



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A (MD)No.525 of 2021

WEB COPY

Chitra (died)

*(Cause title accepted vide Court order, dated
27.04.202 made in C.M.P. (MD)No.4004 of 2021
in CMA(MD)SR.No.22217 of 2021 by KMSJ)*

1.Palpandi

2.Minor Parkavi Pandian

... Appellants/Petitioners

*(Minor represented by her father and natural
guardian Palpandi, 1st Appellant herein)*

Vs.

1.Rajendran

2.Chola M/s.General Insurance Company Limited,
Represented by its Branch Manager,
Door No.2, 2nd Floor, Dare House,
NSC Bose Road,
Chennai.

... Respondents/Respondents

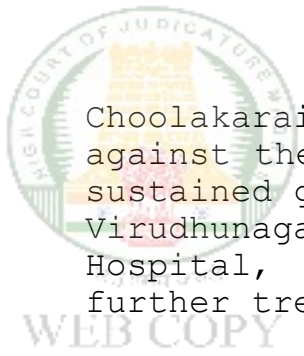
PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records relating to the judgment and decree, dated 25.09.2020 made in M.C.O.P.No.13 of 2018 on the file of the Motor Accidents Claims Tribunal/Sub Court, Aruppukottai and to set aside the same.

For Appellants	:Mr.V.Sasikumar
For R1	:Mr.S.Ramasamy
For R2	:Ms.K.R.Shivashankari

JUDGMENT

The appellants filed this appeal to set aside the judgment and decree, dated 25.09.2020 made in M.C.O.P.No.13 of 2018 on the file of the Motor Accidents Claims Tribunal/Sub Court, Aruppukottai.

2.On 17.07.2017 at about 9.10 a.m. one Kaleesh, who drove a TATA ACE water tank lorry bearing Registration No.TN-67-BC-0407 at <https://hcservices.ecourts.gov.in/hcservices/>



Choolakarai Village in a rash and negligent manner and dashed against the Minor Balakarthick. As a result of which, the deceased sustained grievous injuries and admitted in the Government Hospital, Virudhunagar and thereafter, he was admitted in the Velammal Private Hospital, Madurai as inpatient from 17.07.2017 to 24.07.2017 for further treatment. But due to succumbed, he died in the hospital.

3.The claimants filed MCOP.No.13 of 2018 before the Motor Accidents Claims Tribunal/Sub Court, Aruppukottai, claiming compensation of a sum of Rs.15,00,000/- for the death of the deceased.

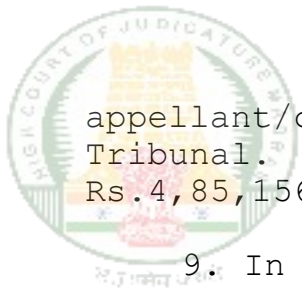
4.Before the Tribunal, on the side of the claimants two witnesses were examined as P.W.1 and P.W.2 and ten documents were marked as Exs.P.1 to P.10. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and five documents were marked as Exs.R.1 to R5.

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 occurred only due to the rash and negligent driving of the driver of the first respondent and directed the second respondent to pay a sum of Rs.4,00,000/- as compensation. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Heard Mr.V.Sasikumar, learned counsel appearing for the appellants and Mr.S.Ramasamy, learned counsel appearing for the first respondent and Ms.K.R.Shivashankari, learned counsel appearing for the second respondent and perused the materials available on record.

7.The learned counsel for the appellants contended that the Tribunal has awarded only Rs.4,00,000/- for the death of the minor child, which is very low and no amount was awarded for medical bills. Hence, he seeks enhancement of compensation awarded by the Tribunal.

8.A perusal of records would show that though the medical bills marked as Ex.P5, the Tribunal has not considered the medical bills and no amount was awarded for the said medical bills. As per medical bills/Ex.P5, this Court is inclined to grant Rs.85,156/- towards medical expenses. Before the Tribunal, the appellants/claimants have filed a judgment reported in **2018(2) TN MAC 328** in the case of **Dhatchinamoorthy and another Vs. Managing Director, Tamilnadu State Transport Corporation, Kumbakonam** and argued that as per the said judgment, the Tribunal ought to have awarded Rs.4,00,000/-. Based on the judgment, the Tribunal has awarded Rs.4,00,000/- as compensation. Hence, the



appellant/claimant cannot go beyond the arguments before the Tribunal. Therefore, the appellants are entitled to get Rs.4,85,156/-.

9. In the result,

(i)The Civil Miscellaneous Appeal is partly allowed.

(ii)The compensation awarded by the Tribunal is enhanced from Rs.4,00,000/- to Rs.4,85,156/- with interest at the rate of 7.5% per annum. The first appellant, who is the father of the deceased, is entitled to Rs.2,85,156/- and the second appellant, who is the sister of the deceased, is entitled to Rs.2,00,000/- with interest at 7.5% p.a from the date of claim petition till the date of realization.

(iii)The appellants are directed to pay the court fee for the enhanced compensation amount, if any.

(iv)The second respondent/Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.4,85,156/- less the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.13 of 2018 on the file of the Motor Accident Claims Tribunal /Sub Court, Aruppukotai within a period of six weeks from the date of receipt of a copy of this order.

(v)On such deposit, the first appellant is entitled to withdraw his respective share as per the ratio fixed by this Court. The share of the minor second appellant shall be deposited in any one of the Nationalized Banks, in a Fixed Deposit, initially for a period of three years, renewable thereafter, till the minors attained majority. The first appellant/father and guardian of the minor second appellant is permitted to withdraw the interest from the above said deposit, once in three months directly from the Bank and utilize the same for the welfare of the child. No Costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

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/Sub Court,
Aruppukottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-526[F] dated 06/01/2022)

+1 CC to M/s.K.R.SHIVA SHANKARI, Advocate (SR-840[F] dated
07/01/2022)

CMA (MD) No.525 of 2021
06.01.2022

SVS (CO)
TR(02.03.2022) 4P 6C