BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	*Judgment Pronounced On*
11.07.2024	***20.08.2024***

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.931 of 2013

1. Thamilarasi
2. P.Dhanalakshmi
3. Guruvammal (Died) ... Appellants

(2nd appellant is declared as major and guardianship of her mother-1st appellant is discharged, vide Court order, dated 03.08.2021, made in C.M.P.(MD)No.6000 of 2021 in C.M.A.(MD) No.931 of 2013)

(Memo, dated 29.06.2021, in USR No.15307 is recorded as 3rd appellant died and the appellants 1 and 2 who are already on record are recorded as LRs of the deceased 3rd appellant, vide Court order, dated 14.07.2021, made in C.M.A.(MD) No.931 of 2013)

Vs.

1. M.Balakrishnan
2. J.Jagadeshchandran
3. The United India Insurance Company,
   Represented through its Divisional Manager,
   Seethalakshmi Complex, Thirunagar,
   Madurai. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act against Award and Judgment dated 14.10.2006 passed in

M.C.O.P.No.845 of 2001 on the file of the Motor Accident Claims Tribunal (Additional District Court / F.T.C. I), Madurai.

For Appellant : Mr.Ramesh @ Ramiah
For R3 : Mr.P.Pethu Rajesh

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JUDGMENT

The Civil Miscellaneous Appeal is preferred by the claimants.

2. It is a case of fatal. The brief facts are that the 1st claimant is the wife of the deceased, the 2nd claimant (minor at the time of filing the claim petition and thereafter, declared as major) is the daughter of the deceased, the 3rd claimant is the mother of the deceased.

3. The deceased was travelling as passenger in the autorickshaw bearing Registration No.TN-58-A-2472 and the said vehicle was insured with the 3rd respondent Insurance Company. The accident occurred when the deceased was travelling in the autorickshaw. The deceased had peeped his head outside of the vehicle thinking someone is calling him. Unfortunately, the van bearing Registration No.TN-45-X-0276 which had come in opposite direction had hit the victim and he died on the spot. The said van was insured with the 3rd respondent Company, but the insurance expired on 21.09.2000 and it was not renewed thereafter. The accident occurred on 26.10.2000 and on the date of accident, there

was no insurance for the said van. After taking the fact that the insurance is not available, the liability was fixed on the owner of the van, the 2nd respondent herein and the 2nd respondent was directed to pay Rs.4,30,000/- with 7.5% interest per annum along with cost. Aggrieved over the same, the present appeal is preferred by the claimants.

4. The contention of the claimants is that the Tribunal had erred in relying on the deposition of the R.W.2 and declining to grant the compensation. It is seen that the R.W.2 is the auto driver and his statement is a self-serving statement. Moreover, the nature of accident is that while the deceased was travelling in the auto he had peeped outside and the van which was coming in the opposite direction had hit the deceased on his head and the deceased died on the spot. This would indicate that there is no adequate space in between the auto and van and the drivers had driven the vehicle negligently. Further, the fact that the deceased died on the spot would indicate that both the vehicles were driven in high speed. Therefore, this Court is of the considered opinion that negligence ought to be fixed on both the vehicles and the same is fixed as 50% on each vehicle. As far as the auto is concerned, the 3rd respondent Insurance Company is liable to pay. As far as the van is concerned, since the validity of the insurance had lapsed, the owner of the van, ie., the 2nd respondent herein is liable to pay. Further, the deceased ought not to have peeped outside while travelling and

hence, contributory negligence ought to be fixed on him also and the same is not fixed in percentage but Rs.50,000/- shall be deducted from the total compensation for contributory negligence.

5. The next contention of the claimants is that the Tribunal had fixed Rs.20,000/- for loss of love and affection and the same is on the lower side. It is seen that the accident occurred on 26.10.2000. During the year 2000, the same is fixed as Rs.20,000/- only, but for one person. In the present case, there are three claimants and hence, each claimant is entitled to Rs.20,000/-, which comes to Rs. 60,000/- in total.

6. The next contention of the claimants is that the Tribunal had granted Rs.2,000/- for funeral expenses which is on a lower side. This Court is enhancing the same to Rs.4,000/-. The Tribunal had not granted compensation for future prospects and hence, this Court is granting future prospects to the tune of 10%. The compensation is modified as stated supra and the compensation granted under the other heads are confirmed.

7.The modified award amount granted by this Court is as under:

Monthly income of the deceased	Rs.3,000/-
Future Prospects (10%)	Rs.300/-
Total	Rs.3,300/-
Deduction of 1/3rd of income towards personal expenses	- Rs.1,100/-
After deduction	Rs.2,200/-

Sl. No.	Heads	Award granted by Tribunal	**Award granted by this Court**	Enhanced / Confirmed / Reduced
1.	Loss of Income	Rs.4,08,000/-	Rs.4,48,800/- (Rs.2200/-*12*17)	Enhanced
2.	Loss of Love and Affection	Rs.20,000/-	Rs.60,000/- (Rs.20,000/- * 3)	Enhanced
3.	Funeral Expenses	Rs.2,000/-	Rs.4,000/-	Enhanced
	Total	Rs.4,30,000/-	Rs.5,12,800/-	
	Deducting contributory negligence	Nil	-Rs.50,000/-	
	Total compensation	Rs.4,30,000/-	**Rs.4,62,800/-**	**Enhanced**

Thus, the total compensation granted by the Tribunal to the tune of Rs.4,30,000/- is enhanced to Rs.4,62,800/- by this Court. The liability is fixed on respondents 2 and 3 as 50% each.

8.The 3rd respondent Insurance Company is directed to deposit Rs. 2,31,400/- with interest at the rate of 7.5% per annum from the date of M.C.O.P., till the date of deposit and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The 2nd respondent / owner of the van is directed to deposit Rs.2,31,400/- with interest at the rate of 7.5% per annum from the date of M.C.O.P., till the date of deposit to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposits, the claimants 1 and 2 are permitted to withdraw their equal shares with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. Since this Court is enhancing the compensation, the claimants are liable to pay the balance Court fee, if any.

9.With the above said observations, the Civil Miscellaneous Appeal is partly allowed. No costs.

20.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Tmg

To

1.Motor Accident Claims Tribunal
(Additional District Court / F.T.C. I),
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

S.SRIMATHY, J.

Tmg

C.M.A(MD)No.931 of 2013

20.08.2024