

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.1503 of 2015
M.P.No.1 of 2015

The Manager,
M/s.Cholamandalam MS General Insurance Co. Ltd.,
"Dare House", 2nd Floor,
N.S.C. Bose Road, Chennai. ... Appellant /2nd Respondent

versus

1. Mrs.Thimmaka
2. Muniyammal
3. Venugopal
4. Radhakrishnan
5. Muniraj ... Respondents/Petitioners/
1st Respondent.

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.1397 of 2010, dated 24.10.2013, on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.M.B.Gopalan

सत्यमेव जयते
JUDGMENT

(Judgement of the Court was made by S.MANIKUMAR ,J.)

Challenge in this appeal, is to the judgment and decree in M.C.O.P.No.1397 of 2010, dated 24.10.2013, on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri, by which, the Tribunal, on adjudication, ordered compensation of Rs.12,60,000/-, with interest, at the rate of 12% per annum.

2. Facts deduced from the reading of the material on record are that on 21.09.2009, about 09.00 A.M., one Balappa was proceeding in a Hero Honda bearing Registration No.TN 24 V 2086, from Royakottai to Dharmapuri, and the said Motorcycle was driven by one Munirathinam, in a cautious manner. Near Odayanahalli bus

stop, a Tata Ace bearing Registration No. TN 24 Y 5608, driven by its driver, in a rash and negligent manner, dashed against the motorcycle, due to which, Balappa, sustained grievous injuries and died on the spot. In this regard, a case in Cr.No.225 of 2009, under Section 279, 337, 304(A) IPC., was registered on the file of Royakottai Police Station, Krishnagiri. According to the respondents, wife, daughter, and two sons/claimants, at the time of accident, Balappa was aged 44 years, he was self employed in Real Estate Business. Besides he was doing coconut, mango and vegetable business and earned Rs.12,000/- per month. They claimed compensation of Rs.15,00,000/-.

3. M/s.Cholamandalam MS General Insurance Co. Ltd., Insurer of Tata Ace bearing Registration No. TN 24 Y 5608, in its counter affidavit, denied the manner of accident. According to the company, it was the rider, Munirathinam, by his rash and negligent driving, suddenly dashed the vehicle, bearing Registration No. TN 24 Y 5608, insured with them. Thus, they have denied the fault and negligence alleged against the driver of the Tata Ace vehicle. It is also the contention of the Company that the rider of the Motorcycle did not possess a valid and effective driving licence, at the time of accident and therefore, the claimants have not impleaded the owner and insurer of the motorcycle. That apart, they denied the avocation and monthly income of the deceased, and compensation claimed under various heads.

4. Before the Claims Tribunal, wife examined herself as PW.1 and adduced evidence. Driver of the motorcycle has been examined as PW.2. Exs.P1 - FIR, Ex.P2 - Post-mortem certificate, Ex.P3 - Legal Heir Certificate, Ex.P4 - Insurance Policy and Ex.P5 - Sale Agreement, have been marked on the side of the respondents/claimants. No oral or documentary evidence has been adduced on behalf of the appellant-Insurance Company.

5. Though the manner of accident has been disputed by the appellant-Insurance Company and averments have been made in the counter affidavit, before the Tribunal, to the effect that it was the motorcyclist, Munirathinam, who was negligent in causing the accident, no oral or documentary evidence, has been adduced to substantiate the averments, made in the counter affidavit. Therefore, after analysing the evidence on record, the Claims Tribunal came to the conclusion that the driver of the Tata Ace bearing Registration No. TN 24 Y 5608, insured with the appellant-Insurance Company, was negligent, in causing the accident. Though the learned counsel for the appellant-Insurance Company assailed the finding of the Claims Tribunal, testing the same on the principles of preponderance of probability, this Court is not inclined to reverse the same. In support of our conclusions, we deem it fit to extract few decisions,

(i) In N.K.V.Brother's Private Limited v. Kurmai reported in AIR 1980 SC 1354, while dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

(ii) In a decision in Union of India v. Saraswathi Debnath reported in 1995 ACJ 980, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

6. On the quantum of compensation, it is the case of the respondents/claimants that the deceased was aged 44 years, at the time of accident and earned a sum of Rs.12,000/- per month, through real estate and vegetable business. Considering the evidence adduced by the claimants with reference to Ex.P5 - Sale Agreement, the Claims Tribunal has fixed the monthly income as Rs.10,000/-.

