

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM :

THE HON'BLE MR. JUSTICE R. SUDHAKAR

Civil Miscellaneous Appeal
No. 628 of 2015

The Branch Manager
The National Insurance Company Ltd.,
72, T.S.R. Street
Kumbakonam Taluk
Thanjavur District.

.... Appellant/2nd
Respondent

-Vs-

1. Thiru. Ravichandran
S/o. Thillaikkannu
2. Mrs. Indhra
W/o. Ravichandran
3. Mr. Siva Guru
S/o. Ravichandran

all are residing at
Pudhu Theru, Palaiyur Village
Perugavazthan Post
T. Mu. Ellaaka, Mannargudi Taluk
Thanjavur District.

... Respondents 1 to 3/
Petitioner 1 to 3

4. Thiru. Ganesan
S/o. Theerththan
209 Kumaran Street
Perugavazhthan Post
Mannargudi Taluk
Thiruvarur District.

... 4th Respondent/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 09.10.2012 passed in M.C.O.P. No. 57 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Mannargudi District.

For appellant : Mr.J. Chandran

J U D G E M E N T

The National Insurance Company is the appellant in the above appeal challenging the award and decree dated 09.10.2012 passed in M.C.O.P. No. 57 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Mannargudi District.

2. It is a case of fatal accident. The accident occurred on 07.10.2010. One Mano, the deceased in this case, is the son of the 1st and 2nd claimants and brother of the 3rd claimant. On 07.10.2010, the said Mano, along with his relative Sundarajan was returning from Thanjavur to Mannargudi, after visiting his relative, in a hired Ambassador car bearing Registration No: TN 50 X 7692 belonging to one Ganesan the 4th respondent herein. When the car was proceeding in Panayakottai Main road, opposite the cremation ground, at about 4.00 a.m. in the early hours of 07.10.2010, Madhavan, the driver of the ambassador car in his attempt to overtake a car going ahead of him, lost balance and the car ran amok and hit at tamrind tree. Mano died on the spot and another occupant of the car, Sundarajan sustained injuries. According to the claimants, the deceased was aged 26 years at the time of accident and was earning a sum of more than Rs.9,000/- per month as an agricultural coolie. The claimants restricted their claim to a sum of Rs. 20,00,000/- as compensation from both the respondents before the Tribunal, the 1st respondent being the owner of the car and the 2nd respondent being the insurer of the vehicle.

3. In support of the claim, the claimant had examined P.Ws. 1 and 2 and marked Exs.P-1 to P-5, the details of which are as follows:-

Ex.P-1 is the copy of First Information Report

Ex.P-2 is the copy of the investigation report of the
Motor Vehicle Inspector

Ex.P-3 is the Post mortem report

Ex.P-4 is the copy of the insurance certificate

Ex.P-5 is the copy of the driving licence

Neither any witness was examined nor any document was marked on the side of the respondents before the Tribunal.

4. The Tribunal, considering the material documents and the fact that the first information report was registered against the driver of the car, came to the conclusion that the accident had occurred due to the rash and negligent driving of the car by its driver. By considering the post-mortem report, the Tribunal has taken the age of the deceased as 18 years. Since no document was filed by the claimants in respect of their claim that the deceased was earning a sum of Rs. 9,000/- per month, the Tribunal has notionally fixed Rs.4,500/- as the monthly income of the deceased. After deducting one third towards personal expenses of the deceased, the Tribunal fixed the loss of dependancy at Rs. 3,000/- per month to the family of the deceased. On the basis of the age of the deceased the Tribunal adopted 18 multiplier. Considering all the factors, the Tribunal had granted a sum of Rs.7,31,000/- as compensation under the following heads :-

1	Towards the loss of dependancy [Rs.3,000/- x 12 x 18]	Rs. 6,48,000/-
2	Towards Transportation	Rs. 5,000/-
3	Towards loss of love and affection to all the claimants @ Rs.25,000/- each	Rs. 75,000/-
4	Towards funeral expenses	Rs. 3,000/-
	Total	Rs.7,31,000/-

5. The finding of negligence on the part of the driver of the offending vehicle who is responsible for the accident and the death and consequential liability fixed on the appellant insurance company to compensate the claimants is not seriously disputed by the appellant and such finding is confirmed. The appeal is canvassed mainly challenging the quantum of compensation.

6. On perusal of the records produced before it, it is seen that the claimants claimed that the deceased was earning a sum of Rs.9,000/- per month as an agricultural coolie. However, the Tribunal, had notionally fixed the monthly income of the deceased at Rs.4,500/- on the ground that the claimants have not brought forth any document in support of their claim that the deceased was earning a sum of Rs.9,000/-. Similarly, though the claimants had stated that the deceased was aged 26 years at the time of accident, the tribunal, by relying on the post-mortem report of the deceased showing his age as 18 years, had chosen

to adopt 18 as the age of the deceased. After deducting one third towards his personal expenses, the Tribunal has taken a sum of Rs. 3,000/- as the contribution of the deceased to the family and by adopting 18 as multiplier, the sum of Rs. 6,48,000/- is arrived towards loss of dependancy. Further, the Tribunal has granted a sum of Rs.25,000/- each to all the three claimants towards loss of love and affection. Here it has to be remembered that the claimants are the parents and brother of the deceased Mano. They have lost their family member at the age of 18 years. Considering this aspect, it cannot be said that the sum of Rs.75,000/- granted to the claimants towards loss of love and affection is on the higher side. Other than this sum, the Tribunal had just granted a sum of Rs.3,000/- towards funeral expenses and a sum of Rs.5,000/- towards transportation.

7. Considering all the above aspects, the total compensation granted by the Tribunal in a sum of Rs.7,31,000/- does not require any further reduction as also the interest granted by the Tribunal at 7.5%.

8. Finding no merit, this Civil Miscellaneous Appeal is dismissed at the admission stage. Connected miscellaneous petition is closed. Appellant is directed to deposit the entire award amount within two months. On such deposit, the claimants are permitted to withdraw the award amount as apportioned by the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
(Subordinate Judge)
Mannargudi.

+1cc to Mr.P.K.Shiva Kumar, Advocate, S.R.No.45479
+1cc to Mr.J.Chandran, Advocate, S.R.No.45609

C.M.A. No: 628 of 2015

KM(CO)
CA(29/10/2015)