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C.M.A.No.410 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.410 of 2018

1. A.Mallikun Niza

2. K.Asain Basha

... Appellants

Vs.

1.R.R.Moorthy

(R1 remained ex-parte before the Tribunal,
hence his presence may be dispensed with)

2. The Shri Ram General Insurance Company Limited
2nd Floor,
Thirumalai Pillai Road, T.Nagar,
Chennai - 17

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2015 made in M.A.C.T. O.P.No.1084 of 2013 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Poonamallee, Thiruvallur.

For Appellants : M/s.A.Subadra

For Respondents : Mr.S.Dhakshnamoorthy for R2
R1- Exparte



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C.M.A.No.410 of 2015



J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 22.09.2015 made in M.A.C.T. O.P.No.1084 of 2013 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Poonamallee, Thiruvallur, for enhancement of compensation.

2. The appellants are the claimants. The 1st respondent is the owner and the 2nd respondent is the insurer of the offending vehicle namely Lorry bearing Regn. No.TN-23-B1515.

3. The case of the claimants who are the wife and son of the deceased S.Kadhar Basha is that on 30.10.2013 at about 2 p.m., the deceased S.Kadhar Basha was proceeding in his bicycle from East to West on the Ambathur C.T.H. Road, Mannurpet, near Pandian Hotel. At that time, a Lorry bearing Regn. No.TN-23-B-1515, which came in the same direction, driven by its driver in a rash and negligent manner, hit behind the bicycle of the deceased, due to which, the deceased fell down on the road and the back wheel of the Lorry ran over the deceased as a result, the deceased died on the spot.



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4. The claimants had filed a claim petition in M.A.C.T. O.P.No.1084 of 2013 before the Motor Accident Claims Tribunal, III Additional District Judge, Poonamallee, Thiruvallur, claiming compensation of Rs.10,00,000/- for the death of the said S.Kadhar Basha.

5. In order to substantiate the claim before the Tribunal, on the side of claimants, two witnesses were examined as P.W.1 and P.W.2 and 7 documents were marked as Ex.P.1 to Ex.P.7. On the side of the respondents, no oral or documentary evidence was let in.

6. The 1st respondent herein who is the owner of the offending vehicle remained ex-parte before the Tribunal.

7. The Tribunal, after hearing the arguments on either side and upon considering the oral and documentary evidence put forth, granted compensation of Rs.7,85,000/- with proportionate cost and interest at 7.5% per annum from the date of claim petition i.e.16.12.2013 till the date of realisation.



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8. Challenging the award passed by the Tribunal, the claimants have filed the present Appeal for enhancement of compensation.

9. The learned counsel for the appellants submitted that though the appellants claimed Rs.10,00,000/- as compensation, the Tribunal has awarded only Rs.7,85,000/- which is very low and it does not reflect the 'just compensation'. At the time of accident, the deceased was aged 48 years and was running a welding shop and earning Rs.15,000/- per month, whereas, the Tribunal has failed to consider the evidence of P.W.1/wife of the deceased and fixed only Rs.5,000/- as notional income of the deceased which is very low and after deducting the 1/3 towards personal expenses, only Rs.3,333/- was taken as income of the deceased. Therefore, the income fixed by the Tribunal is very low. Hence, the Award passed by the Tribunal has to be enhanced.

10. The learned counsel for the 2nd respondent/Insurance Company submitted that though the claimants stated that the deceased was running a welding shop and earning Rs.15,000/- per month, no material was produced to prove the same and in the absence of the same, the Tribunal



rightly fixed Rs.5,000/- as the notional income of the deceased and after deducting 1/3 towards personal expenses, based on the age of the deceased, adopted the multiplier “13” and awarded a sum of Rs.5,20,000/- towards “loss of income”. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

11. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent and perused the materials available on record.

12. The 1st respondent is the owner and the 2nd respondent is the insurer of the offending Lorry. The liability is not in dispute. Neither the owner nor the insurer of the offending Lorry have filed any appeal or cross appeal disputing the liability or quantum. The claimants only have filed the present appeal for enhancement of compensation.

13. Though in the claim petition the claimants have stated that the deceased was running a welding shop and was earning Rs.15,000/- per month and due to his death, they suffered loss of income of Rs.15,000/- per month, no oral or documentary evidence was produced to prove the income



and avocation of the deceased. In the absence of the same, the Tribunal rightly fixed Rs.5,000/- as the notional income of the deceased and awarded a sum of Rs.5,20,000/- towards “loss of income” after deducting 1/3 towards personal expenses and by adopting the multiplier “13” since the deceased was aged 48 years at the time of accident. Further, the Tribunal has awarded a sum of Rs.2,65,000/- under various other heads viz., loss of consortium, pain and sufferings and funeral expenses and in total, the Tribunal has awarded Rs.7,85,000/- as compensation. Therefore, this Court finds that there is no perversity in the appreciation of evidence by the Tribunal and the Award passed by the Tribunal is a 'just compensation'. There is no merit in the appeal and the same is liable to be dismissed.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed.

There shall be no order as to costs in the present appeal.

24.07.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

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1. The Motor Accident Claims Tribunal,
III Additional District Judge, Poonamallee, Thiruvallur.
2. The Section Officer,
VR Section,
High Court,
Madras.



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P.VELMURUGAN. J.

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