

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.3000 of 2009

The United India Insurance Co. Ltd.,
Divisional Office,
Valli Complex, 2nd Floor,
No.151-A, Mettur Road,
Erode - 638 001.

...Appellant/2nd Respondent

Vs.

1.C.Parimalam
2.Sumathy
3.Chitra
4.Lakshmi
5.Manjula

...1 to 5 Respondents/Petitioners 1 to 5

6.C.Dharmaraj

...6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 14.07.2009 made in M.C.O.P.No.1215 of 1999 on the file of Motor Accident Claims Tribunal, (Chief Judge, Small Causes Court), Chennai.

For Appellant : Mr.S.J.Jagadev

For Respondents : Mrs.Manoranjitham for
R1 to R5

JUDGMENT

This appeal has been preferred by the Insurance Company, against the award of Rs.1,20,000/-, for the death of one Chinnadurai, who initially sustained injuries, in the accident, which occurred on 22.09.1998 and succumbed to the injuries, later on 16.03.2000. The said award is challenged by the insurance company stating that there

is no connection between the injuries and the death caused to the deceased.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/claimants.

3. Though the learned counsel appearing for the appellant submit that there is no connection between the injuries sustained and the death, the Tribunal took into consideration the period of treatment, namely, 22.9.1998 to 02.10.1998 again on 07.10.1998 to 02.11.1998 and subsequently also from 07.08.1999 to 14.08.1999, finally, admission in the hospital from 25.09.1999 to 01.10.1999 during which period, the deceased was suffering from severe head ache and he was also suffering from fits weekly twice. He was also suffering from septic ulcer in his left foot, for which, Doctor advised, amputation of left leg. The said injuries were caused as the Lorry, insured with the appellant Insurance Company, hit against the deceased and ran over his left leg. Based on the long period of treatment for 1-1/2 years continuously and based on medical records Exs.P1 to P4, the Tribunal rightly came to the conclusion that the deceased was taking prolonged treatment for septic ulcer on his left leg and epilepsy due to the after effect of frontal bone fracture on the right side, the death was caused due to the injuries sustained by the deceased in the accident. Therefore, the finding of the Tribunal in this regard cannot be disturbed.

4. The deceased was stated to have worked as security guard, earning about Rs.2,000/- p.m. Even though there is no proof, the Tribunal only took a reasonable amount of Rs.2000/- as monthly income and after deducting 1/3rd towards personal expenses, a sum of Rs.16,000/- had been determined as annual contribution to the family and rightly adopted multiplier 13 according to the age of the deceased. Thus the loss of income was determined at Rs.2,08,000/- (Rs.24,000/- - $1/3 \times 12 \times 13$ = Rs.2,08,000/-). A sum of Rs.10,000/- was awarded towards loss of consortium to the first respondent, Rs.10,000/- was awarded towards loss of love and affection and Rs.137/- was towards medical expenses, as per Ex.P5 and Rs.5,000/- was towards funeral expenses which remains unaltered and the same are confirmed. The Tribunal had rightly determined the compensation at Rs.2,33,137/- along with interest at the rate of 7.5% p.a. and the Tribunal restricted the compensation as Rs.1,20,000/-, since the claimants claimed only Rs.1,20,000/- as compensation. When the Tribunal determined the loss of income at Rs.2,33,137/- merely because, the claimants restricted the compensation at Rs.1,20,000/-, it is not an automatic and the Court/Tribunal should pay the said

amount determined. Therefore as per the amount determined by the Tribunal at Rs.2,33,137/- along with interest at the rate of 7.5% p.a. with costs is awarded.

5. The Civil Miscellaneous Appeal is dismissed with the enhancement invoking Order 41 Rule 33 by re-appreciating the evidence as the appeal is in continuation of the original proceedings. No costs.

6. The appellant Insurance Company is directed to deposit the entire enhanced amount along with interest and costs within a period of four weeks from the date of receipt of copy of this order. On such deposit, the respondents/claimants are permitted to withdraw their respective share as fixed by the Tribunal within one week on payment of requisite Court fee.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rrg

To

The Motor Accident Claims Tribunal,
(Chief Judge, Small Causes Court),
Chennai.

1 CC to Mr.S.J.Jagadev, Advocate SR.No. 10702

1 CC to Mrs.Manoranjitham, Advocate SR.No. 10624

C.M.A.NO.3000 of 2009

RSY (CO)
PSI (08.06.2015)

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