

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.2589 of 2012
& M.P.No.1 of 2012

The Divisional Manager,
M/s.Oriental Insurance Co. Ltd.,
Pondicherry.

.. Appellant/2nd respondent
Vs.

1. Kandiban
2. Dhanalakshmi
3. Subashini
4. Mr.Sridhar
(4th respondent ex-parte
in lower Court)

..Respondent 1to3/Claimants
..4th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award, dated 27.02.2012 made in M.A.C.T.O.P.No.146 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Pondicherry.

For appellant : Mr.N.Vijayaraghavan
For respondents : Mr.C.Munusamy for M/s.C & K Law Firm
for RR-1 to 3

JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

The Civil Miscellaneous Appeal is preferred by the Oriental Insurance Company against the Award, dated 27.02.2012 made in M.A.C.T.O.P.No.146 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Pondicherry.

2. The respondent 1 to 3/claimants have filed the claim petition before the Tribunal stating that the first and second claimants are the parents of the deceased Thanigaivelan @ Thanigaivel and the third claimant is the unmarried sister of the deceased. The deceased was a graduate and was working as Engineer in J.J.Polymers and getting a salary of Rs.18,000/- per month. He was the only earning member in his family. His family was mostly depending upon the income of the deceased. On 11.10.2006 at about 8.30 a.m. at Pondy Villupuram Main Road, opposite to Balaji Jewellery, Vadamangalam, Villianur Commune,

Pondicherry, when the deceased was riding his motor-cycle bearing Registration No.PY-01-W-6517 from West to East slowly by keeping left, at the time, a Tractor bearing Registration No.TN-32-X-3141, belonging to the fourth respondent herein and driven by one Purushotharaman, in a rash and negligent manner with high speed, came from opposite direction and hit the motor-cycle of the deceased, thereby he was thrown away from the motor-cycle and he succumbed to the injuries on the spot. Due to the death of the deceased, his family is suffering a lot for financial assistance. The motor-cycle was also damaged. The accident has taken place due to the rash and negligent driving of the driver of the fourth respondent herein. Since the fourth respondent's vehicle is insured with the appellant-Insurance Company, they are liable to pay the compensation and hence, the claimants have filed the claim petition claiming compensation of Rs.40 lakhs.

3. The appellant-Insurance Company filed counter statement before the Tribunal denying that the fourth respondent's vehicle was driven in a rash and negligent manner, causing the death of the deceased. The accident occurred only due to the negligence of the deceased. They further deny that the fourth respondent's vehicle was insured with them at the relevant time. The claimants have to prove the occupation and income of the deceased and his death. The claimants have to prove that the driver of the fourth respondent was having valid driving licence, permit and R.C. on the date of occurrence. They further stated that the claim of the claimants is exorbitant and prayed for dismissal of the claim petition.

4. Before the Tribunal, the first claimant-father was examined as P.W.1, besides P.Ws.2 and 3 and on their side, Exs.P-1 to P-17 were marked. On the side of the appellant-Insurance Company, no one was examined and no document was marked.

5. The Tribunal, on a consideration of the above oral and documentary evidence, came to the conclusion that the accident occurred only due to the rash and negligent driving of the fourth respondent's driver and not due to the deceased and held that the appellant-Insurance Company is liable to pay the compensation to the claimants and thereby, awarded a compensation of Rs.18,30,000/-, with interest at 7.5% per annum from 11.12.2006 till the date of payment, under the following heads:

Sl. No.	Head under which the amount was awarded by the Tribunal	Award amount in Rs.
1	Loss of earnings	18,00,000
2	Loss of love and affection	25,000
3	Funeral expenses	5,000
	Total amount awarded by the Tribunal	18,30,000

6. Learned counsel appearing for the appellant-Insurance Company submitted that he is not challenging the negligence and liability determined by the Tribunal and mainly focussed his arguments with regard to the quantum of compensation. He submitted that the monthly income of the deceased, fixed by the Tribunal is on the higher side. He fairly submitted that the Tribunal failed to consider the future prospects of the deceased and it wrongly deduced 1/3 towards his personal expenses, instead of one-half, as the deceased was a Bachelor.

