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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

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

C.M.A.No.762 of 2018

1.Velvizhi

2.Senthilkumar

3.Sasikumar

...Appellants/Petitioners

Vs.

1. V.Ramprasad

2. The Branch Manager,
The Oriental Insurance Co., Ltd.,
No.1, Katpadi Road,
Vellore - 632 004.

Govindan (deceased)

3.Maina

4.Ganapathi

5.Kannan

6.Kumaresan

7.Thulasiraman

...Respondents/Respondents

Prayer:The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and Decree made in M.C.O.P.No.313 of 2003, dated 25.09.2008, on the file of the Motor Accidents Claims Tribunal, Sub Court at Ariyalur.

For Appellants : Mr.A.A.Venkatesan

For R1 : No appearance

For R2 : Mr.Jayaraman

For R3 to R7 : Ex-parte



JUDGMENT

The claimants in M.C.O.P.No.313 of 2003 on the file of the Sub Court at Ariyalur, are the appellants herein.

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2.Necessity to file claim petition before the Sub Court at Ariyalur had arisen, owing to the fact that the husband of the first claimant/father of the second and third claimants, by name Palanimuthu, had suffered fatal injuries, in an accident which occurred on 29.04.2001, at around 1.30 p.m., when he was travelling in a TVS Champ vehicle, and proceeding to Mannoli Village from Kaikaati. When he reached the petrol bunk, a lorry bearing registration No.TN M 7789 had come from East to West and had dashed against him.

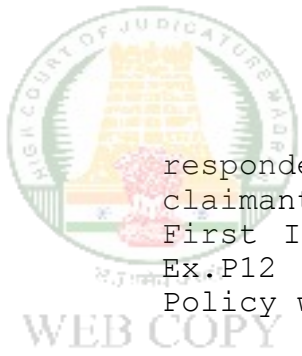
3.It was stated that the lorry was driven in a rash and negligent manner. The deceased Palanimuthu had suffered grievous head injuries and was referred to the Government Hospital at Tanjore. He took treatment for three days but died on 02.05.2001, as a result of the injuries suffered by him.

4.It had been stated that, at the time of his death, he was aged about 48 years and had also been elected as Village President. It was also claimed that he was a first class contractor and recognized as such and was earning a monthly income of Rs.10,000/- per month. Seeking compensation of Rs.10 lakhs, his Legal Representatives had filed the claim petition as aforementioned in M.C.O.P.No.313 of 2003, on the file of the Sub Court at Ariyalur.

5.A counter had been filed by both the respondents in the claim petition. The first respondent/owner of the lorry claimed that he was not responsible for the accident and denied that the accident had occurred owing to the rash and negligent manner in which the lorry had been driven. It had also been stated that the first respondent had sold the lorry and therefore, he was not responsible for any claim granted by the Tribunal. The second respondent/Insurance Company also filed a counter, wherein, they have disputed the manner in which the accident had occurred and they also questioned the occupation and income of the deceased Palanimuthu. It was stated that the compensation sought was exorbitant.

6.The claim petition came up for consideration before the learned Sub Judge, Ariyalur.

7.During the course of trial, on the side of the claimants, two witnesses were examined. The first claimant/widow of Palanimuthu was examined as P.W.1 and the second claimant/son of Palanimuthu was examined as P.W.2. On the side of the



respondents one witness Ravi Raj was examined as R.W.1. The claimants also produced Exs.P1 to P13. Ex.P1 was the Copy of the First Information Report. Ex.P2 was the Postmortem Certificate. Ex.P12 was the R.C.Book of the offending lorry. The Insurance Policy was also produced as Ex.P13 and, also as Ex.R1.

8.With respect to the credentials of the deceased Palanimuthu, the claimants had filed Ex.P3, the Election Certificate declaring him as having contested for the post of President and having won the said Election of the Village. Ex.P4 was Solvency Certificate. Ex.P5 was the Certificate issued by the Ariyalur Panchayat Union and Ex.P7 was the amount disbursed for work done as Contractor. Ex.P9 were the Income Tax Certificates and Ex.P10 was the Patta Passbook.

9.These documents were produced to show that the Palanimuthu was holding a responsible post of the President of the Village and was also recognized as a Contractor and had actually been granted work as a Contractor and had discharged work as a contractor and necessary amounts were also paid for such discharge of work. Ex.P10 had been produced to show that he also owned lands in his name both Punja and Nanja lands.

