

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. NO. 1230 OF 2014

AND

M.P. NO. 1 OF 2014

The Oriental Insurance Co. Ltd.
Gopal Roy Library Building
1st Floor, Town Hall Road
Kumbakonam. .. Appellant/ 2nd Respondent

- Vs -

1. V.Padmavathy
2. V.Geetha
3. V.Vidhya ... Respondents 1 to 3/ Claimants 1 to 3
4. G.Selvakumar
5. M/s.Cholamandalam MS General
Insurance Co. Ltd.
Sree Arthanari Towers, 4th Floor
No.114, Race Course Road
Coimbatore 641 018.
6. K.Palanisamy Gounder
7. Mrs.P. Valliathal
(RR-4, 6 & 7 set expte in lower court) .. Respondents 4 to 7
Respondents 1,3,4 & 5

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.10.2008, passed by the Motor Accident Claims Tribunal, Subordinate Court, Dharapuram made in MCOP No.851 of 2007.

For Appellant : Mr. N.Vijayaraghavan

For Respondents: Mr. Ma.Pa.Thangavel for RR-1 to 3
R-5 - Given Up
RR-4, 6 & 7 - Set ex-parte

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the claimants.

2. The appellant/insurer of the vehicle has filed the appeal challenging the award dated 24.10.2008, passed by the Motor Accident Claims Tribunal, Subordinate Court, Dharapuram made in MCOP No.851 of 2007.

3. On 13.09.2007, at about 04.30 p.m., when the deceased Varatharaj was travelling along with one Rajamani and others on the Tirupur Pollachi Main Road along with his family members in the car bearing Regn. No.TN-38-U-8523, the Jeep, bearing Regn. No.TN-39-K-3089, coming in the opposite direction, driven in a rash and negligent manner by its driver, dashed against the car in which the deceased was travelling as a result of which the occupants of the car sustained grievous injuries. While Rajamani died on the spot, the deceased died on the way to the hospital. A case was registered against the driver of the jeep.

4. The deceased at the time of accident, was doing business and was earning not less than a sum of Rs.15,000/= per month. The claimants, viz., wife and children of the deceased, filed claim petition claiming a sum of Rs.20,00,000/= as compensation.

5. In support of the claim, the wife of the deceased examined herself as P.W.1, besides examining P.W.s 2, 3 and 4, who are other injured persons/petitioners who suffered injuries in the same accident and had filed similar claim petitions and one P.W.5, Periyasamy and Exs.P-1 to P-15 were marked, the details of which are as follows:-

Ex.P-1	-	First Information Report
Ex.P-2	-	Observation Mahazar
Ex.P-3	-	Motor Vehicle Inspector's Report
Ex.P-4	-	Motor Vehicle Inspector's Report
Ex.P-5	-	Charge Sheet
Ex.P-6	-	Post mortem Certificate
Ex.P-7	-	Legal Heir Certificate
Ex.P-8	-	Driving Licence of the deceased Varatharaj
Ex.P-9	-	IT Returns paid receipt of the deceased for the year 2006-2007
Ex.P-10	-	School Certificate

Ex.P-11	-	Post mortem certificate of Smt.Rajamani
Ex.P-12	-	Legal Heir Certificate
Ex.P-13	-	Medical Records
Ex.P-14	-	Permanent Disability Certificate
Ex.P-15	-	IT Return receipt for the year 2006-2007
Ex.P-16	-	Medical Bills of Arun Hospital, Pollachi
Ex.P-17	-	Medical Bills of K.G. Hospital, Coimbatore
Ex.P-18	-	Medicine Bills
Ex.P-19	-	K.G. Hospital Chits
Ex.P-20	-	X-ray (5)
Ex.P-21	-	Photographs
Ex.P-22	-	Medical Records
Ex.P-23	-	Arun Hospital Bills, Pollachi
Ex.P-24	-	K.G. Hospital, Coimbatore Bills
Ex.P-25	-	Medicine Bills
Ex.P-26	-	K.G. Hospital Chits
Ex.P-27	-	X-ray (5)
Ex.P-28	-	Scan (2)
Ex.P-29	-	E.C.G.
Ex.P-30	-	Van Rent Receipt

Ex.P-31	-	Photographs
Ex.P-32	-	Wound Certificate
Ex.P-33	-	Permanent Disability Certificate of Chitra @ Chitradevi
Ex.P-34	-	X-ray
Ex.P-35	-	Permanent Disability Certificate of Mallika
Ex.P-36	-	X-ray

6. On the side of the respondents, one V.Palaniappan was examined as R.W.1 and Ex.R-1 was marked, the details of which is as hereunder :-

