

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.08.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

C.M.A. NO. 1690 OF 2013

AND

M.P. NO. 1 OF 2013

M/s. New India Assurance
Co. Ltd., Casino Division
No.21, Pattulaos Road
Macmillan House
Chennai 600 002.

.. Appellant

- Vs -

1. Tmt. N.Bhuvaneswari
2. Mr. K.Ramnath
3. Mr. Subramanian
4. Mr. P.Kannan

.. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.02.2011, passed by the Motor Accident Claims Tribunal (Addl. District & Sessions Judge), FTC-V, Chennai, made in MCOP No.988 of 2008.

For Appellant : Mr. J.Chandran

For Respondents: No Appearance

JUDGMENT

Heard the learned counsel appearing for the appellant. There is no representation for the respondents.

2. The appellant/insurance company filed the appeal challenging the award dated 25.2.2011 passed in M.C.O.P. No.988 of 2011, by the Motor Accidents Claims Tribunal (Addl. District & Sessions Judge), FTC-V, Chennai.

3. It is a case of fatal accident. On 7.12.07, at about 4.30 p.m., when the deceased Krishnamoorthy, aged 58 years, was riding his two wheeler bearing Regn. No.TN-22-L-8645 and proceeding on the Taluk Office Road, Saidapet, opposite to Prachar Bharath Office, the car, bearing Regn. No.TN-22-AM-5582, driven in a rash and negligent manner, hit the two wheeler of the deceased and on account of the said accident, the deceased fell down and sustained grievous

injuries. The deceased was taken to the Hospital and, inspite of treatment, succumbed to the injuries and died on 12.2.08. A case was registered against the driver of the car. The respondents 1 to 3 herein, the wife and sons of the deceased Krishnamoorthy, filed a claim for compensation in a sum of Rs.25,00,000/-.

4. In support of the claim, the second claimant, viz., the son of the deceased was examined as P.W.1 and one Srinivasan was examined as P.W.2 and Exs.P-1 to P-7 were marked, the details of which are as follows:-

Ex.P-1	-	First Information Report
Ex.P-2	-	Accident Register Extract
Ex.P-3	-	Discharge Summary of Sri Balaji Hospital
Ex.P-4	-	Medical Bills
Ex.P-5	-	Death Certificate
Ex.P-6	-	Legal Heirship Certificate
Ex.P-7	-	Pay Slip of K.R.Krishnamoorthy

5. Neither oral evidence nor any documentary evidence was adduced on behalf of the appellant and the fourth respondent herein.

6. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that corroborating evidence in the form of the evidence of P.W.2, eye witness to the occurrence, has been adduced by the claimants to prove that the car was driven in a rash and negligent manner and also taking into account the documentary evidence and further there being no evidence on behalf of the appellant and the fourth respondent herein, refuting the charge on negligence, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the car and, therefore, the liability was fixed on the fourth respondent herein viz., the owner of the car and consequently the appellant, viz., the insurer of the car, was directed to compensate the claimants.

7. On the issue of negligence, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal and further no material has also been placed before this Court to come to a different conclusion than the one arrived at by the Tribunal.

8. To substantiate the monthly earning of the deceased, the claimants marked the salary slip of the deceased as Ex.P-7, which shows that the deceased was working as Special Assistant in State Bank of India, Service Branch, Royapettah, Chennai and was earning

Rs.30,168/- per month excluding perks. The Tribunal, based on the oral and documentary evidence, fixed the income of the deceased at Rs.30,000/= per month while in service. After deducting one-third towards personal expenses, the Tribunal fixed the pecuniary loss to the family at Rs.20,000/- per month. As the deceased was due to retire in a year, the Tribunal arrived at the pecuniary loss to the family at Rs.2,40,000/= for one year. Since the claimants were receiving pension of Rs.8,000/- to Rs.9,000/- per month after the death of the deceased, the Tribunal notionally fixed the contribution of the deceased to the family at Rs.60,000/- per year (Rs.5,000 X12) and considering the age of the deceased at 58 years, adopted the multiplier of 8 and arrived at the pecuniary loss at Rs.4,80,000/- (Rs.60,000 X 8). Accordingly, the pecuniary loss was arrived at Rs.7,20,000/- (Rs.2,40,000 + Rs.4,80,000). Towards loss of support, love and affection, the Tribunal awarded a sum of Rs.25,000/=. The Tribunal also awarded a sum of Rs.5,000/= towards funeral expenses. Since the claimants have not proved beyond reasonable doubt the expenses incurred towards medical aid, the Tribunal fixed the compensation at Rs.1,50,000/- towards medical expenses. In all, a total amount of Rs.9,00,000/- was awarded as compensation with interest at the rate of 6% p.a. from the date of petition till the date of deposit. From the award amount, the wife, viz., the first claimant was apportioned a sum of Rs.6,50,000/- and the other two claimants, viz., the sons were awarded a sum of Rs.1,25,000/- each.

