



WEB COPY



C.M.A.No.2873 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2023

PRONOUNCED ON : 28.03.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.2873 of 2019

1.Lakshmi @ Mariammal
2.Valli

... Appellants

vs.

1.Chinnagounder
2.The Oriental Insurance Co., Ltd.,
146-N, Kumar Complex,
Tiruchengode.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.893 of 2010 dated 26.02.2019 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankari.

For Appellants : Mr. T.S.Arthanareeswaran
for M/s.C.paraneedharan
For R2 : Mr.J.Chandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants-claimants against the impugned Judgment and Decree dated



C.M.A.No.2873 of 2019

26.02.2019 passed by the Motor Accident Claims Tribunal Chennai -
Subordinate Judge, Sankari in M.C.O.P No.893 of 2010 .

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.15,70,000/- together with interest at 7.5% per annum from the date of filing of claim petition till the date of deposit, to the appellants. Aggrieved of the same, the present Civil Miscellaneous Appeal has been filed by the appellants/claimants for enhancement of compensation.

3. As regards the facts, in this case, on 18.12.2008 at about 3.00 a.m. when the deceased Babu was travelling by sitting in the cabin of Rig Lorry bearing Reg.No.KA-01-ME-1959, at Hiyaarada Village Kattupakuthi Salai, when the vehicle was proceeding, due to the rash and negligent driving of the driver of the lorry, at that time, Babu fell down and eventually was ran over by the left side rear wheel of the lorry on his stomach. Due to which, he sustained fatal injuries on the head and stomach and succumbed to the injuries on the spot itself.

4. The Tribunal upon hearing both sides and after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the owner cum driver -



C.M.A.No.2873 of 2019

first respondent. While awarding the compensation, the Tribunal had taken into consideration of both sides oral evidence and the documents marked by the claimants, awarded total compensation of Rs.15,70,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit payable by the second respondent / Insurance Company at the first instance and to recover from the owner thereafter.

5. The learned counsel for the appellants would contend that the Tribunal has awarded a very meagre amount as compensation and the award suffers from material irregularity and non-application of mind and prayed to enhance the compensation.

6. Per contra, the learned counsel for the second respondent would argue that the Motor Accident Claims Tribunal after taking into consideration the oral and documentary evidence of both sides passed the award, which is reasonable and hence, the same need not be interfered and prays for dismissal of the present appeal.

7. The manner in which the accident had taken place is not in dispute. Based on the evidence of P.W.1, Tmt.Lakshmi to the effect that her brother was working as a cleaner in the Rig lorry and he was



C.M.A.No.2873 of 2019

earning a sum of Rs.10,000/- p.m. and taking into account of the fact that he was getting a daily batta of Rs.50/- on the working days and the deceased would have earned a sum of Rs.11,200/- p.m. To substantiate the said facts, no documentary evidence was produced. The Tribunal has fixed the monthly income at Rs.10,000/- which appears to be reasonable in the given circumstances.

8. In Ex.P.1-First Information Report, Ex.P.4 – Post Mortem Report, it is mentioned that the deceased Babu was aged about 30 years at the time of accident. The Tribunal has fixed the age of the deceased as 30 is correct. As opined by the Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation**, (2009) 2 TNMAC 1 SC, for the age group of persons between 26 to 30, multiplier to be invoked is 17. The same multiplier has been fixed by the Tribunal for assessing the loss of income.

9. As regards the deduction of personal and living expenses of the deceased, as the deceased Babu happened to be a bachelor, as per the Judgment reported in **National Insurance Company vs. Pranay Sethi and others**, (2017) 16 SCC 680, wherein it is stated that in case of death of bachelor, for personal expenses, 50% of the income to be deducted from the monthly income.



C.M.A.No.2873 of 2019

WEB COPY

10. In respect of the future prospects, in the case mentioned supra, the Hon'ble Supreme Court has held if the deceased person was self-employed, 40% of the monthly income to be added towards future income of the deceased Babu.

11. The appellant Nos.1 and 2 herein are the sisters of the deceased Babu. The deceased Babu died as a bachelor. As per the legal heir certificate in respect of the deceased Babu, Ex.P.5., the appellants 1 and 2 are the legal heirs of the said deceased Babu. As per the Judgment reported in **Gujarat State Transport Corporation vs. Ramanbhai**, AIR (1987) SC 1690, it has been held that the brother of a person who dies in the Motor Vehicle Accident is entitled to maintain a petition under Section 110 A of the Motor Vehicles Act, if he is a legal representative of the deceased. In this case, the deceased was said to be the bread winner of the family was truly accepted by the Tribunal.

12. I have thoroughly gone through the entire materials available on record. The Tribunal has awarded the compensation under all the heads appears to be reasonable and hence it need not be interfered with.



C.M.A.No.2873 of 2019

13. With the above observations, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal in M.C.O.P.No.893 of 2010 dated 26.02.2019 is hereby confirmed. No costs.

28.03.2023

Index : Yes/No
Speaking / Non-speaking order
kkd

To:
The Motor Accident Claims Tribunal,
Subordinate Judge, Sankari.

R.KALAIMATHI, J.,

kkd



WEB COPY



C.M.A.No.2873 of 2019

Pre-delivery Judgment in
C.M.A.No.2873 of 2019

28.03.2023