

In the High Court of Judicature at Madras

Dated :: 24.08.2015

Coram :

The Hon'ble Mr. Justice R. Sudhakar

Civil Miscellaneous Appeal
No. 2337 of 2007

The Oriental Insurance Company Ltd.,
Kudivata
Nellore District
Andhra Pradesh

... Appellant/2nd Respondents

-vs-

1. Tmt. Jones Roso
W/o. Roso
Pitariyar Koil Street
Santhom, Mylapore
Chennai - 600 004.

2. Mr. P. Nagabramma Rao
S/o. Nangiriya
No: 2510/21 Kontaiya Palam Gate
Umma Reddy Kanti
Nellore District
Andhra Pradesh

3. Mr. A.M.V. Adaikalam
No: 38 Mint Street
Chennai - 600 079.

4. National Insurance Co. Ltd.
No: 768 Mount Road
Chennai.

... Respondents/Petitioner
1,III and IV

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.03.2005 passed in M.C.O.P. No. 3030 of 1999 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Tract Court No:I), Chennai.

For appellant : Mr.J. Chandran

For 4th respondent : Mr. D. Bhaskaran

J U D G E M E N T

The Oriental Insurance Company Ltd. is the appellant in the above appeal challenging the award and decree dated 15.03.2005 passed in M.C.O.P. No. 3030 of 1999 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Tract Court No:I), Chennai.

2. It is a case of fatal accident resulting in the death of Nilofar, a minor girl aged 11 years. The accident in this case happened on 09.11.2008. According to the claimant, on 09.11.1998, at about 04.30 a.m., she along with her child Nilofar were travelling in a Tata Sumo Car bearing Registration No: TN 04 E 7290 to Trichy. When they were nearing Samayapuram, a lorry bearing Registration No: AP 26 T 2225 overtook the Tata Sumo in a rash and negligent manner without noticing the bus coming in the opposite direction. After seeing the bus, the driver of the lorry suddenly stopped the vehicle and in the melee, the Tata Sumo, unable to apply sudden break, dashed against the lorry and thus the accident had occurred. In spite of treatment given to her at Trichy Hospital and Thanjavur hospital, the said Nilopar died on 14.11.1998. According to the claimant, the mother of the girl, the accident occurred due to the rash and negligent driving of the lorry by its driver and hence, the 1st respondent in the claim petition as owner of the lorry and the 2nd respondent being the insurer of the lorry are liable to compensate the claimant.

3. Before the Tribunal, the appellant insurance company contended that the accident did not happen due to the negligent driving of the lorry by its driver but due to the negligent driving of the Tata Sumo Car by its driver and therefore, the appellant is not liable to compensate the claimant. It also contended that the amount of compensation claimed is on the higher side.

4. In the very same accident, the other passengers, namely, one Viyakulamary, wife of one Adaikalam also died and one Amalorpavam sustained injuries. Therefore, along with this O.P., two other claim petitions in M.C.O.P. Nos: 3028 and 3029 of 1999 were also filed and all the three O.Ps. were disposed of by a common order dated 15.03.2005. This appeal is filed

challenging the award granted in M.C.O.P. No: 3030 of 1999.

5. In support of their respective claim, the claimants have examined P.Ws.1 to 4 and marked Exs.P-1 to P-14, the details of which are as follows:-

