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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2022

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.669 of 2018

The Manager,
National Insurance Company Ltd.,
No.74-A, Paramathy Road,
Namakkal - 637 001.

... Appellant/2nd Respondent

.Vs.

1. Jayakodi	... 1 st Respondent/1 st Petitioner
2. Subramanian	... 2 nd Respondent/2 nd Petitioner
3. V.Bhuvaneswari	... 3 rd Respondent/1 st Respondent

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree passed in M.C.O.P.No.49 of 2016 on 05.07.2017, on the file of the Learned (III Additional District and Sessions Judge) The Motor Accidents Claims Tribunal at Virudhachalam, Cuddalore District.

For Appellant : M/s.A.Divya
For M/s.J.Chandran

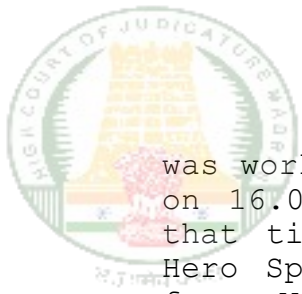
For Respondents : Mr.S.Saravanan
For R1 & R2

R3 - No Appearance

JUDGMENT

The second respondent in M.C.O.P.No.49 of 2016 on the file of the III Additional District Court/Motor Accidents Claims Tribunal, Virudhachalam, Cuddalore, is the appellant herein.

2. M.C.O.P.No.49 of 2016 (claim petition) has been preferred by the parents of Prabhakaran, who was aged about 23 years and



was working as a JCB Operator, when he died owing to an accident on 16.07.2015 at around 12.15 in the middle of the night. At that time, after finishing his office work, he was riding his Hero Splendor Motorcycle bearing Registration No.TN 31 BV 8609 from Vridhachalam to his native place T.V.Puthur. He was traveling on the Vridhachalam to Jayankondam main road. When he was on the Northern side of the Vellar river bridge, a lorry belonging to the first respondent bearing registration No.TN 28 AH 3732 said to have been driven in a rash and negligent manner had dashed against the Motorcycle of the deceased and due to the accident, he suffered multiple grievous injuries and was taken to Government Hospital, Vridhachalam and then referred to JIPMER Hospital, Pondicherry, but, unfortunately he died. Claiming that the said accident had occurred only due to the rash and negligent manner, in which the lorry was driven, the parents had filed the aforementioned M.C.O.P.No.49 of 2016.

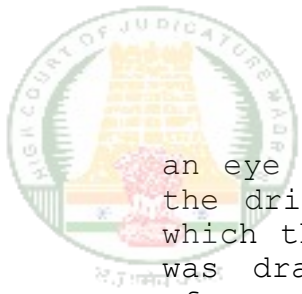
3. The second respondent, National Insurance Company had filed a counter and they claimed that there was no evidence that the deceased was actually a JCB Operator and therefore, to prove his salary they stated that the claimant should establish that he was having a valid driving license to operate a JCB lorry. The first respondent remained ex-parte.

4. During the trial, on the side of the claimants, the first claimant/mother of the deceased was examined as P.W.1 and two independent witnesses were examined as P.W.2 and P.W.3. The claimants have marked Exhibits, viz., Ex.P1 to Ex.P16 and among those documents, the relevant documents would be Ex.P1, the copy of the First Information Report, Ex.P2, the copy of the Motor Vehicle Inspector Report, Ex.P6, the copy of the driving license of the deceased, Ex.P10, the salary certificate of the deceased and Ex.P15, copy of the Insurance Policy.

5. On the side of the respondents, the Junior Assistant, Regional Transport Office, Vridhachalam was examined as R.W.1 and he marked Exhibits viz., Ex.R1 and Ex.R2. Ex.R2 was the copy of the driving license of the deceased Prabhakaran.

6. The second respondent before Tribunal resisted the claim of compensation primarily on the ground that the deceased had driving license, which authorized him to drive only a light motor vehicle. It was however stated that if there is a badge then he could be permitted to operate the JCB machine and in absence of badge or authority, he cannot be permit to operate the JCB. Therefore, they questioned the very employment of the deceased.

