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C.M.A.No.1475 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.M.A.No.1562 of 2020

1. Mani
2. Minor Gowthamraj
3. Minor Elaikkiya
(Minor 2 & 3 are represented natural
friend, Mother first appellant)
4. Parvathi
Thilagappagounder (Died)

... Appellants

-VS-

1. K.Senthamarai
Correspondent
M/s.J.K.K.Rangammal Matriculation Higher
Secondary School,
Salem Main Road, B.Komarapalayam Post,
Tiruchengode Taluk, Namakkal District.

2. The Oriental Insurance Co. Ltd.,
Rep. By its Manager, Kumar Complex,
First Floor, 146, West Car Street, Tiruchengode.

... Respondents

Prayer:- Civil Miscellaneous Appeal Petition filed under Section 173 of the Motor Vehicle Act 1988 as amended by Act 54 of 1994 to set aside the award and judgment made in MCOP. No.555 of 2012 on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Erode District at Bhavani dated 04.10.2017.



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For Appellants : Mr.C.Kulanthaivel
For Respondents : NDW R1
Mr.P.Kandasamy R2

JUDGMENT

The appeal has been filed seeking to set aside the award and judgment made in MCOP. No.555 of 2012 on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Erode District at Bhavani dated 04.10.2017.

2. The case of the appellant is that on 07.03.2012 at about 04.00 pm. The deceased Vaithiyanathan was riding his motor cycle super XL bearing Registration No.TN 34 E 2839. While he was coming near Sundaram Colony, Paramagounder Arch, the JKKN school bus bearing Registration No.TN 28 T 9195 was driven by the driver in a rash and negligent manner dashed against the deceased Vaithiyanathan, he thrown out and sustained injuries all over the body. The deceased was taken to the Government Hospital and died. The dependents of the deceased have filed a claim petition before the Tribunal claiming compensation of Rs.15,00,000/- . The Tribunal has dismissed the claim petition and not awarded any compensation. Challenging the said award, the claimants have filed the the present appeal before this Court.



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WEB COPY 3. The learned Counsel for the appellant submitted that there is no need to even plead about the negligence on the claim under section 163-A of the Motor Vehicles Act, However, the claims tribunal permitted both sides to lead oral and documentary evidences to prove all aspects of the entire claim including negligence point and accordingly both sides led the evidences to prove the negligence, liability and quantum of compensation. Hence the claim petition even though filed under section 163-A deemed to have been converted one under section 166 of the M.V.Act. The claimants were examined PW2 and PW3 who are the eye witnesses and marked Ex.P1 to P.14 and proved that the entire negligence which were on the part of the driver of the 1st respondent vehicle. However, the claims tribunal dismissed the claim petition on the ground that the income of the deceased claimed by the claimants are more than the income fixed under section 163-A of the Motor Vehicles Act, which is not sustainable one.

4. The learned counsel further submitted that the claimants are fighting from the beginning to register the FIR against the driver of the 1st respondent and finally after getting direction from the Hon'ble High Court, the police registered the FIR against the driver of the 1st respondent vehicle. Whereas the Ex.R2 which is the final report without any investigation taking advantage of



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death of the accused, closed the case as charge abets. Hence the same are not binding the claims tribunal under the M.V.Act.

5. The learned counsel further submitted that the deceased was the power loom weaver and aged about 37 years at the time of accident which is of the year 2012. Therefore, the notional monthly income according to the year of accident coupled with the avocation and age of the deceased, it would be reasonable to take at least Rs.8,000/- PM. The age of the deceased as per the postmortem certificate is 37 and in the absence of any other proof for age, the postmortem certificate can be relied. The future prospects as per the judgment of the Hon'ble apex court in *Pranay Sethi* would be 40%. The spouse consortium for wife, parental consortium for minor children's and filial consortium for aged parents would be each Rs.40,000/- as per the judgment of the Hon'ble apex court in *Magma General Insurance Co* case. The other conventional heads may be considered as per the above judgment of the Hon'ble apex court in *Pranay Sethi*. The transport expenses also may be considered reasonably. The learned counsel prays that this Court may allow the appeal and set aside the award passed by the Tribunal.



