



WEB COPY

C.M.A.(MD)No.878 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.09.2021

Delivered On : 27.10.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No.878 of 2014

1.Bragadambal
2.Muthukumar
3.Chithiravel
4.Sendhil
5.Amudha

..Appellants/Claimants

Vs.

1.C.Raman
2.The Branch Manager,
The National Insurance Company Ltd.,
T.S.No.4132,
Keezha Raja Veethi,
Pudukkottai.

.. Respondents/Respondents

(R-1 is remains set exparte by the Tribunal.
Hence, notice may be given up against him)

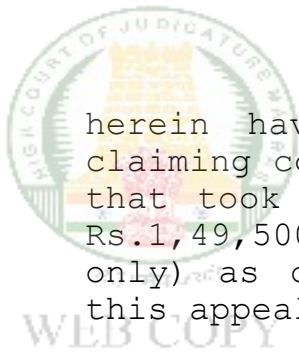
Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the portion of judgment of the Tribunal as far as appellants 2 to 5 herien and to enhance the compensation to the appellants to the tune of Rs.2,00,000/- in addition to compensation awarded by the Tribunal by modifying the judgment and decreetal order made in M.C.O.P.No.365 of 2010 dated 20.12.2012 by the learned Motor Accident Claims Tribunal, (Additional District Court), Pudukkottai.

For Appellant	: Mrs.Prabha For Mr.D.Rameshkumar
For 2 nd Respondent	: Mr.J.S.Murali
For 1 st Respondent	: Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.365 of 2010 dated 20.12.2012, on the file of the Motor Accident Claims Tribunal/Additional District Judge, Pudukkottai.

2.The appellants herein are the claimants and the respondents herein are the respondents in the claim petition. The appellants
<https://hcservices.ecourts.gov.in/hcservices/>



herein have filed a claim petition in M.C.O.P.No.365 of 2010, claiming compensation for the death of one Chinnaiah, in an accident that took place on 10.04.2010. The Tribunal has awarded a sum of Rs.1,49,500/- (Rupees One Lakh Forty Nine Thousand and Five Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3. Brief substance of the claim petition in M.C.O.P.No.365 of 2010 is as follows:

On 10.04.2010 at about 09.45 a.m., when the deceased Chinnaiah was travelling in a mini bus bearing registration No.TN-55-E-6990 standing near the front footboard, the driver of the mini bus drove the bus in a rash and negligent manner and applied sudden brake and as a result of which, the deceased fell down and was run over by the bus and he died on the way to the hospital. The deceased was 60 years old at the time of accident and he was a washerman and was doing agricultural work and was earning Rs.25,000/- per month. The first claimant is the wife, the claimants 2 to 4 are the sons of the deceased. The claimants claimed a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) as compensation.

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

The age, profession and income of the deceased are to be proved. The petitioners are not the dependants of the deceased. The manner of the accident is falsely stated in the petition. The deceased travelled in the footboard and his negligence is the cause of the accident. The driver of the bus is not having valid driving licence. There is policy violation.

5. The first respondent remains set exparte. On the side of the claimants, one witness was examined and five documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal fixed 50% negligence on the part of the deceased and has awarded a sum of Rs.1,49,500/- (Rupees One Lakh Forty Nine Thousand and Five Hundred only) as compensation to be paid by the second respondent herein. Against which, the appellant has preferred this Civil Miscellaneous Appeal for enhancement of the award.

6. On the side of the appellant, it is stated that the Tribunal failed to consider Ex.P2, report of the Motor Vehicle Inspector and the Tribunal is wrong in fixing 50% contributory negligence on the part of the deceased. The Tribunal failed to appreciate the oral and documentary evidence and has erroneously fixed contributory negligence. The Tribunal mistakenly deducted 1/3rd of the compensation instead of deducting 1/4th towards the deceased's personal expenses. The appellants 2 to 5 are entitled for



compensation for loss of love and affection and for pain and suffering. Without considering the same, the Tribunal simply dismissed the claim against the appellants 2 to 5. The award is to be enhanced for transportation expenses, funeral expenses, loss of consortium and for loss of love and affection.

WEB COPY

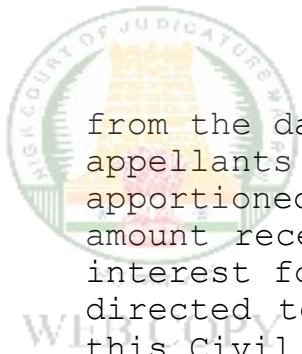
7. On the side of the second respondent, it is stated that the deceased travelled in the footboard and fell down. Travelling in footboard is an admitted fact and hence, the Tribunal fixed contributory negligence on the part of the deceased. The appellants 2 to 5 are aged about 35 to 40 years and they are leading a separate life and they are not dependants of the deceased. The deduction of 1/3rd is reasonable.

8. From the FIR, it is clear that the deceased travelled in the footboard. Even in the petition, it was admitted that the deceased travelled in the footboard. The Tribunal is correct in fixing 50% contributory negligence on the part of the deceased. The accident took place in the year 2010. The notional income fixed by the Tribunal is low. It is decided that the deceased might have earned Rs.4,500/- per month, at the time of accident. The claimants are five in number. 1/4th deduction is sufficient. After deduction 1/4th for the own expenses of the deceased, the monthly income is fixed at Rs.3,375/- (Rupees Three Thousand Three Hundred and Seventy Five only). After applying multiplier method, the loss of income is Rs.3,24,000/- (Rupees Three Lakhs Twenty Four Thousand only). As per the **Praney Sethi** case, the appellants are entitled for Rs.70,000/- (Rupees Seventy Thousand only) towards conventional charges. The appellants are entitled for Rs.3,94,000/- (Rupees Three Lakhs and Ninety Four Thousand only). After deducting 50% towards contributory negligence, the appellants are entitled to Rs.1,97,000/- (Rupees One Lakh and Ninety Seven Thousand only) as compensation.

9. It is seen that the appellants 2 to 4 are major sons and the fifth appellant is the daughter. Since the appellants 2 to 5 are major children of the deceased, the first appellant alone is entitled to Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only), the appellants 2 to 4 are entitled to Rs.10,000/- (Rupees Ten Thousand only) each and the fifth appellant is entitled to Rs.17,000/- (Rupees Seventeen Thousand only) as compensation.

10. Hence, it is decided that the appellants are entitled to a sum of Rs.1,97,000/- (Rupees One Lakh and Ninety Seven Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

11. The second respondent is directed to deposit Rs.1,97,000/- (Rupees One Lakh and Ninety Seven Thousand 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 as per ratio apportioned above with proportionate 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 is needed. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs.

Sd/-

Assistant Registrar (CS-III)

// 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 Motor Accidents Claims Tribunal, Additional District Judge,
Pudukkottai.

Copy to

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

+1 CC to M/s.J.S.MURALI, Advocate (SR-32813[F] dated 27/10/2021)

C.M.A. (MD) No.878 of 2014
27.10.2021

TP (CO)
KB(11.11.2021) 4P 5C