



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2015

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THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.(MD)No.743 of 2015

and

M.P.(MD).No.2 of 2015

Mahamuni .. Appellant/2nd Respondent

Vs

1.G.Marisamy

2.The Regional Manager,
Motor third Party Hub,
The Oriental Insurance Co. Ltd.,
KJR Complex,No.16, north Veli Street, Madurai.

3.A.Malarvizhi .. Respondents/Respondents

Prayer:- Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 09.01.2015 and made in M.C.O.P.No.329 of 2012 on the file of the Motor Vehicle Accident Claims Tribunal / IV Additional District Judge, Madurai.

For Appellant : Mr.K.Kumaravel

For R1 : No appearance

For R2 : Mr.K.Bhaskaran

For R3 : Mr.B.Jeyakumar

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant in the claim petition in M.C.O.P.No.329 of 2012, as against the award of the Motor Accident Tribunal/IV-Additional District Court, Madurai, seeking enhancement of compensation.

2. The first respondent herein is the owner of the offending vehicle whereas the second respondent is the Oriental Insurance Company Limited with whom the offending vehicle was insured during the relevant period. The third respondent herein who is also the third respondent/claimant in the claim petition is none other than the mother of the deceased.

3. The appellant/claimant had moved the Motor Accident Claims Tribunal/IV-Additional District Judge, Madurai with a claim



petition in M.C.O.P.No.329 of 2012 claiming a sum of Rs.12,00,000/- towards the compensation for the death of her husband one Mr.A.Vijaya Kumar in a road traffic accident said to have been taken place on 11.09.2011 at about 5.00 p.m. near Agricultural College at four way track at Madurai to Melur main road. As it is revealed from the claim petition, the deceased Mr.A.Vijay Kumar was travelling as a pillion rider in the motorcycle bearing registration No.TN-59-V-6445 from Ulaganeri to Katthapatti. The said two-wheeler was driven by one Kannan from west to east. When they were nearing Madurai Agricultural College on Madurai to Melur main road, a TATA 407 Maxi Cab bearing registration No.TN-58-T-5945 belonging to the first respondent came from the opposite direction driven by the driver in a rash and negligent manner and dashed against the motorcycle and as a result of which the deceased who was the pillion rider of the two-wheeler was thrown out which resulted in severe head injury as well as multiple injuries of all over his body. He was immediately taken to Madurai Government Rajaji Hospital. However, he had succumbed to injuries on 29.01.2011.

4. The first respondent/owner of the vehicle remained ex-parte. The second respondent/Insurance Company alone had contested the claim petition, disputing the rashness and negligence attributed to the driver of the Maxi Cab.

5. The Tribunal on appreciation of evidences both oral and documentary had proceeded to award a sum of Rs.8,20,000/-, directing the second respondent/Insurance Company to pay this amount with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Having been not satisfied with the award, the appellant being a claimant has approached this Court with this Civil Miscellaneous Appeal.

6. Heard Mr.K.Kumaravel, learned counsel appearing for the claimant/appellant, Mr.K.Baskaran, learned counsel appearing for the second respondent/Insurance Company and Mr.B.Jeyakumar, learned counsel appearing for the third respondent. Despite service of notice, the first respondent has not chosen to appear.

7. It was brought to the notice of this Court that the deceased was working as a skilled worker at Thangasaraswathi Bottle Washing Company Ltd., at Madurai and thereby, earned a sum of Rs.7,500 p.m. It is also revealed from the record that the deceased was aged about 27 years at the time of occurrence.

8. It is pertinent to note here that the second respondent/Insurance Company has not preferred any appeal. The question of disputing the negligence does not arise here.



9. Insofar as the quantum is concerned, though the claimant has claimed that the deceased was earning a sum of Rs.7,500/-, in the absence of any proof, the notional income of the deceased was determined by the tribunal at Rs.5,000 p.m. It is also to be noted that immediately after the death of the deceased, the appellant/claimant had married another man as a second husband within a few days from the date of accident. Despite this fact the Tribunal has determined the future prospects of the deceased at 50% and therefore, the monthly income of the deceased was determined at Rs.7,500/-and after allowing 50% of the deduction, the remaining one half would be 3,750/-. The Tribunal has also determined the age of the deceased at 38 years at the time of the accident instead of 27 years. Therefore, the Tribunal has selected the multiplier of 17. Accordingly, the life dependency of the family was calculated at Rs.7,65,000/-. (3750/-x12x17=7,65,000/-).

10. Mr.K.Kumaravel, learned counsel appearing for the appellant has mainly attacked the award of the tribunal only on the ground of deduction of 50%. In this connection, he would submit that as decided by the Hon'ble Apex Court in several decisions, the deduction of 1/3 towards the personal expenses of the deceased, would be very much reasonable. The submission made by Mr.K.Kumaravel was considered by this Court and accordingly, this Court finds that instead of allowing 50% of deduction i.e., $\frac{1}{2}$ it may be expedient to allow 1/3rd deduction towards the personal expenses of the deceased. Accordingly, the monthly income of the deceased could be calculated at Rs.5,000/- and on the basis of this calculation, the loss of life dependency would be Rs.10,20,000/-.

Loss of dependency of family	Rs.	10,20,000
Loss of love and affection to the mother / 3 rd respondent	Rs.	20,000
Cremation Expenses	Rs.	25,000
Transport Charges	Rs.	10,000
Total	Rs.	10,75,000

11. Keeping in view of the above fact, the appeal filed by the claimant is allowed enhancing the compensation to Rs.10,75,000/- from 8,20,000/-. It is brought to the notice of this Court that the second appellant/Insurance Company had already deposited the entire amount awarded by the Tribunal, i.e., Rs.8,20,000/- along with accrued interest and costs. The second respondent/Insurance Company is directed to deposit the remaining balance of Rs.2,55,000/- along with the proportionate accrued interest and costs from the date of the petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is entitled to receive a sum of



Rs.4,50,000/- as she has got married another man soon after the death of the deceased. The third respondent/third claimant being the mother of the deceased is entitled to receive the remaining amount. They are at liberty to withdraw the deposited amount as above stated without making any formal applications seeking permission. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims
Tribunal / IV-Additional District Judge, Madurai.

2.The Regional Manager,
Motor third Party Hub,
The Oriental Insurance Co. Ltd.,
K.J.R.Complex, No.16, North Veli Street,
Madurai.

3.The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr.K.Kumaravel, Advocate Sr.No.66259

+1cc to Mr.K.Bhaskaran, Advocate Sr.No.66232

+1cc to Mr.B.Jeyakumar, Advocate Sr.No.66404

pjl

AA/SK-SKN/03.02.2016/4p-7c

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M.P. (MD) .No.2 of 2015
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