10.On the basis of the evidence produced, the Tribunal, took up the claim petition for consideration. As the first issue, the Tribunal had examined the manner in which the accident had occurred. In this connection, the Tribunal had observed that the deceased Palanimuthu, was coming towards the Petrol Bunk around 1.30 p.m. on 29.04.2001 when, the offending lorry bearing registration No.TN M 7789, had dashed against him and he had suffered injuries all over the body and as a result of which, he died after hospitalization for three days.

11.It was found that the accident had occurred only owing to the rash and negligent manner in which the lorry has driven. I would affirm that particular finding of the Tribunal.

12.Thereafter, the Tribunal Proceeded then to determine the compensation to be granted. In this connection,the Tribunal observed that, as a fact, the deceased was the Panchayat President and was a contractor and for such work, amounts had also been paid to him as a contractor. In this connection, reference was made to the relevant records, namely Exs.P5, P6 and P9.

13.Thereafter, the Tribunal stated in one sentence that the compensation for the loss of income would be Rs.2,08,000/-. There has been no discussion on what amount had been determined as the monthly income of the deceased Palanimuthu. There has been no discussion relating to the probable contribution made to



the family. From that particular monthly income, there is no discussion with respect to the future prospects which Palanimuthu would have gained, owing to such monthly income. There has been no discussion as to the multiplier which has to be adopted while determining the loss of income. A mere statement determining an amount of Rs.2,08,000/- alone, had been mentioned.

14.The learned counsel for the second respondent had justified such determination of income and stated that probably the Tribunal had probably determined the monthly income at Rs.4,000/- per month and thereafter, had determined the yearly income at Rs.48,000/- and thereafter had arrived at total probable loss of income at Rs.2,08,000/-.

15.It must be mentioned that a Judgment should speak for itself. If a Judgment is read, particularly by the litigant he/she should understand the basis on which a particular finding is given. The reasons for such finding should also be given. The Tribunal should take up the responsibility of examining the documents presented and thereafter determine the income of the deceased. That particular monthly income should be expressed in clear term.

16.The claimants are the legal heirs and they should be made aware as to what was determined as the probable income of the deceased Palanimuthu. Thereafter, they should also be made aware as to whether there had been any determination towards personal expenses/contribution towards family, and the determination of probable future prospects which Palanimuthu could have attained had he continued to live.

17.All these aspects have not been stated in the Judgment. This Court cannot draw a presumption as to the probable income which the Tribunal might have fixed while determining the loss of income at Rs.2,08,000/-.

18.The learned counsel for the second respondent stated that necessary documents had not been filed. However, if documents had not been filed, then the Tribunal should not have referred to Ex.P5/Certificate issued by the Ariyalur Panchayat Union, Ex.P6/Letter sent by M.Jegajothy to the Income Tax Officer and Ex.P9/ the Income Tax Certificates.

19.Having considered to those documents, the Tribunal should have thereafter logically come to a conclusion determining the monthly income of the deceased.

20.The Tribunal had granted a sum of Rs.1 lakh for loss of consortium for the first claimant and a sum of Rs.2,000/- for



21. The Judgment speaks for itself. It does not clarify or give clarity of any of the aspects aforementioned. Even though the accident had occurred in the year 2001, this Court, in view of the fact that if compensation has to be determined by this Court, particularly, when there is a refusal by the learned counsel for the respondents, to look into the documents filed, there would be loss of a right to file appeal by either one of the two parties.

23. The Tribunal may also refer to the guide lines laid while determining to grant necessary compensation for loss of consortium, for loss of estate, for pain and sufferings for the two sons and towards funeral expenses, transportation expenses and any other head which are legally permissible. It is only appropriate that the matter is remanded back to determine all those aspects.

25. It is hoped that while delivering the Judgment, the Tribunal would apply its mind in each one of the aspects which have to be examined for grant of compensation in a Motor Accident Claim Petition.

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27. With the above direction, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

ssi

To:

The Motor Accidents Claims Tribunal,
The Sub Judge, Ariyalur.

Copy To

The Section Officer, | With a direction to send back the
VR Section, | records to Sub Court, Ariyalur
Madras High Court. | forthwith.

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.26935

+1cc to Mr.Jayaraman, Advocate, S.R.No.26648

C.M.A.No.762 of 2018

MG (CO)
RGA (30/05/2022)