IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.3633 of 2012

The legal Manager,
M/s.Royal Sundaram Alliance Insurance Company Limited,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai - 600 014.

...Appellant

Vs.

1.Valli @ Valliyammal

2.Mr.Rajamani
(2nd respondent exparte in Lower Court and hence notice may be dispensed with)

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Award made in M.C.O.P. No.281 of 2010, dated 03.07.2012, on the file of the Motor Accident Claims Tribunal, Tindivanam.

For Appellant :Mr.N.Vijayaraghavan

For Respondents : Mr.G.Anabaya Chozhan for R1
Exparte for R2

J U D G M E N T

The short facts of the case are as follows:-

On 28.03.2010, at about 08.55 a.m., when the deceased was riding a two wheeler bearing registration No.TN-07E-0713, on the Dindivanam main road, the lorry bearing registration No.TN-32Q-1778 coming from the same direction and driven at a high speed and in a negligent manner dashed against him. As a result, the rider of the motorcycle had sustained injuries and succumbed to it. Hence, the claim petition has been levelled against the owner and insurer of the lorry.

2. The Insurance Company had filed a counter statement and opposed the claim. The averments regarding occurrence of accident due to driver of the lorry was denied. The lorry had not been covered under valid documents. The averments

regarding age, income and occupation of deceased was denied. The Tribunal, after recording averments of both parties, had framed three issues. On the side of the claimant, two witnesses were examined and six documents were marked. On the side of the respondents, no witness, no documentary proof. After recording evidence of the witnesses and on perusing the exhibits marked by the claimant, the Tribunal had granted a sum of Rs.9,40,000/- with interest at the rate of 7.5% per annum. Against the said award, the Insurance Company has filed the above appeal.

3. The highly competent counsel Mr.Vijayaraghavan appearing for the appellant submits that the offending lorry had not been covered under valid documents. Besides, the deceased's income was not proved through documentary proof. Actually in the said accident, two vehicles had been involved. As such, the owner and insurer of the two wheeler ought to have been impleaded but the same was not done. Further in the instant case, contributory negligence has to be fastened on the deceased but this was also not considered. Hence, the learned counsel entreats the Court to set aside the award.

4. The highly competent counsel, Mr.G.Anabaya Chozhan appearing for the claimant submits that the deceased's age was 45 years, but the Tribunal wrongly concluded that the age of the deceased was 55 years and adopted a multiplier of 11. Further, the Tribunal has not awarded adequate compensation under the head of transport and funeral expenses. The claimant is a middle aged widow and there is no one else to support her. The deceased was the breadwinner of the family. Therefore, the learned counsel requests this Court to dismiss the above appeal.

5. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the Tribunal had fixed the income of the deceased at Rs.10,000/- in the absence of income proof. Therefore, this Court fixes the income of the deceased at Rs.8,000/- per month and awards a sum of Rs.7,04,000/- (Rs.8,000x12x11x2/3) under the head of loss of income, Rs.1,00,000/- towards loss of consortium since the widow is in a deserted condition without anyone's support; Rs.40,000/- is awarded towards funeral expenses; Rs.6,000/- towards transport. In total, this Court awards Rs.8,50,000/- as compensation. As such, the above appeal is partly allowed.

6. At the time of admission, this Court had directed the Insurance Company to deposit Rs.6,00,000/- with proportionate interest. Now, this Court directs the appellant to deposit the balance compensation of a sum of Rs.2,50,000/- as per this Court's findings with interest at the rate of 7.5% per annum from the date of filing the claim till deposit of compensation. This Court directs the Insurance Company to deposit the balance compensation with interest within a period of six weeks from the date of receipt of a copy of this order.

7. After such deposit being made, it is open to the claimant to withdraw the entire compensation amount including interest thereon, after filing a memo, along with a copy of this order. Hence, the above appeal is partly allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

sd/
ASSISTANT REGISTRAR(CS-IV)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

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To

1. The Motor Accident Claims Tribunal, Tindivanam.
2. The Section Officer,
   VR.Section, High Court, Madras

+1 CC to MR.G.Anabaya Chozhan ADVOCATE. SR.NO. 51299
+1 CC to MR.N.Vijayaraghavan ADVOCATE. SR.NO. 51323

C.M.A.No.3633 of 2012

CO-KM
JD 20/10/2015