

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.3428 of 2012

1.Bernath Mary
2.Arockia Mary
3.Devanathan
4.Leo Selvanathan
5.Anitha Sagayamary ... Appellants/Petitioners

Vs.

1.S.Raju
2.Iffco Tokio Insurance Company Ltd.,
2nd floor, No.28, (Old No.195),
North Usman Road, T.Nagar, Chennai - 17.
(First Respondent Exparte in Lower Court, Hence
Summons may be dispensed with) ... Respondents /Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.3778 of 2006, dated 31.01.2008, on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant :M/s.V.Mohan Choudary

For Respondents :Mr.M.B.Gopalan for R2
Exparte R1

J U D G M E N T

On 10.07.2006 at about 04.45 a.m., and at that point of time, the driver of the auto bearing registration No.TN-02P-5676, had driven it in a rash and negligent manner on the E.V.R Salai. As a result, the auto capsized and the (deceased) had succumbed to his injuries. Hence, the legal heirs of the deceased have filed the claim petition against the owner and insurer of the Auto.

2. The Insurance Company had filed a counter statement and opposed the claim petition. The respondent submits that the vehicle was not covered under valid insurance policy. The driver of the auto was not having valid driving licence and the vehicle was not covered under valid permit. Further, the accident had occurred in an inevitable manner in order to prevent collusion with a lorry coming from the opposite direction. Hence, the driver of the auto had applied brakes and as such the accident had been committed.

3. After considering the averments of both parties, the Tribunal had framed three issues. On the side of the claimants, two witnesses were examined and six documents were marked. On the side of the respondents one witness was examined and three documents were marked. After recording the evidence of the witnesses and on perusing the exhibits marked by both parties, the Tribunal had awarded a sum of Rs.2,32,000/- with interest. Not being satisfied by the quantum of compensation, the claimants have filed the above appeal.

4. The highly competent counsel Mr.V.Mohan Choudry, submits that at the time of accident, the deceased was aged about 59 years and he was hale and healthy. The deceased was involved as a Coolie worker and he was earning Rs.200/- per day. The deceased was the breadwinner of the family. After his death, the claimants have been put into hardship for their livelihood. The Tribunal had fixed the income of the deceased as Rs.4,000/- per month and deducted 1/3rd of it for his personal expenses. The claimants are 5 in numbers and as such the Tribunal has to deduct only 1/4th of income for the personal expenses of the deceased. Actually, the income of the deceased was Rs.6,000/- per month. However, the Tribunal had not granted an adequate compensation under the relevant heads.

5. The very competent counsel Mr.M.B.Gopalan, appearing for the Insurance Company submits that the claimants had not produced any documentary proof for income of the deceased. However, considering the age and nature of work of the deceased and dependency on the deceased, the Tribunal had granted an adequate compensation. Except the 1st claimant, no one else is depending on the income of the deceased. Hence, the Tribunal had adopted proper multiplier after deducting 1/3rd of income for personal expenses of deceased.

6. On considering the facts and circumstances of the case and arguments advanced by the very competent counsel on either side and on perusing the typed set of papers, this Court grants a sum of Rs.3,00,000/- as additional compensation, since the deceased was aged about 59 years and he was involved in labour work as Coolie. The said amount has been granted under the head of loss of income, loss of consortium of the 1st claimant,

loss of love and affection of other claimants, funeral expenses and transport. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till 31.01.2008 and from 18.08.2011 till date of deposit of the said compensation amount. As such the above appeal is allowed.

7. The said compensation amount has been apportioned as follows: The 1st claimant is entitled to receive a sum of Rs.1,00,000/- with proportionate interest and the other claimants 2 to 5 are entitled to receive Rs.50,000 each with proportionate interest. This Court directs the Insurance Company to deposit the said amount within a period of six weeks from the date of receipt of a copy of this order. After such deposit being made, it is open to the claimants to withdraw their respective share amount with proportionate interest thereon, after filing a memo along with a copy of this order before the Trial Court. There is no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ub

To
1.The Chief Judge,
Motor Accident Claims Tribunal,
Chennai

2.The Section Officer,
VR Section, High Court, Madras

+1 cc to Mr.V.Mohan Choudary Advocate sr.52814

C.M.A.No.3428 of 2012

kjl(co)
aa28/10/2015