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C.M.A.(MD)No.487 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.10.2021

Delivered On : 16.11.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No.487 of 2014

1.Gnanaselvi

2.Asirvatham

3.Minor Soosai Raj

4.Minor Sureka

(Minor petitioners 3 and 4 are represented

by their mother and natural guardian,

first petitioner herein)

..Appellants/ Petitioners

Vs.

1.The Correspondent,

Jeyaraj Annapackiam College of Engineering,

Marchosis Nagar,

Nazerath - 628 617,

Thoothukudi District.

2.The Branch Manager,

United India Insurance Company Ltd.,

Door No.5/1, Kailasapuram Middle Street,

Azhagu Bagavathi Complex,

Tirunelveli - 627 001.

.. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to call for the records relating to the judgment and decree dated 23.07.2012 in M.C.O.P.No.1423 of 2011 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Tirunelveli and set aside the findings of contributory negligence and enhance the compensation.

For Appellants

: Mr.V.Sasikumar

For 1st Respondent

: Mr.Kingsly Soloman

For 2nd Respondent

: Mr.A.Shajahan



JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.1423 of 2011 dated 23.07.2012, on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Tirunelveli.

2.The appellants herein are the claimants and the respondents herein are the respondents in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.1423 of 2011, claiming compensation for the death of Madhanraj, in an accident that took place on 27.10.2011. The Tribunal has awarded a sum of Rs.2,60,000/- (Rupees Two Lakhs and Sixty Thousand only) as compensation. Against which, the appellant has preferred this appeal.

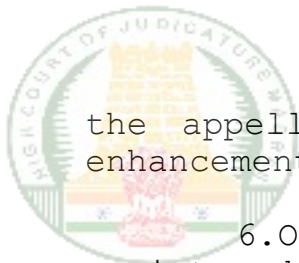
3.Brief substance of the claim petition in M.C.O.P.No.1423 of 2011 is as follows:

On 27.10.2011, at about 08.15 a.m., one Madhanraj was riding a two wheeler bearing registration No.TN-05-S-9475 along the Manjinapuram - Tiruchendur main road keeping the left edge of the road. The first respondent drove the bus bearing registration No.TN-60-N-7732 in a rash and negligent manner and dashed against the motorcycle. Madhanraj died on the spot. The deceased was aged about 19 years at the time of accident. He was studying Third year Diploma Course in Jeyaraj Annapackiam Engineering College. The petitioners 1 and 2 are the parents of the deceased. The petitioners 3 and 4 are the brother and sister of the deceased. The petitioners claimed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation.

4.Brief substance of the counter filed by the second respondent therein is as follows:

The petitioners have to prove the education, dependency and the manner of accident. The deceased Madhanraj was not having valid licence at the time of accident. The owner of the two wheeler allowed the deceased to ride his two wheeler. It was the motorcyclist, who drove the bike in a rash and negligent manner and invited the accident. The rough sketch will clearly prove that the accident took place along the northern side of the road. But the FIR was wrongly registered against the bus driver and hence, the petition is to be dismissed.

5.On the side of the claimants, two witnesses were examined and six documents were marked. On the side of the respondents, two witnesses were examined and two documents were marked. After trial, the Tribunal has awarded a sum of Rs.5,20,000/- (Rupees Five Lakhs and Twenty Thousand only) as compensation and after deducting 50% towards contributory negligence, the Tribunal awarded a sum of Rs.2,60,000/- (Rupees Two Lakhs and Sixty Thousand only) as compensation to be paid by the respondents therein. Against which,



the appellant has preferred this Civil Miscellaneous Appeal for enhancement of the award and for fixing the contributory negligence.

6.On the side of the appellant, it is stated that the FIR was registered only against the bus driver. The rough Sketch plan does not reflect the position of the vehicle at the time of accident. The rough sketch reflects the position of the vehicle after the impact of the accident. In support of this contention, a judgment of this Court in the case of **Sivagami and others v. The Managing Director** reported in **2011 (1) TN MAC 151 (DB)**, is cited.

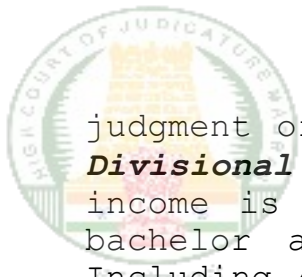
7.On the side of the appellants, it is stated that the Tribunal failed to consider that only left portion of the bus was damaged, not the right portion. It is the responsibility of the heavy vehicles to be more cautious. Contributory negligence cannot be fixed merely on the basis of observation mahazer without any corroboration.

8.On the side of the first respondent, it is stated that the first respondent is the owner of the vehicle. He was set exparte before the Tribunal. The victim is a minor. It was the rider of the two wheeler, who overtook the bus, came to the wrong side and dashed against the bus. The owner of the bus was not impleaded as a party and he was not examined as a witness. There is no mistake on the part of the bus driver.

9.On the side of the second respondent, it is argued that the two wheeler crossed the centre line and met with the accident and that the second respondent is liable for 50% contributory negligence.

10.It is seen that the deceased was aged about 19 years at the time of the accident. FIR was registered against the bus driver. In Ex.R1, observation mahazer and rough sketch, it is mentioned that the accident took place on the southern portion of the road. The driving licence of the deceased was not marked on the side of the appellants. The observation mahazer and rough sketch reveals that the occurrence took place on the right side of the road and hence, it is decided that there is 50% contributory negligence on the part of the deceased.

11.On the side of the appellants, it is stated that the deceased was aged about 19 years at the time of the accident and he was doing third year Engineering Diploma course. The transfer Certificate was marked as Ex.P4. The conduct certificate was marked as Ex.P5. ID card was marked as Ex.P6. From the records, it is seen that the deceased completed the age of 18 at the time of accident. Though the deceased was a student at the time, he was doing a professional course. There is possibility for him to earn Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month. As per the



judgment of the Hon'ble Supreme Court in the case of **Syed Sadiq v. Divisional Manager** reported in **2014 (1) TNMAC 459 (SC)**, the notional income is fixed as Rs.6,500/- per month. Since the deceased is a bachelor and a student, 50% is deducted for his own expenses. Including 40% towards future prospects, the loss of income would be calculated as Rs.9,82,800/- (Rupees Nine Lakhs Eighty Two Thousand and Eight Hundred only). A sum of Rs.70,000/- (Rupees Seventy Thousand only) is awarded towards conventional charges. The total compensation is calculated as Rs.10,52,800/- (Rupees Ten Lakhs Fifty Two Thousand and Eight Hundred only). After deducting 50% towards contributory negligence, a sum of Rs.5,26,400/- (Rupees Five Lakhs Twenty Six Thousand Four Hundred only) is awarded as compensation.

12.Hence, it is decided that the appellants are entitled to a sum of Rs.5,26,400/- (Rupees Five Lakhs Twenty Six Thousand and Four Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

13.The respondents therein are directed to deposit Rs.5,26,400/- (Rupees Five Lakhs Twenty Six Thousand and Four Hundred only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellants are permitted to withdraw the award amount with interest after deducting any amount received by them earlier. The claimants are not entitled for interest for the default period, if there is any. The appellants are directed to pay extra Court fee, if any. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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 IV Additional District Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.A. SHAJAHAN, Advocate (SR-34671[F] dated 16/11/2021)

+1 CC to M/s.V. SASI KUMAR, Advocate (SR-34862[F] dated 17/11/2021)

+1 CC to M/s.KINGSLY SOLOMON J., Advocate (SR-35083[F] dated 18/11/2021)

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RD(16.12.2021) 5P 7C