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6. The learned counsel for the second respondent/insurance company submitted that the 1 Respondent Owner of the Bus bearing Registration No. TN 28 T 9195 remained exparte and the 2nd Respondent / Insurance Company alone contested the case, filed their counter denying the case of the Appellants / Claimants. The deceased alone drove the vehicle in rash and negligent manner under the influence of alcohol and without noticing the Bus dashed against the Bus and invited the accident and for which the Komarapalayam Police, registered a case in Crime No. 289/2012, under section 279 and 304 (A) of I.P.C., against the deceased and later the same was closed as charges abetted, because the Accused / Deceased was died. Therefore the claim against the 2nd Respondent / Insurance Company is not maintainable because the deceased was a tort feaser and cannot maintain any case of compensation against the Respondents herein. As the 1 Respondent / Owner of the Bus remained exparte the 2nd Respondent / Insurance Company also filed application under section 170 of M.V. Act., and the same was allowed. After considering the oral and documentary evidence placed on the either sides before the Learned Tribunal, the Learned Tribunal was pleased to dismissed the claim petition in M.C.O.P. No. 555 of 2012, on the ground that the evidence adduced by the Appellants / Claimants do not support their case.



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7. The learned counsel further submitted that now in the present appeal before this Hon'ble Court has to consider whether the appeal against the dismissal of claim by the Learned Tribunal under section 163 (A) of M.V. Act., is maintainable or not, as per the said provision of 163 (A) of M.V. Act. the negligence need not be proved and now the claim is amended by the Appellants herein and the same has to be treated as claim of Appellants herein under section 166 of M.V. Act., as it was amended based on the order passed in C.M.P. No. 15292 of 2018 in C.M.A. No. 1562 of 2020, therefore the appeal against the order passed by the Learned Tribunal in claim under section 163 (A) of M.V. Act.. itself does not survive in favour of Appellants / Claimants therefore it has to be rejected.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The appellants have filed a claim petition under Section 163 of MV Act before the Tribunal for the death of one Vaithyanathan and the same was rejected on the ground that the deceased was earning more than Rs.40,000/- annum under 163 (A) of the MV Act second schedule of the MV Act as per the judgment passed by the Hon'ble Apex Court reported in AIR SC (2004) 2107.



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10. The appellant herein has also filed a miscellaneous petition along with the present appeal seeking to amend the claim petition in MCOP. No.555 of 2012 and the same was numbered as CMP.No.15292 of 2019 and after notice to the respondents. The said petition has been allowed on 26.07.2019 and amended the claim petition in MCOP No.555/2012 as if the same was filed under Section 166 and 163-A of the MV Act.

11. The negligence has been proved as per the observation made by the tribunal in its impugned judgment at para 11 and 12 and also as per the evidence of eyewitnesses of PW2 and PW3 and Ex.P1 to P14. Now the issue that arises for consideration is whether the appellants are entitled for compensation as per the amended provision.

12. From the materials on record, it seen that the Tribunal elaborately discussed and arrived at a conclusion that the accident had happened only due to the negligence on the part of the driver of the first respondent and on perusal of the deposition of the PW1 and PW2, who are the eyewitnesses, it is clearly seen that there is no negligence on the part of the deceased and accordingly, the first and second respondents are liable to pay the compensation.



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13. At the time of the accident, the deceased is aged about 37 years and the income proof of the deceased has not been produced before the Tribunal.

However, in the absence of any income proof, the accident had happened in the year 2001, as per the decision rendered by the Hon'ble Apex Court in the case of *syed shadik* and therefore, this Court is inclined to fix a sum of Rs. 10,000/- per month and after deducting 1/3rd amount towards personal expenses as the number of dependents is four and the applicable multiplier is "15" for the age of the deceased as per the decision rendered by the Hon'ble Apex Court in the case of *Sarla verma* and 40% has to be added towards future prospects. The same is calculated as follows: Rs. 10,000 – (1/4 of 10,000) = 7500

14. This Court is inclined to award compensation under the following heads which the appellants are entitled to:

Heads	Award Amount (Rs.)
Loss of income	13,50,000/- (Rs.7500/-X 12 X 15)
Future prospects	5,40,000/-
Funeral expenses	50,000/-
Loss of estate	15,000/-
Loss of love and affection	1,20,000/- (3 persons)
Loss of consortium (wife)	40,000/-
Total	21,15,000/-



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15. In the result, this Civil Miscellaneous Appeal is allowed. The second respondent is directed to pay a sum of **Rs. 21,15,000/- (Rupees Twenty one lakhs and fifty thousand only only)** towards compensation with interest at the rate of 7.5% per annum from the date of petition till the date of realization within a period of six weeks from the date of receipt of a copy of this judgment. Out of the compensation amount, the 1st Appellant/Wife, 2nd & 3rd Appellants/children and the 4th Appellant/Mother are entitled to receive the same in the ratio of 40:20:20:20. On such deposit made by the insurance company, the appellants are permitted to withdraw the award amount, along with interest and costs. No costs.

01.12.2023

Rli

Index: Yes/No

NCS : Yes/No

To

The Judge,

Motor Accident Claims Tribunal cum

IV Additional District Judge, Erode District.

M.DHANDAPANI,J.

rli



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