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140IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NOS.24 and 25 of 2015
and
M.P.No.1 of 2015

United India Insurance Co. Ltd.,
Divisional Office,
No.82, North Mada Street,
Mylapore, Chennai-4

... Appellant in /2nd Respondent
(Both Appeals)

Vs.

1.Piyari Bi
2.Samiya
3.Basheer Basha
4.Rasheed Basha
5.Salma Bi
6.Meeran Shahib

...Respondents/Petitioners

(Minors are rep. by their mother and
next friend first appellant herein)

7.A.Asaithambi ... Respondents/Ist Respondent
(CMA.No.24/2015)

1.Jayanthi
2.Minor C.Sundaramoorthy
3.Minor C.Parthiban
4.Chandrammal

(Minors are rep. By their mother and
next friend first appellant herein)

5.A.Asaithambi ... Respondents /Ist Respondent
(C.M.A.No.25/2015)

Prayer in CMA.No.24 of 2015 :Civil Miscellaneous Appeal filed under
Section 173 of the Motor Vehicles Act,1988 against the decree and
judgment dated 01.07.2013 made in M.C.O.P.No.4900 of 2009 on the file
of Motor Accident Claims Tribunal, (Chief Small Causes Court),
Chennai.

Prayer in CMA.No.25 of 2015: Civil Miscellaneous Appeal filed under
Section 173 of the Motor Vehicles Act,1988 against the decree and



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judgment dated 01.07.2013 made in M.C.O.P.No.4899 of 2009 on the file of Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

For Appellant : Mr.S.Arun Kumar
(Both appeal)

For Respondents : Mr.K.Suriyanarayanan
for R1 to R6 in CMA No.24 of
2014 and R1 to R4 in CMA
No.25 of 2015.

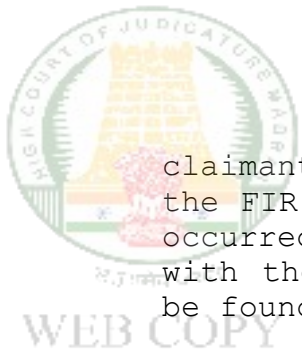
COMMON JUDGMENT

These appeals have been filed by the Insurance Company against the award of Rs.7,97,184/-and Rs.7,44,528/- for the death of one Chandrasekar, aged about 40 years, agriculturalist, earning Rs.15,000/- per month and one Sardhar Basha, aged about 40 years, fruits and vegetable vendor, earning Rs.15,000/- per month respectively, who died in the accident occurred on 16.06.2007, while they were riding the motor cycle, which was hit by the car, coming in the opposite direction, insured with the appellant Insurance Company driven rash and negligently.

2. Heard Mr.S.Arunkumar, learned counsel appearing for the appellant in both appeals and Mr.K.Suriyanarayanan, the learned counsel appearing for the respondents in both appeals.

3. Mr.S.Aruukumar, the learned counsel appearing for the appellant would submit that even basic document FIR was not marked by the claimants and that would go to show that the deceased were at fault. Therefore, there cannot be any liability on the part of the Insurance Company, when the accident was caused by the deceased. However, Mr.K.Suriyanarayanan, the learned counsel appearing for the respondents/claimants would support the award of the Tribunal.

4. No doubt, the FIR was not marked. However, based on Ex.P7 postmortem certificate of Chandrasekar, which states that the deceased would appear to have died of shock due to consequences of crush injuries and postmortem report of Sardhar Basha Ex.P11, in which Crime No.242 of 2007 on the file of Ranipet Police Station has been incorporated and based on eye witness - P.W.3, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the car. The eye witness - P.W.3 categorically stated that he was proceeding to a shop from his house and he witnessed the accident and the car was driven rashly and negligently, overtook and dashed against the motor cycle, which was coming on the opposite direction. That apart, there is no contra evidence adduced by the respondents/claimants. Even if the FIR was not marked by the



claimants nothing prevented the respondents/claimants from producing the FIR or marking the FIR. Therefore, the finding that the accident occurred because of the rash and negligent driving of the car insured with the appellant Insurance Company is based on evidence and cannot be found fault with.