7. It is observed that P.W.2 had been examined on behalf of the claimants, who was an independent person, who had deposed as



an eye witness to the accident. The Tribunal also observed that the driver of the lorry did not depose regarding the manner in which the accident had occurred. Therefore, adverse interference was drawn against the driver of the lorry. In view of the aforesaid reasons, the Tribunal held that the accident was caused only due to the rash and negligent manner in which the lorry was driven. I would affirm that particular finding.

8. The Tribunal then proceeded to determine the compensation which has to be granted and found that the lorry was insured with the second respondent. It was therefore stated that the second respondent had an obligation to indemnify the insured for any loss and that therefore, the second respondent would be liable to pay the compensation awarded by the Tribunal.

9. With respect to the compensation to be paid, the Tribunal had observed that the deceased was aged about 23 years. The Tribunal was also examined Ex.P3, the copy of the Postmortem Certificate, which showed that the deceased was aged about 25 years at the time of his death.

10. It was stated by P.W.3 that he was owning a Chamber Brick Industry and he was also owning a JCB and that the deceased Prabhakaran was employed in the Industry. He had issued a salary certificate viz., Ex.P10 stating that the deceased was earning a sum of Rs.20,000/-. However, the Tribunal did not give much credence to that particular exhibit. With respect to the authority of the deceased to actually drive the JCB, the evidence of R.W.1 was examined by the Tribunal and during cross-examination R.W.1 had admitted that if the JCB was less than 7500 kgs then a driving license to drive light motor vehicle is sufficient and the vehicle could be used for self use without badge. The Tribunal held that the deceased was not employed by P.W.3 cannot be accepted and by considering the evidence of P.W.3 and R.W.1, the Tribunal held that the deceased was actually a JCB driver and the income of the deceased was fixed at Rs.10,000/- per month.

11. The learned counsel appearing for the appellant raised issues with respect to the entitlement of the deceased, to actually drive the JCB. But, at the same time, the evidence of R.W.1 was in favour of the appellant and therefore, the said finding of the Tribunal is confirmed by this Court.

12. The Tribunal had taken 50% towards his future prospects and had relied upon a judgment in the case of Rajesh and Others Vs. Rajbir Singh and Others [2013 (2) TNMAC 55 (SC)]. But it is now established that 40% of the monthly income alone can be taken for future prospects. The Tribunal had also deducted 50% towards personal expenses. The Tribunal had granted Rs.50,000/-



towards loss of love and affection. That amount has to be interfered with by this Court and Rs.40,000/- alone can be granted. The Tribunal had granted a sum of Rs.25,000/- towards funeral expenses and transportation at Rs.10,000/-. In view of these findings, which this Court affirms, except for the grant of loss of love and affection and the future prospects, the compensation granted by the Tribunal is modified as follows : Monthly income is at Rs.10,000/- + 40% of the future prospects i.e., 4,000/-. Therefore, the monthly income = Rs.10,000/- + Rs.4,000/- = Rs.14,000/- - 50% has to be deducted towards personal expenses. Therefore, the monthly income is Rs.7,000/-.

Notional income 7,000 x 12 x 18	15,12,000/-
Loss of love and affection 40,000/- x 2	80,000/-
Funeral expenses and transportation (25,000/- + 10,000/-)	35,000/-
Total	16,27,000/-

13. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.17,55,000/- is hereby reduced to Rs.16,27,000/- [Rupees Sixteen Lakhs Twenty Seven Thousand only] together with interest at the rate of 7.5% per annum from the date of the appeal till the date of deposit. The Appellant/Insurance Company is directed to deposit the award after adjusting the reduced amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.49 of 2016, on the file of the Motor Accidents Claims Tribunal, Vridhachalam, Cuddalore District. On such deposit, the respondents are permitted to withdraw the amount equally, now awarded by this Court as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, as awarded by the Tribunal less the amount if any, already withdrawn by making necessary applications before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar



sp/mp

To

1. The III Additional District and Sessions Judge,
The Motor Accidents Claims Tribunal,
Vridhachalam,
Cuddalore District.
2. The Section Officer,
V.R. Section,
Madras High Court.

+1cc to Mr.S.Saravanan, Advocate, S.R.No.20732

C.M.A.NO.669 OF 2018

BR(CO)
PBS/04/07/2022