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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	16.12.2021
DELIVERED ON	27.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .Nos.52 & 481 of 2012

and

C.M.P. (MD) Nos. 10174 of 2017 and 4132 of 2019

C.M.A. (MD) No.52 of 2012

The Branch Manager,
Reliance General Insurance Company Limited,
Rai Towers, Plot No.2054,
2nd Avenue, 2nd Floor,
Near Senthil Nursing Home,
Anna Nagar, Chennai - 600 040. ...Appellant/2nd Respondent
Vs.

1.Chandra
2.Muthulakshmi
3.Thangaraj
4.Minor Mari Chelvam
5.Mariamammal ...R-1 to R-5/Petitioners
[Minor 4th respondent represented by her mother 1st respondent]
[R-2 & R-3 declared as major and guardianship discharged vide Order,
dated 20.03.2005]
6.Buveneswari ..R-6/1st Respondent

PRAYER in C.M.A. (MD) No.52 of 2012: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order, dated 16.08.2011 made in M.C.O.P.No.120 of 2011 on the file of the learned Motor Accident Claims Tribunal (Fast Track Court-II), Tirunelveli, and allow this Civil Miscellaneous Appeal.

C.M.A. (MD) No.481 of 2012

1.Chandra
2.Muthulakshmi
3.Thangaraj
4.Minor Mari Chelvam
5.Mariamammal ...Appellants/Petitioners
[Minor 4th respondent represented by her mother 1st respondent]
[R-2 & R-3 declared as major and guardianship discharged vide Order,
dated 20.03.2005]

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

Vs.



1. Bhuvaneswari

2. The Branch Manager,
Reliance General Insurance Company Limited,
Rai Towers, Plot No.2054,
2nd Avenue, 2nd Floor,
Near Senthil Nursing Home,
Anna Nagar, Chennai - 600 040.

...Respondents

PRAYER in C.M.A. (MD) No.481 of 2012 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal and enhance the award amount in M.C.O.P.No.120 of 2011 on the file of the learned Motor Accident Claims Tribunal, (Fast Track Court No.2), Tirunelveli, dated 16.08.2011.

In C.M.A. (MD) No.52 of 2012

For Appellant	: Mr.S.Srinivasa Ragavan
For R-1 to R-5	: Mr.T.Selvakumaran
For R-6	: No appearance

In C.M.A. (MD) No.481 of 2012

For Appellants	: Mr.T.Selvakumaran
For R-1	: No appearance
For R-2	: Mr.S.Srinivasa Ragavan

COMMON ORDER

These Civil Miscellaneous Appeals have been filed against the order, dated 16.08.2011 in M.C.O.P.No.120 of 2011 passed by the learned Motor Accident Claims Tribunal, (Fast Track Court No.2), Tirunelveli.

2. It is a case of fatal accident. On 25.03.2010 at about 12.30 a.m., the deceased Vettum Perumal Nadar was driving his auto bearing Regn. No.TN-22-AR-5865 on the mount road at Saidapettai on the middle of Maraimalai Adigalar Over Bridge. At the time, a lorry bearing Regn. No.TN-39-R-6770 belonging to one Bhuvaneswari parked the lorry without any park lamp or signals on the middle of the road and a long pipe which was protruding beyond the back door of the lorry smashed the win screen entered into the auto and hit the deceased. Due to the accident, the Vettum Perumal Nadar died on the spot.

3. The claimants have filed a petition in M.C.O.P.No.120 of 2011, on the file of the learned Motor Accident Claims Tribunal, (Fast Track Court No.2), Tirunelveli, seeking compensation.

4. Before the Tribunal, on the side of the claimants two witnesses were examined as P.Ws.1 & 2 and marked Eleven documents as Exs.P.1 to P.11. No witness was examined and no document was marked on the side of the owner of the vehicle and insurance company.



5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondents and also on appreciating the evidences on record, held that the accident was occurred only, due to the rash and negligent driving of the lorry driver and directed the owner of the vehicle and the appellant/insurance company to pay compensation, jointly or separately.

6.Heard on either side.

7.The Insurance company has preferred an appeal in C.M.A.(MD) No.52 of 2012 to set aside order and decree, dated 16.08.2011 in M.C.O.P.No.120/2011, passed by the learned Motor Accident Claims Tribunal, (Fast Track Court No.2), Tirunelveli.