7. In Ex.P2, Post-Mortem Certificate, age of the deceased has been mentioned as 50 years. Therefore, in the absence of any contrary document, the Claims Tribunal has determined the age of the deceased, at the time of accident, as 50 years. Determination of age as 50 years, cannot be found fault with, in the light of the decisions made in Fakeerappa v. Karnataka Cement Pipe Factory reported in 2004 (4) LW 20 and The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515].

8. As there are four claimants, following the decision in Sarla Verma v. Delhi Transport Corporation reported in 2009 (2)

TNMAC 1 (SC), the Claims Tribunal has decided the deduct 1/3rd towards personal expenses. Thus, the Claims Tribunal has computed loss of contribution of the family, as Rs.11,70,000/- and awarded compensation under other heads, as hereunder:

Loss of Dependency	: Rs.11,70,000/- (7,500 x 12 x 13)
Loss of Consortium	: Rs. 25,000/-
Loss of Love and Affection	: Rs. 60,000/-
Funeral Expenses	: Rs. 5,000/-

Total	: Rs.12,60,000/-

9. We are of the view that compensation awarded under the head, loss of consortium and loss of love and affection, is less. Funeral expenses of Rs.5,000/- is also less. On the whole, the quantum of compensation to the legal representatives of the deceased, cannot be said to be excessive.

10. Going through the award and the materials on record, this Court finds that the decision of the Claims Tribunal, in fixing negligence on the driver of the Tata Ace, bearing Registration No.TN 24 Y 5608, insured with the Cholamandalam Company and the compensation awarded to the respondents/claimants, cannot be said to be erroneous or manna from heaven, warranting any interference. The award is confirmed.

11. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, if not already deposited, with proportionate accrued interest and costs, less the amount already deposited to the credit of M.C.O.P.No.1397 of 2010, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw the same, by making necessary applications, before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

skm

To

The Motor Accidents Claims Tribunal,
Additional District Court, Krishnagiri.

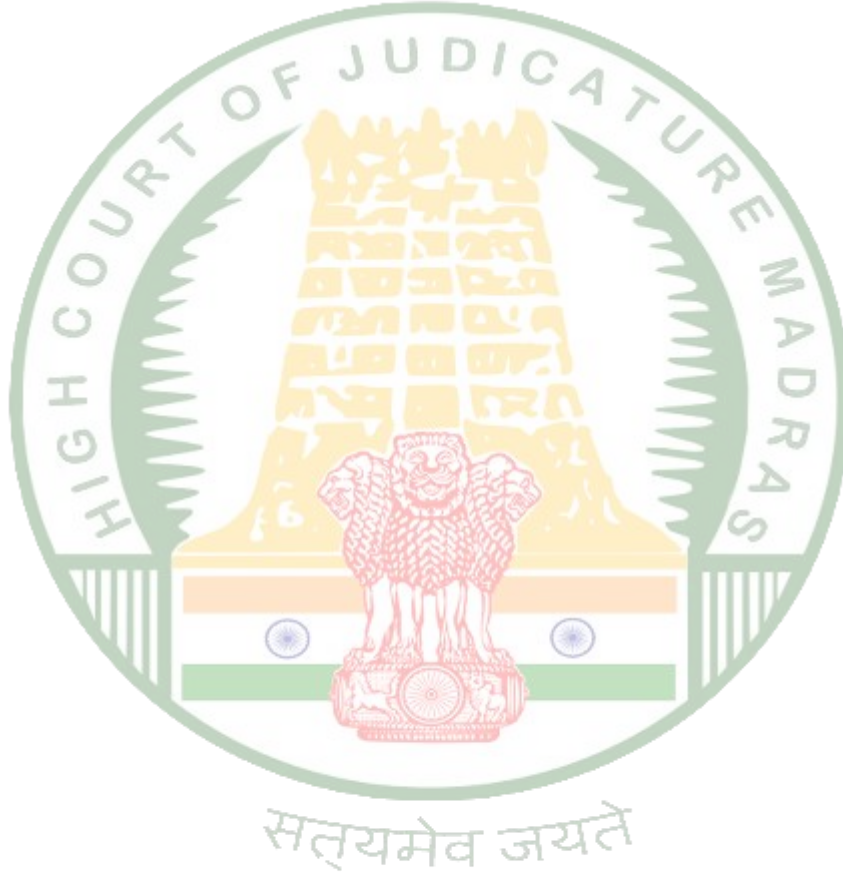
Copy to:

The Section Officer, VR Section, High Court, Madras 104.

+1 cc to Mr.M.B.Gopalan, Advocate, sr.41814

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