

In the High Court of Judicature at Madras

Dated :: 23..01..2015

Coram ::

The Hon'ble Mr. Justice V. Dhanapalan
and
The Hon'ble Mr. Justice G. Chockalingam

C.M.A. No: 164 of 2013

United India Insurance Co. Ltd.
SNS Complex
Near Telephone Exchange
L.B. Road, Adyar
Chennai - 20. Appellant/2nd Respondent in Trial Court

-vs-

1. S. Rajasekaran
S/o. Srinivasan
Inspector of Police
77 Ramanathapuram
Ammappettai, Salem.

2. Minor R. Gokulraj
S/o. Rajasekaran

3. Minor R. Harini
D/o. Rajasekaran

[R.2 and R.3 are minors represented
by their father and natural guardian R.1]

4. Lakshmi
E, 349-B Circle Office Road
Maramalapuram
Sankar Nagar
Tirunelveli District - 627 001. Respondents/
Petitioners 1 to 3 and First
Respondent in Trial Court

Civil Miscellaneous Appeal under Section 173 of the Motor
Vehicles Act, 1988 against the judgment and decree dated 30.12.2009
made in M.C.O.P. No: 1700 of 2007 on the file of the MACT (I ADJ)
at Salem.

For appellant :: M/s. T. Ravichandran
For R.1 to R.3 :: Mr. N.A. Ravindran
For R.4 :: Ex-parte (in Tribunal below)

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J U D G M E N T
(Judgment of the Court was
delivered by V. Dhanapalan, J.)

This Civil Miscellaneous Appeal is directed against the award of the Motor Accident Claims Tribunal (I Additional District Judge), Salem, made in M.C.O.P. No: 1700 of 2007 dated 30.12.2009, wherein as against the claim of Rs.50 lakhs, the Tribunal has awarded a sum of Rs.23,99,316/- with 7.5% interest.

2. The case of the claimants before the Motor Accident Claims Tribunal is that the claimants and their relatives, on a pilgrimage tour to Tirupathi, hired two vehicles on 29.05.2007. On 01.06.2007 morning at 5.00 a.m. they were returning from Thiruvannamalai to Salem. When they were nearing S.V.R. Kalyana Mandapam at Theevattipatti, the lorry bearing Registration No: TN 45 B 3976, being driven by its driver in a rash and negligent manner, dashed against the vehicle bearing registration No: TN 33 AW 1, due to which the deceased Prema died on the spot. Claiming a sum of Rs. 50 lakhs as compensation, the claimants approached the Tribunal. On consideration of the oral and documentary evidence, the Tribunal has awarded a sum of Rs.23,99,316/- with 7.5% interest. Challenging the said award, the insurance company has filed the present appeal.

3. Learned counsel appearing for the appellant would attack the award of the Tribunal on the ground that the Tribunal has committed grave error in awarding compensation to the claimants in the absence of any documentary evidence to show that the accident had occurred due to the negligent driving of the lorry by its driver and that it has not considered the fact that the fault was on the vehicle driven on the opposite side also. The amount fixed as monthly income and the consequent fixation as loss of income are unsustainable. The adoption of multiplier was on the higher side and that the husband of the deceased cannot be said to be a dependant as he was working in Police Department and was having his own income. According to the learned counsel for the appellant, on these grounds, the award is unsustainable in law.

4. On the other hand, the learned counsel appearing for the claimants / respondents would contend that the Tribunal has on consideration of the oral and documentary evidence has arrived at a just compensation and it needs no interference at the hands of this Court.

5. We have heard the learned counsel on either side and perused the material documents made available on record.

6. The learned counsel for the appellant has submitted that the Tribunal, on consideration of the oral and documentary evidence, had confirmed the negligence aspect on the driver of the insured lorry and therefore, no serious contest has been made on the liability part and thus, the focus is on the quantum aspect

alone. He contends that the loss of income arrived at by the Tribunal is very much on the higher side and that since the husband of the deceased is working in the police department, he cannot be said to be a dependent of the deceased and therefore, the amount awarded in toto should be reduced.

7. On the other hand, learned counsel appearing for the respondents / claimants submits that the deceased Prema was working as a teacher in Municipal Middle School in Suramangalam and was drawing a decent salary and that the Tribunal has only taken her monthly salary into account and it cannot be faulted with. On the question of dependency, learned counsel would submit that in the case of death of a wife, the husband and children are naturally dependants, irrespective of the fact that they are earning on their own or not, and the appellant cannot have a grievance on that score.

8. We have heard the learned counsel on either side and perused the material documents on record.

9. It is seen that the claim has been made by the claimants for the loss of the deceased Prema, who met with an accident on 01.06.2007 at about 5.00 a.m. when they were returning from Thiruvannamalai after visiting various temples on pilgrimage. When they were nearing S.V.R. Kalyana Mandapam at Theevattipatti, the lorry bearing Registration No: TN 45 B 3976, being driven by its driver in a rash and negligent manner, dashed against the vehicle bearing registration No: TN 33 AW 1, causing instantaneous death of the deceased Prema and others suffering injuries. Immediately, it was reported to the Deevattipatty Police Station by Uma Maheswari who had travelling along with the deceased and the same was registered as F.I.R. No: 241 of 2007 for the offences under Sections 279, 337 and 304 (A) I.P.C. The claimants are two minor children a son by name Gokulraj aged about 7 years studying III standard in Holy Cross Matriculation Higher Secondary School and the younger one being the daughter by name Harini aged about 5 years studying in UKG at Chuny Matriculation Higher Secondary School. The husband of the deceased was employed as a Sub Inspector of Police.

