IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 725 of 2015
&
M.P. No. 1 of 2015

The Oriental Insurance Co. Ltd.,
Coimbatore – 641 018. ..Appellant/2nd Respondent

Vs.

1. Vasugi

2. Pugalendhi (Minor)

3. Gowtham (Minor)

Minors 2 & 3 rep. By their mother &
next friend Vasugi

4. Vijayalakshmi

5. Palani

6. Saravanan ..Respondents/Petitioners & 1st Respondent

(6th Respondent remained exparte)

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 15.10.2014 passed by the Motor Accidents Claims Tribunal (District Judge, Special District Court for Motor Accidents Claims Cases) at Dharmapuri in MACT O.P. No. 77 of 2014.

For Appellant :: Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs. 20,96,000/- passed by the Motor Accidents Claims Tribunal ((District Judge, Special District Court for Motor Accidents Claims Cases) at Dharmapuri, in favour of the claimants of one P. Vinod, aged about 26 years, a Driver by profession and said to have earned Rs.10,000/- per month, who died in the accident which occurred on 11.09.2012, when the two-wheeler driven by him was hit by a lorry insured with the appellant Insurance Company.

2. Heard Mr.M. Krishnamoorthy, learned counsel for the appellant, who would firstly submit that the Tribunal was wrong in coming to the conclusion that the accident occurred because of the rash and negligent driving by the driver of the lorry, in view of Ex-P1, FIR, filed against the deceased himself. Further, there is no document available to implicate the driver of the lorry and therefore, the finding arrived at, by the Tribunal, with regard to the negligence aspect, is erroneous. Secondly, the learned counsel would submit that Rs.8000/- was fixed as the monthly income of the deceased, without any proof in support of the same, which according to the learned counsel, is on the higher side. Thirdly, considering the age of the deceased, 50% was added towards "Future Prospects". But, as per the judgment of the Honourable Apex Court rendered in Reshma Kumari and others V. Madan Mohan and another (2013 ACJ 1253 (SC)), the benefit of "Future Prospects" cannot be given to those, who are not permanently employed and the said judgment, being the earliest one, on the subject, the learned counsel would plead that the principles laid down in the said judgment, with regard to "Future Prospects", may be followed in the present case as well.

3. A perusal of the records would reveal that after the accident, the driver of the lorry, insured with the appellant, had lodged the complaint, based on which Ex-P1, FIR came to be registered and as rightly observed by the Tribunal, the same cannot be accepted, as the driver of the lorry, in an attempt to safeguard himself, could have lodged the complaint against the deceased, as it is normal human tendency to shift the blame on the opposite side, especially, when the other person, involved in the accident, died. Besides, the FIR is not an encyclopaedia and it is the first document to set the law in motion and the statements in the FIR cannot be taken as gospel truth. Moreover, the claimants examined one Silambarasan, an eye witness to the occurrence, as P.W.2, who categorically stated that the accident occurred because of the rash and negligent driving by the driver of the lorry and not on account of the rider of the two-wheeler, the deceased. In the teeth of evidence of P.W.2 and also in the absence of any rebuttal evidence on the side of the appellant, the Tribunal was left with no other option, except to conclude that the accident occurred only because of the rash and negligent driving by the driver of the lorry. The said finding, which is based on evidence, cannot be set aside.

4. The accident had occurred on 11.09.2012. The deceased is said to be a Driver and to prove that, Ex-P3, copy of the driving licence of the deceased, was marked. It would not have been possible to hire a Driver for less than Rs.10,000/- per month during the year 2012. That being so, the Tribunal rightly determined the monthly income at Rs.8000/- per month and added 50% towards "Future Prospects", which is in consonance with the judgment of the Honourable Apex Court rendered in Rajesh and others V. Rajbir Singh

and others reported in 2013 (3) CTC 883. Though Mr.M.Krishnamoorthy, learned counsel for the appellant would rely upon Reshma Kumari's judgment ((2013 ACJ 1253 (SC)), being the earliest one, on "Future Prospects", the latest judgment, namely, Rajesh and others V. Rajbir Singh and others reported in 2013 (3) CTC 883 will prevail over the earliest one and that has to be followed. Therefore, this Court is of the view that the Tribunal rightly added 50% towards "Future Prospects" while calculating the monthly income, which is in consonance with the judgment of the Honourable Apex Court in Rajesh's case (2013 (3) CTC 883).

5. The size of the family of the deceased was five and therefore, one-fourth deduction was rightly made towards "Personal Expenses". As per the age of the deceased, multiplier 17 was rightly adopted, calculating the "Loss of Income" as Rs.18,36,000/- as hereunder:

Monthly Income	::	Rs.8000/-
Add:		
50% towards "Future Prospects"		
	::	Rs.8000/- + 50% (Rs.8000/-)
	::	Rs.12,000/-
Less:		
One-fourth towards "Personal Expenses"	::	Rs.12,000/- (-) 1/4 (Rs.12,000/-)
Total Monthly Income	::	Rs.9000/-
Applying multiplier 17,		
Loss of Income	::	Rs.9000 x 12 x 17
	::	Rs.18,36,000/-

6. It is very unfortunate that the 1st respondent/wife lost her spouse, that too, at a young age of 21 years. Though the said loss cannot be compensated monetarily, following the judgment of the Honourable Apex Court rendered in Rajesh's case (2013 (3) CTC 883), the Tribunal rightly awarded Rs.1 lakh towards "Loss of Consortium". Respondents 2 and 3, the children of the deceased, aged about 2 years and 1 year, respectively, who lost their father's love, affection, care and guidance, throughout their lives, respondents 4 and 5, who have been deprived of their son's love and affection for the rest of their lives have been rightly granted Rs.25,000/- each, towards "Loss of love and affection", except the 1st respondent, who is entitled to only "Loss of Consortium" and the amount of Rs.25,000/- awarded to the 1st respondent towards "Loss of love and affection" is deleted. However, no amount was awarded towards "Loss of Estate" and therefore, Rs.25,000/- is awarded towards "Loss of Estate". The amount of Rs.10,000/- awarded towards "Transportation Expenses" and Rs.25,000/- awarded towards "Funeral Expenses" are reasonable and they are confirmed. The award of Rs.20,96,000/- granted by the Tribunal is justified and the same is confirmed. So also, the rate of interest awarded by the Tribunal at 7.5% per annum.

7. The appellant Insurance Company is directed to deposit the entire award amount, together with accrued interest and costs, after deducting the amount, if any, already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the apportionment of the award amount, the portion of the award amount to be withdrawn by respondents 1, 4 and 5 and the re-investment of the balance award amount as well as the share of the minors shall be, as per the directions of the Tribunal.

8. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal, to the tune of Rs.20,96,000/- is confirmed. No costs. Connected M.P. Is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,(District Judge,
Special District Court for
Motor Accidents Claims
Cases).Dharmapuri.

Copy to:
Vasugi, W/o.Late Vinoth
Salai Street, Palacode.

+1 cc to Mr.M.Krishnamoorthy, Advocate,SR.19018.

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