

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1030 of 2015

1.Rajathi
2.Velmurugan
3.Selvi

....Appellants/Claimants

Vs.

1.G.Nagamani

2.The Oriental Insurance Company Limited,
P.L.A. Building, 1st Floor,
No.12/A Kovai Road,
Karur District.

(The Ist Respondent remained exparte
before the Tribunal, Hence notice may
be dispensed with for the 1st Respondent
in this Appeal).

.... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicle Act, 1988, against the Award made in M.C.O.P.
No.651 of 2010, dated 17.06.2013, on the file of the Motor Accident
Claims Tribunal, Principal District Court, Namakkal.

For Appellant : M/s.Ma.Pa.Thangavel

For Respondents: Mr.J.Chandran for R2
Exparte for R1

J U D G M E N T

The short facts of the case are as follows:-

On 03.05.2010 at about 01.00 a.m., when the (deceased)
Pachamuthu was travelling in a Maruthi Car, on the Karur Main Road, a
Maruthi Van, coming in the opposite direction and driven in a
negligent manner dashed against the car. As a result, the (deceased)
had sustained injuries and succumbed to it inspite of medical
treatment. Hence, the three legal heirs of the deceased have filed
the claim against the owner and insurer of the Maruthi Van.

2. The Insurance Company had filed a counter statement and resisted the claim. The respondent denied the occurrence of the said accident and denied that the driver of the van had committed the accident. Actually, the driver of the Maruthi Car bearing registration No.TN-30P-7305 had driven it in a rash and negligent manner and as such the car had capsized. The respondent also denied the averments regarding age, income and occupation of deceased. In the said case, the Maruthi Car's owner and insurer are necessary parties, but they have not been impleaded as necessary parties.

3. After recording averments of both sides, the Tribunal had framed necessary issues. On the side of the claimant, one witness was examined and nine documents were marked. On the side of the respondent, one witness was examined and one document was marked. After recording evidence of the witnesses on both sides, and after perusing the exhibits marked by both sides, the Tribunal had fastened 75% negligence on the part of the driver of Maruthi Car and as such the Tribunal had awarded a sum of Rs.2,89,125/- as compensation, with interest at the rate of 7.5% per annum. Not being satisfied with the quantum of compensation, the claimants have filed the above appeal and seeking additional compensation of a sum of Rs.2,10,875/- with interest.

4. The very competent counsel, Mr.Ma.Pa.Thangavel, appearing for the claimants submits that the deceased's age was 59 years, but the Tribunal had fixed the age of the deceased as 60 years, taking an erroneous view. Further, the deceased was earning Rs.10,000/- as a Milk Vendor. The Tribunal had not granted adequate compensation under the relevant heads.

5. The learned counsel, Mr.J.Chandran, appearing for the Insurance Company submits that in the said accident, two vehicles have been involved in a head on collision. Therefore, the Tribunal had fastened the negligence as 3:1 ratio. On the side of the driver of Maruthi Van and Maruthi Car respectively. This decision has been taken on the basis of F.I.R and rough sketch. The age of deceased was fixed at 60 years as per the postmortem report, which had been certified by the practicing Doctor. The Tribunal had granted an adequate compensation under the relevant heads. The 2nd and 3rd claimants are not depending on the income of the deceased. However, the Tribunal had granted an adequate compensation to the claimants.

6. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the deceased was a Milk Vendor and the F.I.R had been registered against the driver of the Mahendra Van/offending vehicle. However, the Tribunal had fastened the negligence as 3:1 ratio against the driver

of the Mahendra Van and driver of the Maruthi Van respectively. Even then the quantum of compensation is on the lower side. Therefore, on the basis of 75% liability, of the 2nd respondent/Insurance Company this Court grants additional compensation on the following heads:

Rs.1,50,000/- under the head of Loss of Earning;

Rs.15,000/- towards Funeral Expenses;

Rs.15,000/- towards Loss of Consortium to the 1st claimant;

Rs.15,000/- each of the 2nd and 3rd claimants under the head of Loss of Love and Affection;

Rs.875/- towards Transport Expenses;

In view of the above, the compensation awarded by the Tribunal to the 2nd respondent/Insurance Company is enhanced as follows:

S.No	Description	Total compensation awarded by the Tribunal	75% liability payable by the 2 nd res. as per the order of Tribunal	Additional compensation awarded by this Court	Compensation to be paid by the 2 nd resp./Insurance Company
1.	Loss of earning	3,24,000	2,43,000	1,50,000	3,93,000
2.	Funeral Exp.	5,000	3,750	15,000	18,750
3.	Loss of love and affection to the I and II claimants	-	-	30,000	30,000
4.	Loss of love and affection to the I claimant	25,000	18,750	-	18,750
5.	Loss of consortium to the wife	30,000	22,500	15,000	37,500
6.	Transport Expenses	1,500	1,125	875	2,000

S.No	Description	Total compensation awarded by the Tribunal	75% liability payable by the 2 nd res. as per the order of Tribunal	Additional compensation awarded by this Court	Compensation to be paid by the 2 nd resp./Ins .Company
	Total	3,85,500	2,89,125	2,10,875	5,00,000

Hence, the above appeal is allowed. This Court directs the Insurance Company/2nd respondent to deposit the additional compensation amount of a sum of Rs.2,10,875/- with interest at the rate of 7.5% per annum from the date of claim petition till date of payment of compensation before the trial Court. This Court further directs the Insurance Company/2nd respondent to comply with this Court's findings within a period of six weeks from the date of receipt of a copy of this order.

7. After such a deposit being made, it is open to the claimants to withdraw their respective amounts equally among themselves after filing a memo, along with a copy of this order. Hence, the above appeal is allowed. There is no order as to costs.
Ub

Sd/-
Assistant Registrar (CS-VII)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
Principal District Court, Namakkal.

+1 C.C. To MR.MA.P.Thangavel, Advocate in SR.NO.49124

C.M.A.No.1030 of 2015

KGK (CO)

sd : 30/11/2015