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C.M.A(MD)No.475 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.11.2022

Pronounced on : 28.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.475 of 2012

The Branch Manager,
ICICI Lombard General Insurance Co.Ltd.,
No.7, Loyola Technical Institute Building,
A.A.Road,
Gnanaolipuram, Madurai Town,
Madurai District.

... Appellant /Respondent-2

Vs.

1.K.Thangalakshmi

2.K.Rajesh

K.Suresh

4.Arivalaghan

(4th respondent has been declared as major and her
mother discharged from guardian ship vide order,
dated 27.02.2014, made in M.P.(MD).No.1/2014)

5.A.Krishnamoorthy

... Respondents/Petitioners



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PRAYER :-

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This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to allow this appeal, set-aside the award and decree made in M.C.O.P.No.45 of 2011, dated 31.10.2011 on the file of the Motor Accident Claims Tribunal/ Fast Track Court/ Additional District Judge, Virudhunagar.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.K.Vinayagan for R1 to R4

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.45 of 2011, dated 31.10.2011, on the file of the Motor Accident Claims Tribunal/Fast Track Court/Additional District Judge. The appellant herein is the second respondent, respondents 1 to 4 are the claimants and the fifth respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 01.08.2010 at about 05.00 a.m., when the petitioner and the deceased-Kaliappan were travelling in a car bearing Registration No.TN-67-AB-9347. A lorry bearing Registration No. TN-47-Q-3961 came in a rash and



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negligent manner and dashed against the car, due to which, the deceased died on the spot. The deceased was working in Pandian Grama Bank and he was earning a sum of Rs.26,000/- per month. Respondents 1 to 4 were his dependants and they pray a sum of Rs.20,00,000/- as compensation.

3.A brief substance of the counter filed by the respondents are as follows:

The manner of the accident as narrated in the petition is denied. The first respondent/driver of the lorry drove the vehicle in a slow and cautious manner and it was the car driver, who drove the vehicle in a rash and negligent manner, dashed against the lorry. The first respondent vehicle was not having valid Fitness Certificate at the time of accident. The driver of the vehicle was not having valid driving licence. The insurance company of the car is a necessary party. The petitioner should prove the age, income and occupation of the deceased, the quantum of compensation claimed is excessive and the respondent is not liable to pay compensation.

4.Two witnesses were examined and seven documents were marked on the side of the petitioners. Two witness were examined and one document was



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marked on the side of the respondents. After considering the oral and documentary evidence adduced on both sides, the Tribunal has awarded a sum of Rs.16,73,756/- as compensation.

5. Against the order, the appellant has preferred this appeal on the following grounds:

The Tribunal is wrong in fixing the entire liability on the respondent. It was the deceased, who was rash and negligent in driving the car and he ramped the car and dashed against the lorry, which was parked. The tribunal failed to follow the split multiplier method to calculate the loss of income. The tribunal failed to consider that the deceased was about to retire and he was nearing the age of 58.

6. The Tribunal is wrong in fixing the monthly income as Rs.25,137/-. The tribunal is wrong in awarding Rs.45,000/- towards loss of love and affection. The total award amount is excessive.

7. On the side of the appellant, it is stated that the lorry was going ahead of the car and it was the car, which hit the lorry from behind. The lorry



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was under going break down. R.W.2 has deposed that though they have placed the stones for identification the car hit on the rear side of the stationed lorry.

8. It is seen that it was the car that hit the lorry from the behind. From the evidence of R.W.1, it is clear that the lorry was parked on the road, due to the break down. The evidence of R.W.2 was in support of the evidence of R.W.1. Ex.P1 is the copy of the FIR, wherein the first respondent driver was mentioned as the accused. The Motor vehicle report was marked as Ex.P3 and Ex.P4.

9. In the counter filed by the respondent, it was not stated that the lorry was stationed at the time of accident. On the basis of the evidence of P.W.1 and on the basis of the evidence of P.W.2, the tribunal has fixed the responsibility on the lorry driver. Even as per the evidence of R.W.1, it is clear that R.W.1 has used only some stones and he has not parked the lorry with glittering indicators. The accident has taken place in the Highways, unless there are glittering indicators, there was no possibility for the upcoming vehicles to avoid hitting a vehicle stationed in the road. Since the



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lorry driver was responsible for the accident, the judgment needs interference.

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10. On the side of the appellant, it is stated that the deceased was a Government servant, who was about to retire, hence, the loss of income has to be calculated on the basis of the pay till the date of retirement and by calculating the proposed pension from the date of Superannuation. The law is now well settled, there is no necessity to apply split multiplier method and the income has to be calculated on the basis of the last drawn salary.

12. The tribunal deducted 1/3rd of the amount towards the personal expenses of the deceased. The Tribunal fixed the monthly income as 25,137/- after deducting 1/3rd for his personal expenses, the tribunal fixed the loss of income as 16,08,768/-p.a., which is reasonable.

13. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses and a sum of Rs.15,000/- for loss of consortium to the wife, and a sum of Rs.15,000/- for each of the respondents 2 to 4 towards loss of love and affection, which are also reasonable.



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14. A perusal of the records reveals that the quantum of compensation awarded by the Tribunal is reasonable. In the above circumstances, there is nothing sufficient enough to interfere with the orders of the Tribunal. Accordingly, this Civil Miscellaneous **Appeal is dismissed**. No costs.

(i) The quantum of compensation, Rs.16,73,768/- (Rupees Sixteen Lakhs Seventy three thousand Seven hundred and sixty eight only) awarded by the Tribunal is hereby confirmed. The award amount shall carry interest at the rate of 7.5% per annum.

(ii) The appellant is directed to deposit the entire compensation of Rs.16,73,768/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.45 of 2011, dated 31.10.2011 on the file of the Motor Accidents Claims Tribunal (Fast Track Court), Virudhunagar, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the appellant, claimants are permitted to withdraw their shares as apportioned by the Tribunal, with accrued interest and costs, less any amount already withdrawn by them. The claimant is not entitled to interest for the default period, if there is any.

28.04.2023

Index: Yes / No
Internet : Yes / No

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To

1. Motor Accident Claims Tribunal/
Fast Track Court/ Additional District Court,
Virudhunagar
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R.THARANI, J.

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Pre - Delivery Judgment made in
C.M.A(MD)No.475 of 2012

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