



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Monday, the Thirty First day of January Two Thousand Twenty Two

WEB COPY

PRESENT

The Hon`ble Mrs.Justice S.ANANTHI

CMA(MD) . No.400 of 2012

1. S.JOSEPH BRITO (Died)

2. J. SAROJA

... Petitioners/Appellants

Vs

1. K.MOHAMMED ABBAL KAISOR

2. THE BRANCH MANAGER,
BAJAJ ALLIANCE GENERAL ASSURANCE CO., LTD.,
12-G, RAM NAGAR,
BYE PASS ROAD, MADURAI.

3. ICICI LOMBARD GENERAL INSURANC CO., LTD.,
NO.140 NUNGAMBAKKAM HIGH ROAD,
CHENNAI-34.

... Respondents/Respondents

Prayer :-

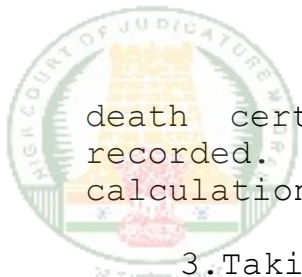
Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 preferred against the judgment and decree of the Motor Accidents Claims Tribunal (Additional District Court/Fast Track Court No.II), Thoothukudi, dated 24/06/2011 passed in MCOP NO.169 of 2009.

Ordered:-

This appeal having been posted on this day "FOR BEING MENTIONED" In pursuance to the order of this court dated 26/11/2021 and upon perusing the said order of this court dated 26/11/2021 in CMA (MD) NO.400 of 2012 and upon hearing Mr. S. Siva Thilakar, advocate for the appellants and of Mr. J.S. Murali, advocate for the 2nd respondent, Mr. K.K. Ramakrishnan, advocate for the 3rd respondent, this court made the following order.

This matter is listed today under the caption 'For Being Mentioned' at the instance of the learned counsel appearing for the appellants.

2.The learned counsel for the appellants filed a memo stating that the first appellant passed away on 22.04.2020 and produced the



death certificate of the first appellant. The said memo is recorded. He further submitted that there is a clerical error in calculation of the award amount.

3.Taking note of the submission made by the learned counsel for the appellants, the Registry is directed to issue the following judgment:-

' ' BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A(MD)No.400 of 2012

S.Joseph Brito (Died)

J.Saroja

... Appellant

Vs.

1.K.Mohammed Abbai Kaisor

2.The Branch Manager

Bajaj Alliance General Assurance Company Ltd.,
12-G, Ram Nagar, Bye-Pass Road,
Madurai.

3.ICICI Lombard General Insurance Company Ltd.,

No.140, Nungambakkam High Road,
Chennai - 34.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Petition is filed under Section 173 of M.V.Act, 1988, to modify the judgment and decree, dated 24.06.2011 made in MCOP.No.169 of 2009 on the file of Motor Accidents Claims Tribunal (Additional District Court/Fast Track Court No.II), Thoothukudi.

For Appellant	:	Mr.S.Siva Thilakar
For R-1	:	No Appearance
For R2	:	Mr.J.S.Murali
For R3	:	Mr.K.K.Ramakrishnan

JUDGMENT

This Civil Miscellaneous Appeal has been filed to modify the judgment and decree, dated 24.06.2011 made in MCOP.No.169 of 2009 on the file of Motor Accidents Claims Tribunal (Additional District Court/Fast Track Court No.II), Thoothukudi.



2. It is a case of fatal accident, which took place on 02.01.2009 at about 12.00 hours, the deceased Melegon was sitting on the three wheel cycle, which was stopped on the west side of the Tiruchendur to Kulasekarapattinam near Allanthalai bus stop. At that time, the driver of the first respondent's bus, bearing Registration No.TN-23-AD-3890, came on the same road from south to north, driven by its driver in a high speed without control, in rash and negligent manner and dashed against the deceased. As a result of which, the deceased fell down and sustained head injuries and multiple fractures all over the body and died on the spot and FIR has been registered in Cr.No.3/09 under Section 279, 337 and 304(A) IPC against the first respondent's driver.

3.The claimants have filed a petition in M.C.O.P.No.169 of 2009 on the file of the Motor Accidents Claims Tribunal (Additional District Court/Fast Track Court No.II), Thoothukudi, seeking compensation.

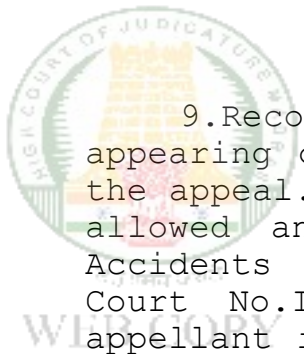
4.Before the Tribunal, on the side of the claimants two witnesses were examined as P.W.1 and P.W.2 and four documents were marked as Exs.P.1 to P.4. On the side of the respondents one witness was examined as R.W.1 and two documents were marked as Ex.R1 and Ex.R2.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and respondents and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the first respondent's bus and directed the first respondent to pay a sum of Rs.2,46,500/- as compensation.

6.Against which, the claimants have filed this present appeal to modify the judgment and decree passed by the Tribunal.

7.Eventhough, paper publication was effected no one appeared for the first respondent. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second and third respondents and perused the materials available on record.

8.The learned counsel appearing for the third respondent has filed a Memo stating that the Insurance Company have no objection in allowing the appeal of the claimants to the extent of Rs.2,00,000/- with interest at the rate of 7.5% pa., along with the award passed by the Court below, from the date of filing of the claim petition with a further direction to recover the amount from the owner of the vehicle in the same execution proceedings, for which, the appellant has no objection.



9.Recording such undertaking given by the learned counsels appearing on either side, this Court has no hesitation in allowing the appeal. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the amount of Rs.2,46,500/- awarded by the Motor Accidents Claims Tribunal (Additional District Judge/Fast Track Court No.II), Thoothukudi, is enhanced to Rs.4,46,500/-. The appellant is entitled to get Rs.4,46,500/- (Rupees Four lakhs forty six thousand five hundred only) with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization. Except the above, all the other terms of the award passed by the Tribunal is confirmed.

10.The third respondent is directed to deposit the award amount, now fixed by this Court, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the appellant is permitted to withdraw the same, by filing necessary application before the Tribunal. If the entire award amount is already paid by the Insurance Company, the Insurance Company is permitted to withdraw the excess amount with accrued interest. No Costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Motor Accidents Claims Tribunal
(Additional District Court/Fast Track Court No.II),
Thoothukudi.
2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.S.Sivathilakar, Advocate SR.No. 3389
+1 CC to Mr.T.S.Murali, Advocate SR.No. 36183

C.M.A. (MD) No.400 of 2012
31.01.2022

ck(CO)