

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09/09/2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.513 of 2015

The Oriental Insurance Company Limited,
Spencer Tower,
770-A, Anna Salai,
Chennai 600 002.

... Appellant/2nd Respondent

Vs.

1.Nasarath

2.M.Sumathy

3.R.Mohamed Khalid

... Respondents 1&2/Petitioners

... 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Award made in M.C.O.P. No.750 of 2012, dated 13.10.2014, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.Udaya Banu
for Mr.K.Varadhakamaraj

J U D G M E N T

The short facts of the case are as follows:-

On 01.01.2012 at about 04.00 a.m., when the (deceased) Jagan was crossing the Perambur Barracks Road, the motorcycle bearing registration No.TN-05J-0444, driven by its rider in a rash and negligent manner and at a high speed, dashed against the (deceased) Jagan. As a result, he had succumbed to his injuries on 05.01.2012 inspite of medical treatment. Hence, the brother and sister of the deceased had claimed compensation against the owner and insurer of the offending vehicle.

2. The Insurance Company had filed a counter statement and resisted the claim. The respondent denied the averments regarding age, income and occupation of the deceased. Further, the claimants are not depending upon the income of the deceased. The rider of the motorcycle did not possess valid driving licence. Hence, the respondent prays to dismiss the above claim.

3. After considering the averments of both parties, the Tribunal had framed four issues. On the side of the claimants, two witnesses were examined and six documents were marked. On the side of the respondents, two witnesses were examined and seven documents were marked. After recording the evidence of both sides and on perusing the exhibit marked by both sides, the Tribunal had awarded a sum of Rs.8,95,060/- as compensation with interest at the rate of 7.5% per annum. As such, contributory negligence has to be fastened on either side but the same observation had not been ordered by the Tribunal. Further, the claimants are not depending on the income of the deceased. The Tribunal had fixed the income of the deceased at Rs.7,000/- per month without income proof. The compensation awarded under the head of loss of earning after deduction of 1/3rd of personal expenses of deceased is not correct as the deceased was a bachelor. Actually, the claim amount was Rs.6,00,000/- but the Tribunal had awarded a sum of Rs.8,95,060/- which is more than the claimed amount. As such, the impugned award had been passed in an arbitrary manner. Hence, the learned counsel entreats the Court to set aside the award.

4. The learned counsel Mr.S.Udayakumar, appearing for the claimants submits that the accident had been committed by the rider of the motorcycle bearing registration No.TN-05J-0444 in a rash and negligent manner. Hence, a criminal case had been registered against the rider of the motorcycle in Crime No.01/P3/2012, on the file of Traffic Investigation Wing, Kilpauk. The rider of the motorcycle had admitted his guilt and paid the fine amount before the VI Metropolitan Magistrate. Therefore, the question of negligence on the part of the deceased does not arise. Further, the accident had taken place in the month of January 2012 and during the relevant period, the income of the deceased was about Rs.15,000/- per month, but the Tribunal had fixed the income of the deceased as Rs.7,000/- per month, which is on the lower side. The very competent counsel further submits that the claimants come under the 2nd class heirs of the deceased as per the Hindu Succession Act and as such the claimants are entitled to receive compensation in the absence of I class legal heirs as per the Hindu Succession Act. The Tribunal had not granted compensation under the head of medical expenses, transport and attender charges. Even though originally the claimed amount was Rs.6,00,000/- but the Tribunal had not granted compensation under the head of medical expenses, transport and attender charges. Even though, originally the claimed amount was Rs.6,00,000/- but the Tribunal had granted Rs.8,95,060/- on the basis of merits. The innocent claimants, due to inferiority complex and being illiterate have claimed lesser compensation. However, the Tribunal had granted a fair compensation after well analyzing the facts of the case after recording the evidence of both sides and on scrutinizing the exhibits marked by both parties. Therefore, the award and decree passed by the Tribunal is suitable for execution against the Insurance Company. Further, there is no infirmity in the said Trial Court award.

5. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsel on either side and on perusing the typed set of papers, this Court is of the view that a criminal case had been levelled against the rider of the offending vehicle. Further, the said vehicle had been insured with the Insurance Company. Therefore, negligence and liability have been decided by the Tribunal in an appropriate manner. Further, the accident had occurred in the month of January 2012 and during the period, the deceased might have earned more than Rs.10,000/- per month and he was a middle aged man aged about 40 years.

6. This Court is of the view that the personal expenses of the deceased cannot be fixed in a rigid manner like 50% or 1/3rd or 1/4th of 1/5th of the total income of deceased. However, the earlier deduction for personal expenses have been fixed by the Courts only in an arbitrary manner. But there is no specific provision to fix the deduction for personal expenses of the deceased. The personal expenses of any person depends upon his style of living and his earning capacity. In the instant case, the deceased was aged about 40 years and he was involved in hard work as a coolie. Therefore, the compensation fixed by the tribunal is appropriate. Even though, the Tribunal had awarded compensation under the head of transport and attender charges. Hence, the award is confirmed and appeal is dismissed.

7. Now, this Court directs the appellant herein to deposit the entire compensation amount, with accrued interest thereon as per the trial court order within a period of six weeks from the date of receipt of this order before the trial Court. After such a deposit being made, the claimants are at liberty to withdraw their apportioned share amount, as per the ratio fixed by the Tribunal along with a copy of this order, before the trial Court, after identification of the claimants by the appellant's counsel, Mr.S.Udayabanu. Hence, the above appeal is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

2. Mr.S.Udayabanu, Advocate, High Court, Madras 104.

+1 cc to M/s.S.Ravikumar, Advocate, sr.52329 (08/10/2015)

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