9. On the face of the award, there appears to be no infirmity in the quantum of compensation granted by the Tribunal and the interest also is not excessive as the accident happened in the year 2007. The deceased died after taking treatment for 65 days in the hospital. No amount was granted towards mental shock and agony to the claimants, who are the wife and sons of the deceased. Further, no amount has been awarded towards "attender charges" and "transportation charges" and the sum awarded towards "loss of love and affection" is also on the lesser side. Further, no amount was awarded towards loss of consortium to the wife. However, the respondents 1 to 3 have not filed any appeal claiming enhancement of the amount under the above heads. In the above background, this Court is of the considered opinion that there is no reason to interfere with the amount awarded by the Tribunal.

10. Accordingly, finding no merit, this Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. It is stated that the appellant has deposited the entire award amount along with interest, in all totaling to a sum of Rs.10,80,736/=-, by way of demand draft, to the credit of MCOP No.988/2008, at the time of filing this appeal. The claimants/respondents 1 to 3 herein are permitted to withdraw the said amount, as apportioned to them by the

Tribunal, if not already withdrawn. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

-s/d-
Assistant Registrar (CSIV)
dt:12/10/2015

True Copy

Sub-Assistant Registrar

GLN

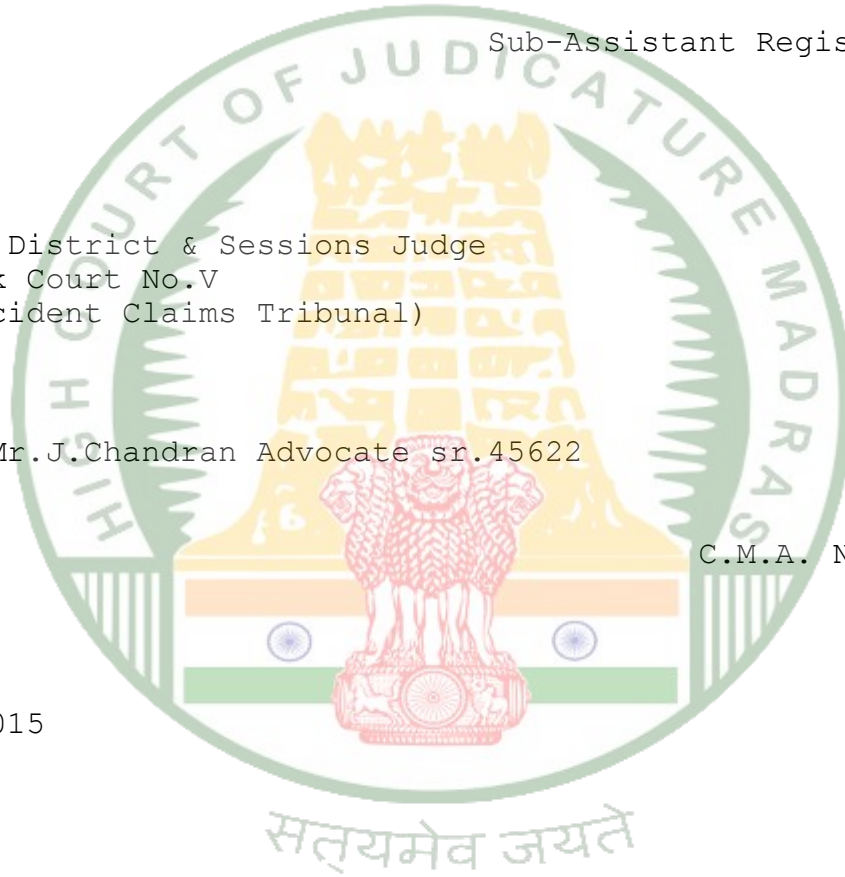
To

The Addl. District & Sessions Judge
Fast Track Court No.V
(Motor Accident Claims Tribunal)
Chennai.

+1 cc to Mr.J.Chandran Advocate sr.45622

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