10. At the time of death, deceased Prema was aged about 32 years. She was a science graduate with a degree in Bachelor of Education. She is employed as a teacher in Municipal Middle School in Suramangalam. Her last drawn monthly salary was Rs. 12,500/-. Her prospects of improving her earning is manifold particularly because she was imparting education during the evening hours to the higher secondary students for their entry into professional colleges. She was earning about Rs. 10,000/- per month from and out of this part time job. Hence she was able to give her children the best of education, comfort and other needs in life. According to the claimants, if the deceased had continued to serve in the school, the promotion and increment in her salary are part of her employment and she would have served for another uninterrupted period of 26 years and her income would have arisen at an

unimaginable and eviate rate. She would have been designated to the rank of DEO and therefore, the pecuniary benefits the two children would have secured would have been in part with the salary of the deceased. Hence, the pecuniary benefits should behest in the Zeal of aiding the dependants to get out of the shock and agony besides the loss of love and affection.

11. On the background circumstances the Tribunal has considered the oral evidence of P.W. 1 the husband of the deceased and the documents marked Exs. P. 1 to P.7. The first claimant is the husband of the deceased and the second and third claimants are the minor son and daughter of the deceased Prema. Ex.P.7 is the salary certificate of the deceased Prema which evidences the fact that her monthly salary is Rs. 12,223/-. She has got 24 years of service. Therefore, her monthly income at the time of her retirement would be Rs.24,446/-. Thus calculated her monthly salary on an average would be a sum of Rs. 18,334.50 [Rs.12,223 + Rs. 24,446 x 50% = Rs.18,334.50] rounded off to Rs.18,335/-. If one third of her salary is deducted towards her personal expenses contribution to the family would be Rs.12,223/-. If calculated on this basis, the total loss of income can be arrived at a sum of Rs. 23,46,816/- [Rs. 12,223 x 12 x 16]. Towards funeral expenses and transport expenses a sum of Rs. 2,500/- is awarded; towards loss of consortium a sum of Rs. 25,000/- is awarded and for loss of love and affection a sum of Rs. 25,000/- is awarded for the children. Thus, in total, a sum of Rs. 23,99,316/- is awarded as compensation.

12. In the absence of any Cross Appeal by the respondents / claimants, the amount awarded by the Tribunal in every part is just confirmed. Though the appellant has raised certain plea, like the one that the 1st claimant cannot be termed as the dependant, etc., which in our considered opinion is not germane to the issue on hand and we hold that the compensation awarded is not excessive or against the principles of law. Therefore, finding that there is no warranting circumstance to interfere with the award, we confirm the same by dismissing this civil miscellaneous appeal. Connected miscellaneous petition is closed. There shall be no orders as to the costs.

Sd/-
Assistant Registrar
Dated:24.2.15

True Copy

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal/
First Additional District Judge 1,
Salem.

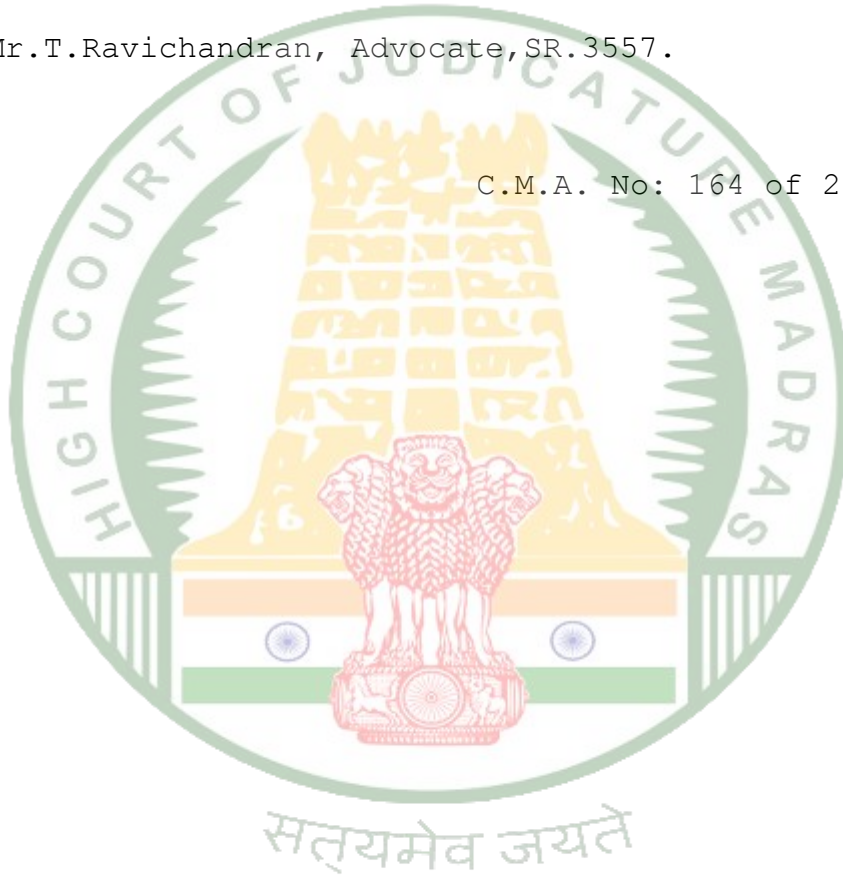
Copy to:
The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.C.Prabakaran, Advocate,SR.4074.

+1 cc to Mr.T.Ravichandran, Advocate,SR.3557.

jp(co)
krd 19/3

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