5. Though there is no appeal/cross appeal by the claimants, a perusal of the award would show that the Tribunal rightly determined monthly income at Rs.4,500/-, added 30% towards future prospectus and after deduction towards personal expenses determined the loss of monthly income at Rs.4,388/- in respect of deceased Chandrasekar (C.M.A.No.25 of 2015) and the loss of income was rightly determined at Rs.7,37,184/-. However, only a sum of Rs.15,000/- was awarded towards loss of consortium to the first respondent and therefore the same is to be enhanced to Rs.70,000/-. Rs.10,000/- awarded towards loss of estate is adjusted towards transportation. Rs.10,000/- awarded towards funeral expenses is confirmed. Rs.25,000/- awarded towards loss of love and affection to the respondents 2 to 4 is also confirmed. The award of Rs.7,97,184/- is enhanced to Rs.8,52,184/-, rounded to Rs.8,50,000/-, even in the absence of any appeal/cross appeal by the respondents/claimants invoking under Order 41 Rule 33 to award just compensation. The rate of interest at 7.5% awarded by the Tribunal remains unaltered. The respondents/claimants are entitled to get the enhanced compensation now awarded in this appeal, on payment of Court fee.

6. As far as C.M.A.No.24 of 2015, in respect of Sarthar Basha case, a sum of Rs.7,44,528/- was awarded. Sarthar Basha was doing business as fruit and vegetable vendor, aged about 40 years, the Tribunal rightly determined the monthly income at Rs.4,500/- and added 30% towards future prospects. As per the judgment of the Honourable Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, the Tribunal arrived the loss of income at Rs.5,800/-, since the size of the family consists 4, one-fourth is rightly deducted towards personal expenses and loss of income is determined at Rs.6,84,528/- ($5850 - 1/4 \times 12 \times 13 = 6,84,528/-$).

7. The Tribunal awarded only Rs.15,000/- towards loss of consortium to the first respondent and therefore the same is enhanced to Rs.70,000/-. Rs.25,000/- awarded towards loss of love and affection to the respondents 2 to 6 and Rs.10,000/- awarded towards funeral expenses are confirmed. Rs.10,000/- awarded towards loss of estate is adjusted towards transportation. The award of Rs.7,44,528/- is enhanced to Rs.7,99,528/- rounded to Rs.8,00,000/- even in the absence of any appeal/cross appeal by the respondents/claimants invoking under order 41 Rule 33 to award just compensation. The rate of interest at 7.5% awarded by the Tribunal remains unaltered. The respondents/claimants are entitled to get the enhanced



compensation now awarded in this appeal, on payment of Court fee.

8. In C.M.A.No.24 of 2015, the Appellant Insurance Company is directed to deposit the entire award amount as per the order passed by this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to pay the respective share as fixed by the Tribunal to the respondents/claimants within one week thereafter except the minors' shares which shall be deposited in an interest bearing fixed deposit with Indian Bank, High Court Branch, Madras-104, till they attain majority. The 1st claimant is permitted to withdraw interest accruing on such deposit once in three months.

9. In C.M.A.No.25 of 2015, the Appellant Insurance Company is directed to deposit the entire award amount as per the order passed by this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to pay the respective share as fixed by the Tribunal to the respondents/claimants within one week thereafter, except the minors' share which shall be deposited in an interest bearing fixed deposit with Indian Bank, High Court Branch, Madras-104, till they attain majority. The 1st claimant is permitted to withdraw interest accruing on such deposit once in three months.

10. In view of the above, these civil miscellaneous appeals are disposed of. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg

To

The Motor Accident Claims Tribunal,
(Chief Small Causes Court), Chennai.

Copy to:

1.Piyari Bi

No.5/3, East Jones Road, Saidapet,
Chennai -15.

2.Smt.Jayanthi

No.5/3, East Jones Road, Saidapet,
Chennai -15.

C.M.A.NOS.24 and
25 of 2015

MG (CO) PMK.25.3.2015