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CMA.No.2145 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2145 of 2019

1. Athayee
2. Kalaivani
3. Bojarajan

Appellants

Vs

1. R.Kulandaivel
2. M/s.United India Insurance Company Limited
Salem-7

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 30.11.2015, made in MCOP.No.238 of 2006, by the II Additional District Sessions Court (MACT) Salem.

For Appellant : Mr.S.Ravichandran

For Respondents : Mr.J.Chandran-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, against the judgement and decree, dated, 30.11.2015, made in MCOP.No.238 of 2006, by the II Additional District Sessions Court (MACT) Salem, for enhancement of compensation.
2. Originally, the injured claimant, namely, one M.Shanmugam has filed the claim petition before the Tribunal, seeking a compensation of Rs.10,00,000/- on various heads, for the injuries and disabilities, sustained by him, in a motor road accident, which took place on 09.07.2004 at 9.40 a.m. Since



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during the pendency of the claim petition, the injured claimant died on 21.07.2006, the Appellants herein, who are the wife, daughter and son of the deceased, were brought on record as his legal heirs before the Tribunal. The 1st Respondent herein/owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a counter. On the side of the claimants, PW.1 to PW.3 were examined and Ex.P1 to Ex.P9 were marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle, owned by the 1st Respondent, the Tribunal has awarded a total compensation of Rs.64,200/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, with costs, to be payable by the 2nd Respondent / Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Income	18000.00
2	Transportation Expenses	5000.00
3	Extra Nourishment	7000.00
4	Pain and Suffering	25000.00
5	Medical Expenses	9200.00
Total Compensation		64200.00

Aggrieved by the quantum of compensation, this appeal has been filed by the Appellants/claimants.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. The Appellants, who are the wife, daughter and son of the deceased, are the claimants. The 1st Respondent herein, who is the owner of the offending



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vehicle remained exparte. The 2nd Respondent is the Insurance Company.

6. As regards the negligence aspect, the Tribunal, considering the evidence on record, has held that there was negligent on the part of the driver of the offending vehicle and that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle. Since the finding, recorded by the Tribunal, with regard to the actionable negligence, has not been assailed by anyone of the Respondents herein, the said finding of the Tribunal with regard to the negligence aspect, fixing the same on the part of the driver of the offending vehicle, is confirmed. As such, it is not necessary to narrate the entire facts in detail in respect of the accident. However, the dispute is only with regard to the quantum of compensation.
7. According to the learned counsel for the Appellants, since it is a fatal accident, the Tribunal ought to have adopted multiplier method and awarded a reasonable compensation, but without considering the materials and evidence, the Tribunal awarded a lesser compensation, which is not just and proper.
8. It is the contention of the 2nd Respondent/ Insurance Company that the compensation awarded by the Tribunal is not sustainable, since the Appellants have not proved by valid evidence that the deceased died due to the injuries sustained by him in the alleged accident.
9. The injured claimant M.Shanmugam met with a motor road accident, which took place on 09.07.2004 and two years after filing of the claim petition by him, he died on 21.07.2006. The Appellants, who are the wife, daughter and



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son of the deceased, were subsequently impleaded as the claimants in the claim petition. The 2nd Respondent Insurance Company is the insurer of the offending vehicle.

10. On considering the entire evidence, the Tribunal held that the claimants have not proved that the deceased died due to the injuries sustained in the alleged accident by valid evidence and consequently, refused to award compensation for the death of the deceased. Even before this Court, there is no material to prove that the deceased died due to the injuries sustained in the alleged accident. Hence, the compensation awarded by the Tribunal needs to be modified.

11. Since the injured claimant died, the compensation under the heads of loss of income and pain and sufferings awarded by the Tribunal cannot be sustained. If at all, the compensation of Rs.5,000/- towards transportation expenses, Rs.7,000/- towards nutrition and Rs.9,200/- towards medical expenses awarded by the Tribunal can be retained. Further, a sum of Rs.10,000/- towards attendant charges is hereby awarded.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.31,200/-, (Rupees thirty one thousand two hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Transportation Expenses	5000.00
2	Nutrition	7000.00
3	Medical Expenses	9200.00
4	Attendants Charges	10000.00
Total Compensation		31200.00



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The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, 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 being made, the Appellants 1 to 3/claimants are entitled to withdraw Rs.21,200/-, Rs.5,000/- and Rs.5,000/- with proportionate interest, respectively, by filing proper application. No costs.

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

To

1. The II Additional District Sessions Court (MACT) Salem
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

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