation awarded by the tribunal Rs.	Compensation awarded by this Court Rs.
Loss of Dependency	5,47,200/-	Rs. 7,66,080/- ($3800 \times \frac{1}{4} + 40\% \times 12 \times 16$)
Loss of Consortium to 1st respondent	30,000/-	25,000
Loss of Love & Affection to 3rd & 4th respondent	30,000/-	40,000/- (Rs.20,000/- each)
Loss of Love & Affection to 2 nd respondent	...	15,000
Loss of Estate	...	15,000
Funeral Expenses	2,500/-	10,000
Total	6,09,700/-	8,71,080/-

12. In view of the above modification, the respondents 1 to 4/claimants are entitled to a sum of Rs.8,71,080/- along with interest at the rate of 7.5% per annum.

13. The respondents 1 to 4/Claimants have filed an application in CMP.No.88199 of 2019 to condone delay in filing cross objections seeking enhancement of compensation awarded by the tribunal. In view of the modification, enhancing the compensation awarded by the tribunal, the delay in filing Cross Objection is condoned. Consequently, the Cross Objection in SR.No.88195 of 2019 is closed at the SR Stage itself.



14. The appellants are directed to deposit the entire compensation amount along with interest as modified by this Court, less the amount already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/respondents 1 to 4 are permitted to withdraw the compensation as modified by this Court along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

15. It is represented by the learned counsel for the claimants/respondents 1 to 4 that the respondents have already paid court fee for a sum of Rs.10,00,000/-, therefore, the said Court fee shall be adjusted for the enhancement amount in the present appeal.

16. With the above, the present Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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1. The 1st Additional District Judge
(Motor Accidents Claims Tribunal),
Salem.

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

+1 cc to special Government Pleader (C.S),
High Court Madras Sr.No. 8418

+1cc to Mr.K.Ganesan, Advocate SR.No.8455

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AK II(CO)

B.VC(27.07.2021)