8.The Claimants have preferred an appeal in C.M.A.(MD)No.481 of 2012 to enhance the compensation awarded by the Tribunal in M.C.O.P.No.120/2011.

9.The Respondents 1 to 5/ Claimants in C.M.A.(MD)No.52 of 2012 have filed M.C.O.P.No.120/2011 for compensation for the death of husband of the 1st Claimant who died in an accident on 25.02.2010. The deceased drove an auto bearing Regn.No.TN AR 5865 dashed a lorry which was insured in the appellant/insurance company parked in the middle of the road without any signal. The pipe kept in the lorry which dashed in the front mirror of the auto and the deceased sustained injuries and died on the spot.

10.The Tribunal has fixed liability on the Insurance company of lorry and awarded a sum of Rs.5,95,000/-as compensation. Aggrieved by the said order, the insurance company has filed C.M.A(MD).No. 52 of 2012. To enhance the compensation since monthly income fixed as very low the Claimants have filed an appeal in C.M.A(MD)No. 481 of 2012.

11.The deceased met the accident when he drove the auto. So, it is proved that the deceased was a auto driver at the time of accident. The Tribunal has fixed Rs.4,500/-as his monthly income is very low.

12.The accident took place in the year 2010. So, the monthly income of the deceased is to be fixed at the rate of Rs.6,500/-/ since his age was 40 years at the time of accident and self employed. So, the future prospectus 30% to be added.

13.Further, since the claimants are wife, children and mother of the deceased, each one get Rs.40,000 for loss of consortium. Loss of estate Rs.15,000 to be added.

14.Hence, the award amount passed by the tribunal is to be enhanced.



15.Regarding liability without any signal lorry containing a long pipe which was protruding beyond the back door of the lorry smashed the win screen entered into the auto and hit the deceased. On the other hand the place of occurrence is the main road-bridge. So, there must be bright lights. If the driver of the auto drove carefully he can avoid the accident. But the main reason is that parking the lorry in the middle of the road without any signal.

16.The appellate Court cannot reverse the judgment of the Tribunal without proper reason. But, in this case, there is a reason for negligent on the part of the auto driver, but very less contribution. Hence, this court is fixed at 20%.

Loss of Income

6,500 + 30% of Future Prospectus, so Monthly Income is 8,450

1/3rd is to be deducted for personal expenses.

Loss of monthly income is Rs.4,39,452/-.

For funeral expenses Rs. 15,000/-

loss of consortium to the 5 claimants

each entitled Rs.40,000/- x 5= Rs.2,00,000/-

Loss of estate Rs. 10,000/-

Total

Rs. 6,64,452/-

17.The Insurance company is directed to pay 80% of the award amount passed by this Court with 7.5% which is from the date of petition. Interest exempted if any default period.

18.Finally, C.M.A.(MD)No.481 of 2012 is allowed and a sum of Rs.5,95,000/-awarded by the tribunal is enhanced to Rs. 6,64,452/- and C.M.A(MD)No.52 of 2012 is partly allowed. The insurance company is directed to pay 80% of the compensation i.e.,Rs. 5,31,562/-with 7.5% interest from the date of petition. The insurance company is directed to deposit the enhanced award amount within a period of six weeks, from the date of receipt of copy of the order. If any excess amount deposited, the appellant/insurance company is permitted to withdraw the same. After depositing the amount, the 1st claimant is permitted to withdraw a sum of Rs.1,50,000/- with 7.5% interest and 2nd to 4th claimants are permitted to withdraw a sum of Rs.1 Lakh, each and the 5th claimant is permitted to withdraw a sum of Rs.81,562/-with 7.5 % interest. The 4th claimant/minor's share amount is to be deposited in anyone of the nationalised bank till he attains majority. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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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

The Judge,
Motor Accident Claims Tribunal/
(Fast Track Court-II),
Tirunelveli.

Copy to:

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-2671 dated 27/01/2022)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-3056 dated 31/01/2022)
C.M.A. (MD) .Nos. 52 & 481 of 2012
27.01.2022

MGJ(28.03.2022) 5P 6C