Ex.R-1	-	Driving Licence of Senthil Kumar
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7. The Tribunal based on the oral evidence of the P.W.1, the F.I.R. and also taking into account the other corroborating evidence of P.Ws.2 to 5, who were persons injured in the same accident, which has been adduced to prove that the bus was driven in a rash and negligent manner coupled with the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant to refute the testimony of the prosecution witnesses as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the jeep and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of income	-	Rs.15,60,000/=
Transportation	-	Rs.5,000/=
Funeral Expenses	-	Rs.5,000/=
Loss of Consortium	-	Rs.10,000/=
Loss of love & affection	-	Rs.5,000/=
Total Compensation	-	Rs.15,85,000/=

8. In all the Tribunal awarded a compensation of Rs.15,85,000/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

9. The only point raised by the learned counsel appearing for the appellant is that the income fixed by the Tribunal is on the higher side and has not been properly substantiated with documentary evidence.

10. Per contra, learned counsel appearing for the claimants submitted that the Tribunal has analysed the evidence threadbare and taking into consideration the income tax returns has fixed the income of the deceased and, therefore, the same requires no interference at the hands of this Court. Further, it is submitted that the compensation awarded on the other heads are on the lower side and this Court may consider enhancing the same.

11. The Tribunal has arrived at the income of the deceased on the basis of the income tax returns filed by the deceased for the year ending 2006-2007. In such circumstances, in the absence of any other credible material adduced by the appellant, this Court is of the considered view that the income fixed by the Tribunal cannot be interfered with. The income, in the considered opinion of this Court is just and reasonable. So also the multiplier fixed by the Tribunal. Accordingly, this Court holds that no interference is called for with the award passed by the Tribunal.

12. In the result, this Civil Miscellaneous Appeal is dismissed confirming the order passed by the Tribunal. This Court, by order dated 29.04.2014 directed the appellant to deposit the entire award amount and permitted respondents 1 to 3, 6 and 7 to withdraw 50% of the amount deposit. The claimants are permitted to withdraw their share as per the apportionment made by the Tribunal. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

GLN

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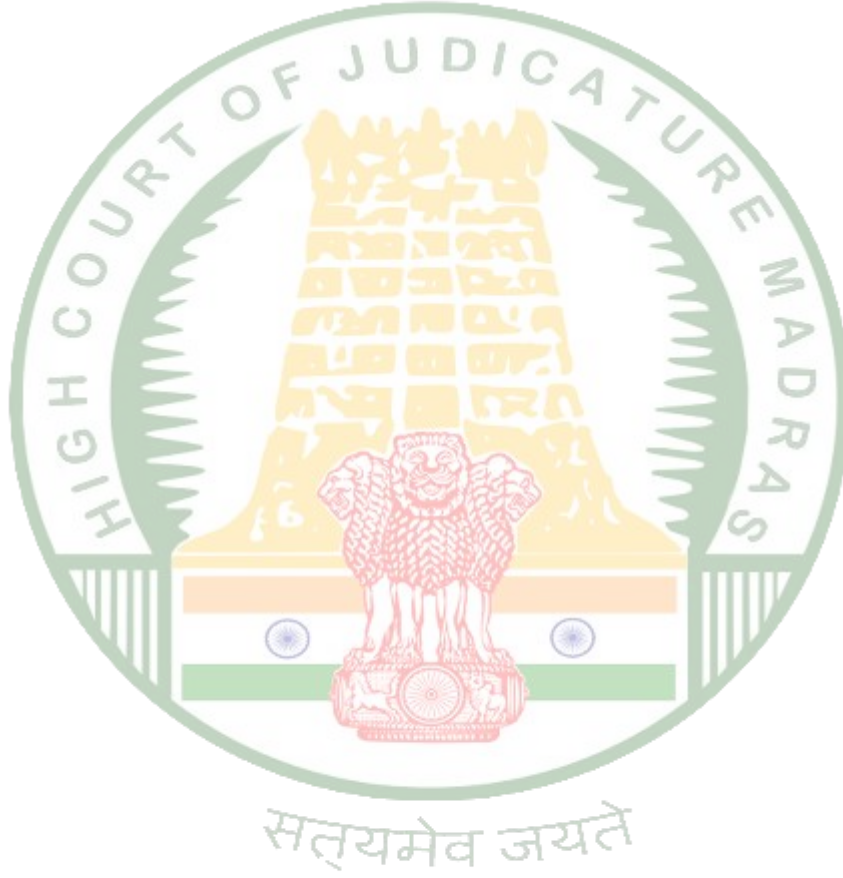
To

The Motor Accident Claims Tribunal
The Subordinate Judge
Dharapuram.

1 cc to Mr.M.B. Gopalan, Advocate, Sr. 16186
1 cc to Ma.P. Thangavel, Advocate, Sr. 15809

C.M.A. NO. 1230 OF 2014

VD (CO)
kk 24/3



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