

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2971 of 2014

1.Shanmugam

2.Anjammal

...Appellants/Petitioner

vs.

1.Duraisamy

2.The Branch Manager

The United India Insurance Company

No.5B/11, SBI Building

Salem Road, Rasipuram

Namakkal District

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Judgment, dated 15.07.2013, made in M.C.O.P.No.219 of 2011, on the file of Motor Accident Claims Tribunal, Sub Court, Mannargudi.

For Appellants : Mrs.R.Kamalarani

For Respondents: Mr.T.Ravichandran for R2

J U D G M E N T

The appellants / claimants have preferred the present appeal against the judgment and decree, dated 15.07.2013, made in M.C.O.P.No.219 of 2011, on the file of Motor Accident Claims Tribunal, Sub Court, Mannargudi.

2. The short facts of the case are as follows:-

04.07.2011, at about 01.00 a.m., when one Muruganantham was driving a lorry bearing registration No.TN28 AB6381 on Trichy-Namakkal Main Road, a lorry bearing registration No.TN32 S6026 driven by its driver in a rash and negligent manner, dashed against the lorry driven by Muruganantham. As a result, the said Muruganantham succumbed to his injuries. Hence, the parents of the deceased filed a claim petition against the owner and insurer of the offending vehicle for compensation.

3. The Insurance Company filed a counter statement and resisted the claim petition. It was submitted that the driver of the lorry did not possess valid driving licence to drive the lorry. Further, the deceased had driven his lorry in a negligent manner and caused the said accident. Further, two

vehicles have been involved in the said accident as a head on collision and therefore the owner of the lorry driven by the deceased and its insurer are necessary parties, but they have not been added as parties to the claim petition. The Insurance Company denied the age and income of the deceased.

4. After recording the averments of both parties, the Tribunal had framed three issues. On the side of the claimants, three witnesses were examined and ten documents were marked. On the side of the respondents, one witness was examined and no document was marked.

5. The Tribunal, after considering the evidence of the witnesses and scrutinizing the documents marked by the claimants, awarded a sum Rs.2,52,260/- with interest at the rate of 7.5% per annum.

6. Not being satisfied with the quantum of compensation, the claimants have preferred this appeal.

7. The learned counsel for the appellants has submitted that F.I.R., has been registered against the driver of the offending lorry, which has been insured with the Insurance Company. Negligence and liability have been established against the driver of the offending vehicle. However, the Tribunal has not granted adequate compensation to the claimants. The deceased was 22 years, he was a heavy goods vehicle driver and was earning Rs.21,000/- per month, but the Tribunal fixed the income as Rs.2,000/- per month on an erroneous view. Further, The appropriate multiplier is 18, but the Tribunal fixed the multiplier as 13, which is also inappropriate. Further, the Tribunal has not granted an adequate compensation under the head of love and affection, transport and funeral expenses. Hence, the learned counsel prays this Court to grant an adequate compensation to the claimants.

8. The learned counsel for the Insurance Company has submitted that in the said accident two heavy duty lorries have been involved in an head on collision. Therefore, the owner of the lorry driven by the deceased and its Insurer are necessary parties, since contributory negligence has to be fastened on both sides equally. This was not carried out by the Tribunal. Further, the claimants have not produced income proof and that he was a bachelor and hence the Tribunal had assessed the compensation on the basis of age of the parents of the deceased. However, an adequate compensation has been granted under the relevant heads.

9. Considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court fixes the income of the deceased as Rs.8,000/- per month and assessed the compensation as follows:

- i. Rs.8,64,000/- (Rs.8,000/- X ½ X 12 X 18) under the head of loss of income;
- ii. Rs.10,000/- under the head of transport expenses;
- iii. Rs.10,000/- under the head of funeral expenses;
- iv. Rs.25,000/- each to the claimants 1 and 2 under the head of loss of love and affection.

In total, this Court awards Rs.9,34,000/- as compensation to the claimants. After deducting the initial compensation of Rs.2,52,260/-, this Court awards Rs.6,81,740/- as additional compensation with interest at the rate of 7.5% per annum.

10. This Court directs the second respondent / Insurance Company to deposit the entire enhanced award amount with interest as mentioned above, and costs, to the credit of M.C.O.P.No.219 of 2011, on the file of the Motor Accident Claims Tribunal / Sub Court, Mannargudi, within a period of six weeks from the date of receipt of a copy of this Judgment. After such a deposit being made, it is open to the claimants to withdraw the entire award amount equally after filing a memo along with a copy of this Judgment.

11. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and Decree, dated 15.07.2013, made in M.C.O.P.No.219 of 2011, on the file of Motor Accident Claims Tribunal, Sub Court, Mannargudi, is modified. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

krk

To:

The Sub Judge, Motor Accident Claims Tribunal,
Mannargudi.

+ 1 cc to M/s. Kamala Rani, Advacate SR.59367

+ 1 cc to M/s. T. Ravichandran, Advocate sR.59422

Copy to: The Branch Manager,
The United India Insurance Company,
NO.53/11, SBI Building, Salem Road,
Rasipuram, Namakka, District

C.M.A.No.2971 of 2014

RSK(CO)

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