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CMA.No.2681 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 19.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2681 of 2019

J.Prabakaran

Appellant

Vs

1. S.Rajesh Reddy
2. K.Angammal
3. K.Palanivel
4. K.Lakshmi
5. K.Savithiri

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 25.06.2018, made in MCOP.No.131 of 2016, by the Special Court (MACT) Villupuram.

For Appellant : Mr.Elumalai for Mr.S.Ayyathurai

For Respondents : Mr.Ms.V.Suguna for Mr.C.Munusamy-RR2 to 5

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 25.06.2018, made in MCOP.No.131 of 2016, by the Special Court (MACT) Villupuram.
2. The Respondents 2 to 5 herein, who are the wife, son and daughters of the deceased, namely, Krishna Pathar, have filed the claim petition before the Tribunal, seeking a compensation of Rs.10,00,000/- on various heads, for the death of the deceased, who died in a motor road accident, which took place on 02.02.2013. The 1st Respondent is the owner of the offending



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vehicle and the Appellant is its driver. The 1st Respondent owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the Appellant, by filing a counter. On the side of the claimants, PW.1 and PW.2 were examined and Ex.P1 to Ex.P4 were marked. On the opposing side, RW.1 was examined.

3. Finding that the deceased died in the alleged motor road accident due to the rash and negligent driving of the Appellant, the Tribunal has awarded a total compensation of Rs.5,66,800/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by both the owner and driver of the offending vehicle, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency	496800
2	Funeral Expenses	15000
3	Loss of Estate	15000
4	Loss of Consortium	40000
Total Compensation		566800

Aggrieved by the same, this appeal has been filed by the Appellant/ driver of the offending vehicle.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. According to the learned counsel for the Appellant, the accident had occurred only due to the negligence on the part of the deceased and since the Appellant was only an employee as driver under the 1st Respondent, he cannot be held liable for payment of compensation and the compensation awarded by the Tribunal is also without any basis.



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6. The 1st Respondent, owner of the offending vehicle remained exparte before the Tribunal and he has also not contested the case before this Court. According to the learned counsel for the Respondents 2 to 5/claimants, the compensation awarded by the Tribunal is just and proper.
7. On considering the submissions of the learned counsel for the Appellant and the contesting Respondents/ claimants, it is seen that the factum of accident is not disputed by the parties. However, the issues that arise for consideration are (1) negligence aspect, (2) liability and (3) quantum of compensation.
8. According to the claimants, the deceased was 60 years old and was earning a monthly income of Rs.10,000/- as a mason. When on 02.02.2013 at 17.00 hours, the deceased was walking on the left side of the Tiruvannamalai-Pondicherry road, the offending motor cycle, bearing Reg.No.PY-01-P-8112, driven by the Appellant in a rash and negligence manner, dashed against the deceased, due to which, he succumbed to injuries in the hospital.
9. In so far as issue of negligence aspect is concerned, before the Tribunal, on behalf of the claimants, PW.1 has deposed as to the manner of the accident as narrated in the claim petition and Ex.P1 is the First Information Report registered against the Appellant. The owner of the offending vehicle remained exparte.
10. In so far as the liability to pay the compensation is concerned, it is well settled that it is primarily of driver of the offending vehicle and then, the owner of offending vehicle is also vicariously liable for the accident caused



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by his driver in the course of plying of his vehicle. The Insurance Company being the insurer is also vicariously liable for the damages suffered by the insured. In cases where the Insurance Company is not added as a party, the liability of the owner and driver ought to have been held to be joint and several.

11. In the case on hand, the Appellant was examined as RW.1, who has deposed that he was an employee as a Driver under the 1st Respondent, who is the owner of the offending vehicle. The claimants have not impleaded any Insurance Company as a Respondent. The Appellant, as a driver of the offending vehicle, has also failed to file any Insurance Policy showing that the offending vehicle was insured on the date of the accident. The owner did not contest the case. Therefore, the Appellant being the driver is liable to pay the compensation and the 1st Respondent being the owner of the offending vehicle is also vicariously liable to pay the compensation.

12. Considering the oral evidence of PW.1 and Ex.P1 First Information Report and in the absence of contra evidence, the Tribunal has rightly held that the accident had occurred only due to the negligence on the part of the Appellant and both the Appellant and the 1st Respondent were rightly held liable jointly and severally to pay the compensation. In the opinion of this Court, the said finding of the Tribunal with regard to the negligence aspect and liability does not suffer from any infirmity and accordingly, it is confirmed.

13. With regard to the quantum of compensation, in the absence of evidence to prove the age of the deceased, the Tribunal, considering Ex.P2 post-mortem



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report, fixed the age of the deceased as 60 years. Similarly, in the absence of evidence to prove the income of the deceased, the Tribunal has rightly fixed the notional monthly income of the deceased at Rs.6,000/-. Considering the age of the deceased, the Tribunal has also rightly added 15% towards loss of future earning capacity. Ultimately, the Tribunal, by adopting multiplier method and deducting 1/3rd towards personal expenses, arrived at the loss of income at Rs.4,96,800/- (Rs.4600x9x12) and awarded total compensation under other heads with interest, as stated above and apportioned the compensation in the ratio of 50% to the 1st claimant and another 50% to be equally shared by the other claimants, by the impugned judgement, which warrants no interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Both the Appellant, driver of the offending vehicle and the 1st Respondent, owner of the offending vehicle are directed, jointly or severally, to deposit the entire compensation, with interest as awarded by the Tribunal, after deducting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit is being made, the claimants are entitled to withdraw their respective shares with proportionate interest, as awarded and apportioned by the Tribunal, by filing proper application. No costs.

19.07.2023

A.A.NAKKIRAN, J.



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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The Special Court (MACT) Villupuram
2. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.No.2681 of 2019

19.07.2023