

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	18.12.2020
DELIVERED ON	20.01.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD) No.1124 of 2011

- 1.Murugammal
- 2.Minor.Sathya
- 3.Minor.Avadaiappan
- 4.Minor.Gomathy Lakshmi
- 5.Minor.Selvi

[Minor appellants 2 to 5 are represented
by their next friend and natural guardian their
mother the first appellant herein]

.. Appellants/Petitioners in M.C.O.P

vs.

- 1.M.Antony Jeyaraj

- 2.Shri Ram General Insurance Company Limited,
E-8, EPIP, RIICo Industrial Area,
Sitapuram, Jaipur, Rajasthan-302 022.

- 3.Grace .. Respondents/Respondents in M.C.O.P

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award, dated 01.04.2011 passed in M.C.O.P.No.358 of 2010, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge (Fast Track Court No.1), Tuticorin, in so far as it related to the quantum.

For Appellants : Mr.G.Aravinthan
for Mrs.P.Jessi Jeeva Priya

For Respondents : No Appearance (for R1 and R3)

Mr.S.Srinivasaraghavan (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the the award, dated 01.04.2011 passed in M.C.O.P.No.358 of 2010, on the file of the Motor



Accidents Claims Tribunal-cum-Additional District Judge (Fast Track Court No.1), Tuticorin, insofar as it relates to the quantum is concerned.

2.The case of the claimants before the Tribunal is that on 09.08.2010, at about 05.45 p.m., the deceased Alwar along with the appellant/1st petitioner was riding his Motor Cycle bearing Registration No.TN-72J-9214 belonging to the third respondent, at that time, the first respondent's vehicle bearing Registration No.TN-74V-5898 was driven by its driver in a rash and negligent manner and dashed against the Motor Cycle, in which, Alwar, who travelled as a pillion rider, sustained injury and died on the way to the hospital. In respect of the occurrence, a case in Crime No.227 of 2010 was registered on the file of the Seithunganallur Police Station. Since the accident took place due to the rash and negligent driving on the part of the third respondent's vehicle driver, the third respondent being the owner and the second respondent the insurer of the said van, are jointly and severally liable to pay the compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only). The deceased was aged about 55 years, at the time of the accident and he was doing Real Estate Business and an Agriculturist and earned Rs.10,000/- per month.

3.The case of the 2nd respondent/Insurance Company before the Tribunal is that the accident took place only due to the negligence on the part of the rider of the Two-wheeler. Therefore, neither the 1st respondent nor the 2nd respondent herein are liable to pay the compensation.

4.The case of the third respondent before the Tribunal is that only the first respondent is liable to pay the compensation and the third respondent is no way liable to pay any amount.

5.On the side of the appellants/claimants before the Tribunal one witness was examined and nine documents were marked. On the side of the respondents/respondents no witness was examined and no document was marked.

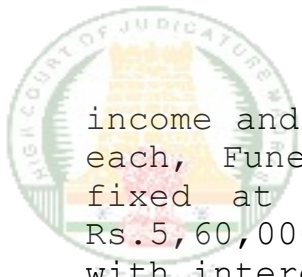
6.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the driver of the vehicle bearing Registration No.TN-74V-5898. Whiles, the respondents 1 and 2 were jointly and severally liable to pay the amount. Regarding the quantum taking into account, the age of the deceased, notional income was fixed at Rs.24,000/- and awarded Rs.1,98,600/- (Rupees One Lakh and Ninety Eight Thousand and Six Hundred Only) as compensation with interest at the rate of 7.5% p.a.



7.Challenging the said quantum fixed by the Tribunal, the appellants/claimants are before this Court. There is no cross objection from the respondents.

8.With regard to the negligent aspect, no argument was advanced by the respondents. So, from the nature of the accident, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the third respondent's vehicle driver. P.W.1, the wife of the deceased, is also an Eye-witness. In respect of the occurrence, a case in Crime No.227 of 2010 was registered on the file of the Seithunganallur Police Station. P.W.1, is the first informant. From the evidence of P.W.1, it is seen that the accident took place only due to the rash and negligent driving on the part of the first respondent vehicle driver. There is no contra evidence on the part of the appellants/claimants in this regard. In such circumstances, the finding of the Tribunal requires confirmation and accordingly, it is confirmed.

9.Regarding the quantum, the age of the deceased was fixed at 55 years, except the Xerox copy of the Postmortem Certificate marked under Ex.P.2 and there is no other supporting document. Hence, the age was fixed by the Tribunal can be taken as correct. Regarding the income, no documentary evidence was produced by the appellants/claimants before the Tribunal. From the evidence of P.W.1, it is seen that the deceased was doing business and an agriculturist, was earning not less than Rs.10,000/- per month. In the absence of any document and oral evidence, the Tribunal took Rs.2,000 p.m., as notional income and assessed the same at Rs.22,000/- p.m. As mentioned earlier, this compensation has been challenged by the appellants/claimants, on the ground that the deceased was maintaining a family consisting of four children and wife. Hence, the income ought to have been fixed at Rs.10,000/-, in the absence of the any documentary evidence to prove the correct income. The cost inflation index released periodically by the Income Tax Department of Government of India have now been taken into account for fixing the notional income. The accident took place only in the year 2010 and so the annual income can be fixed at Rs.36,000/-. So that can be taken into account for assessing the notional income and the loss of estate. By taking into account, in the year 1994, when the II schedule was introduced, a notional income for non-earning member was fixed at Rs.15,000/-. So by adding 25% for future prospects, the income would come to Rs.45,500/-, from which, 1/3rd is to be deducted for the personal expenses of the deceased and hence, the total contribution is taken as Rs.30,000/-. Since the age of the deceased was 55 years, applying multiplier '11' as per the decision of **Sarla Verma's case**, this Court awards Rs.3,30,000/- (Rupees Three Lakhs Thirty Thousand Only) for loss of



income and the loss of love and affection was fixed at Rs.40,000/- each, Funeral expenses fixed at Rs.15,000/-, loss of estate was fixed at Rs.15,000/- and the total compensation is fixed at Rs.5,60,000/- (Rupees Five Lakhs and Sixty Thousand Only) along with interest at the rate of 7.5% per annum .

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10. In the result, the Civil Miscellaneous Appeal is partly allowed. The award granted by the Tribunal in MCOP.No.358 of 2010, dated 01.04.2011 is modified and enhanced from Rs.1,98,600/- (Rupees One Lakh and Ninety Eight Thousand and Six Hundred only) to Rs.5,60,000/- (Rupees Five Lakhs and Sixty Thousand Only). The 2nd respondent/Insurance Company is directed to deposit the modified award amount along with interest at 7.5% p.a from the date of claim petition till the date of deposit, less the amount already deposited, if any, within a period of two months from the date of receipt of a copy of this judgment. On such compliance, the appellants/claimants are entitled to withdraw the award amount in proportion to their share as allotted by the Tribunal excluding minors, if any. If they attained majority by this time, they are permitted to file proper application before the Tribunal. The appellants are directed to pay the additional court fee, if any. No costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

sjj

To

1.The Additional District Judge,
(Motor Accidents Claims Tribunal)
Fast Track Court No.1, Tuticorin.

Copy to

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai (2 copies).

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-1750[F] dated 22/01/2021)

judgment made in
C.M.A(MD) No.1124 of 2011
20.01.2021

NS(CO)

TR(11.02.2021) 4P 5C