Ex.P-1 is the copy of FIR

Ex.P-2 is the Post-mortem report of Viyakulamary

Ex.P-3 is the copy of the judgment rendered
by III Judicial Magistrate

Ex.P-4 is the income tax particulars of Viyakulamary

Ex.P-5 is the copy of the accident register

Ex.P-6 is the legal heir certificate in respect of Viyakulamary

Ex.P-7 is the accident register in respect of Amalorpavam

Ex.P-8 is the document in respect of the medical expenses

Ex.P-9 is the document of Amalorpavam's Income Tax particulars

Ex.P-10 is the Post-mortem report of Nilofar

Ex.P-11 is the legal heir certificate of Jones Roso

Ex.P-12 is the birth certificate of Nilofar

Ex.P-13 is the disability certificate

Ex.P-14 is the X-ray

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

6. After discussing the oral and documentary evidence on record, the Tribunal fixed the monthly income of the deceased Nilofar notionally at Rs. 3,000/-. After deducting one third towards her personal expenses, a sum of Rs. 24,000/- per annum was taken as the contribution of the deceased to the family. Since the deceased is a girl aged 11 years at the time of accident, the Tribunal adopting multiplier 15, had granted a sum of Rs. 3,60,000/- towards loss of dependency of the deceased to the family. The Tribunal has also granted a sum of Rs.5,000/- towards funeral expenses and a sum of Rs.20,000/- towards loss of love and affection to the claimant. In all, the Tribunal granted the following amounts as compensation with

9% interest from the date of petition till the date of payment, as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Towards loss of dependency	Rs. 3,60,000/-
2	Towards funeral expenses	Rs. 5,000/-
3	Towards loss of love and affection	Rs. 20,000/-
	Total	Rs.3,85,000/-

7. Further, in case of any default in deposit of the amount within three months as awarded above, the Tribunal directed the insurer to pay default interest at the rate of 12% instead of 9%.

8. In appeal, the appellant contends that the Tribunal ought to have fixed the negligent on the driver of the Tata Sumo Car and the consequent liability on the owner and insurer of the Tata Sumo Car and that the compensation awarded under the various heads is on the higher side.

9. Though the appellant disputes the negligent aspect, it had not chosen to examine any witness to prove such a contention nor had it marked any documents to support its contention. In an accident of this nature, in which, almost three vehicles, namely, a Tata Sumo Car, a lorry and an omni bus were involved, it is strange to note that the appellant had not taken any effort to bring anyone into the box and had not marked even a piece of paper on its side. Such being the position, this Court is of the considered view that the conclusion arrived at by the Tribunal, which is based on the evidence, both oral and documentary, put forth by the claimant cannot be said to be unjust and unreasonable.

10. As to the quantum of compensation awarded, the claimant is the mother of the deceased Nilofar. From the claim petition filed, it is seen that the deceased was aged 11 years at the time of accident and that she was studying in 7th standard. The Tribunal, considering the age of the deceased, had decided to fix the monthly income of the deceased at Rs.3,000/- notionally and after deducting one third towards her personal expenses, a sum of Rs.24,000/- has been fixed as loss of dependancy per year to the family of the deceased. By adopting multiplier 15, the Tribunal fixed total loss of dependancy at Rs. 3,60,000/-. In addition to this, the Tribunal had granted a sum of Rs.5,000/- towards funeral expenses and a sum of Rs. 20,000/- towards loss of love and

affection.

11. This court is not inclined to interfere with the compensation granted by the Tribunal for the following reasons:-

- (1) The accident occurred on 9.11.1998. After getting treatment in the hospital at Trichy and Thanjavur, the deceased died on 14.11.1998. During the period the mother suffered mental agony.
- (2) No amount was granted towards mental agony to the mother of the deceased.
- (3) No amount was granted towards attender charges, transport charges and medical expenses.

12. However, the default interest granted at 12% cannot be justified as per the decision of the Apex Court in National Insurance Co. Ltd., - vs. - Keshav Bhahadur and others reported in 2004 ACJ 648.

13. In the result, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (1) The award in a sum of Rs.3,85,000/- granted by the Tribunal is confirmed.
- (2) The interest granted by the Tribunal at 9% per annum is also confirmed.
- (3) The default interest granted by the Tribunal at 12% per annum is set aside.
- (4) This Court by order dated 26.9.2007 directed the appellant to deposit entire award amount with interest and cost.
- (5) Hence, the claimant is permitted to withdraw the entire award amount with interest and cost.
- (6) Connected miscellaneous petition is closed.
- (7) There shall be no order as to costs.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

The Presiding Officer
Motor Accident Claims Tribunal
Additional District Court cum Sessions Court
Fast Track Court No: 1
Chennai.

copy to : The Section Officer,
V.R.Section, High court,
Madras.

AK(co)
cp 19/10/2015

C.M.A. No: 2337 of 2007



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