

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:07.09.2015

DATED:09/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2938 of 2013

1.Rani  
2.Rajeshwari  
3.Minor.Maheswari  
4.Minor.Venkatesa Perumal  
5.Minor Madeshwaran ... Appellants/Petitioners,  
(Minor 3 to 5 Rep.by its,  
their Mother, 1<sup>st</sup> petitioner Rani)

Vs.

1.Nandhakumar  
(R1-remained exparte before the Tribunal)

2.The Divisional Manager,  
Oriental Insurance Company Limited,  
No.75, Krishnan Street,  
Thiruvannamalai.

.... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Award made in M.A.C.T.O.P.No.585/2008, dated 25.08.2010, on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

For Appellant : Mr.P.Terry Chellaraja

For Respondents : Mr.S.Manohar for R2  
Exparte-R1

J U D G M E N T

The short facts of the case are as follows:-

On 08.02.2008 at about 10.30 p.m., when the deceased was proceeding on his bicycle on the Chengam Main Road, the bus bearing registration No.TN-25H-7935, driven at a high speed dashed against him. As a result, he sustained injuries and succumbed to it inspite of medical treatment. Hence, the legal heirs of the deceased had filed a claim petition against the owner and insurer of the vehicle.

2. The Insurance Company had filed a counter statement and resisted the claim. The respondent denied the occurrence of accident and averments regarding age, occupation and income of the deceased. Further, the driver of the bus did not possess valid driving licence at the time of accident. Further, the deceased had ridden his bicycle in a negligent manner due to which the accident had happened.

3. After considering the averments of both parties, the Tribunal had framed three issues and recording the evidence of two witnesses on the side of the claimants and perused the three exhibits marked by the claimant. On the side of the respondents, no evidence, no documentary proof. After recording the evidence, the Tribunal granted a sum of Rs.4,23,000/- with the quantum of compensation, the claimant has filed the above appeal.

4. The highly competent counsel Mr.P.Terry Chellaraja, appearing for the claimants submits that the accident had been committed by the driver of the bus and hence F.I.R has been registered against him. The offending vehicle had been insured with the Insurance Company. The deceased's age was 40 years and he was an employee, attached to the housing scheme, Co-operative Society and earning Rs.10,000/- per month. Besides, he also earned money through agricultural operations. The Tribunal had fixed the income of the deceased as Rs.2,000/- per month which is on the lower side. The claimants are five in numbers and therefore deduction for personal expenses has to be  $\frac{1}{4}^{\text{th}}$  of income but the Tribunal had deducted  $\frac{1}{3}^{\text{rd}}$  of income, which is not appropriate. Hence, the learned counsel entreats the Court to grant adequate compensation.

5. The very competent counsel Mr.Manohar, appearing for the Insurance Company submits that the claimants have not produced any income proof. Further, the vehicle had not been covered with valid documents and the driver of the bus did not possess valid driving licence. However, in the absence of income proof, the Tribunal had assessed an adequate compensation and granted the same.

6. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side, this Court is of the view that the Tribunal had fixed the income of the deceased as Rs.2,000/- after subtracting  $\frac{1}{3}^{\text{rd}}$  of his income i.e., Rs.1,000/- for his personal expenses, which is on the lower side. Further, the claimants are 5 in numbers and therefore deduction of personal expenses of deceased has to be only  $\frac{1}{4}^{\text{th}}$  of income. The compensation granted on the other heads are also on the lower side. Hence, this Court grants an additional compensation on the following heads.

Rs.2,00,000/- under the head of loss of earning;

Rs.60,000/- under the head of loss of love and affection to the claimants 2 to 5;

Rs.15,000/- under the head of loss of consortium to the 1<sup>st</sup> claimant;

Rs.18,000/- under the head of funeral expenses;

Rs.7,000/- towards transport charges

In total, this Court awards a sum of Rs.3,00,000/- as additional compensation. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation. The appeal value is Rs.3,00,000/- and hence the above appeal is allowed with the above observations of this Court.

7. This Court directs the Insurance Company to deposit the additional compensation amount with interest within a period of six weeks from the date of receipt of this order. After such deposit being made, it is open to all the claimants to withdraw their apportioned share amount, with accrued interest thereon, equally among themselves, after filing a memo along with a copy of this order, before the Trial Court. Accordingly, the above appeal is allowed. There is no order as to costs.

Ub

Sd/-  
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,  
District Judge, Thiruvannamalai.

+1 C.C. To M/S.M.Malar, Advocate in SR.NO.49305

Pre-delivery order made in

C.M.A.No.2938 of 2013

CTK(CO)  
sd : 19/10/2015