7. Learned counsel for the respondents 1 to 3/claimants submitted that the Tribunal has awarded the compensation based on oral and documentary evidence and the same is just and proper and hence, it may not be interfered with.

8. Heard the learned counsel appearing on either side and perused the material documents available on record.

9. As there is no challenge to the aspect of negligence and liability, we are not dealing with the same and the award of the Tribunal on this aspect is hereby confirmed.

10. With regard to the loss of earnings determined by the Tribunal, as rightly submitted by the learned counsel for the appellant-Insurance Company, the monthly income of the deceased should have been fixed at Rs.10,500/- instead of Rs.12,500/-, as he was Bachelor. Further, with regard to the future aspects of the deceased, no amount was awarded by the Tribunal and it is appropriate to award 50% of the monthly income towards his future prospects, thereby, the monthly income is arrived at Rs.15,750/- ($10,500 + 50\%$ of 10,500 (i.e. Rs.5,250/-) = 15,750). Thus, the annual income of the deceased is arrived at Rs.1,89,000/- ($\text{Rs.15,750/-} \times 12$). The Tribunal deducted 1/3 towards the personal income of the deceased. Considering the age of the deceased and he being Bachelor, it is proper to deduct one-half towards his personal expenses. Thus, the personal expenses would be at Rs.94,500/- ($1,89,000 - 1/2$ of 1,89,000 (i.e.94,500) = 94,500). The Tribunal adopted multiplier "18", which is confirmed. Thus, the loss of earnings is determined at Rs.17,01,000/- ($\text{Rs.94,500/-} \times 18$).

11. Coming to the aspect of loss of love and affection to the claimants on account of the death of the deceased, it is seen that the Tribunal has totally awarded Rs.25,000/- to all the claimants on that account, which is a paltry sum, considering the relationship of the claimants with the deceased as the claimants are parents and sister of the deceased. Hence, it is appropriate to award Rs.1,00,000/- to the parents of the deceased and Rs.20,000/- to the sister of the deceased, which are hereby awarded. The Tribunal has awarded a sum of Rs.5,000/- towards the funeral expenses, which is

hereby enhanced to Rs.9,000/-. Thus, the total compensation works out to Rs.18,30,000/-. In effect, there is no change in the total amount of compensation awarded by the Tribunal. The interest at 7.5% p.a. awarded by the Tribunal is hereby confirmed.

12. The amounts awarded by the Tribunal and this Court, as noted above, are shown below:

Sl. No.	Heads under which the amounts were/are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court in this Appeal (in Rs.)
1	Loss of earnings	18,00,000	17,01,000
2	Loss of love affection	25,000	1,00,000 (to parents) 20,000 (to sister)
3	Funeral expenses	5,000	9,000
	Total amount	18,30,000	18,30,000

13. In the result, though there is modification of the award amount under the heads, the total award of the Tribunal remains unchanged. Accordingly, the appeal is disposed of in the above terms. The award of the Tribunal at Rs.18,30,000/- is hereby confirmed, with 7.5% interest per annum from 11.12.2006 till the date of payment by the appellant-Insurance Company to the claimants (respondents 1 to 3 herein). The award amount shall be shared by all the claimants equally. The amount(s), if any lying in Bank Deposit / Court Deposit shall be disbursed to the respondents 1 to 3/claimants directly by the Tribunal, without insisting on any formal application from them. The amount, if any already withdrawn by the respondents 1 to 3/claimants during the pendency of this appeal, shall be adjusted from the total award amount. The remaining amount of compensation shall be paid by the Tribunal to the respondents 1 to 3/claimants, expeditiously, without insisting on any formal application from them. No costs. The Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

CS

Copy to

1. The Motor Accidents Claims Tribunal
(Principal Subordinate Court), Pondicherry.
 2. Record Keeper, V.R. Section, High Court, Madras.
- + 1 cc to Mr.N. Vijayaraghavan, Advocate SR.4981
+ 1 cc to Mr.C. Munusamy, Advocate SR. 4679

C.M.A.No.2589 of 2012

SV(CO)
EU 04.03.2015



WEB COPY