

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A. No.2072 of 2016
and C.M.P.No.15146 of 2016

The Oriental Insurance Company Limited,
No.281, Cross Cut Road,
Gandhipuram, Coimbatore. .. Appellant/2nd Respondent

Vs.

1. P.V.Damodharan
2. Vijayalakshmi
3. Kanagaraj ... Respondents/Petitioner /
1st Respondent

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988
against the Decree and Judgment passed by the Motor Accidents
Claims Tribunal (II Additional District and Sessions Judge),
Tiruppur in MCOP No.515 of 2005 dated 28.03.2013.

For Appellant : Mr.N.Vijayaraghavan

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Being aggrieved by the award, dated 28.03.2013, made in MCOP
No.515 of 2005, on the file of the Motor Accidents Claims
Tribunal (II Additional District and Sessions Judge), Tiruppur,
the Oriental Insurance Company Limited, Coimbatore, has
preferred this appeal.

2. Short facts leading to the appeal are that on 02.02.2005,
about 12.50pm, when Prakash was riding a motor cycle bearing
Regn.No.TN38 W 1914 on Kovai Avinashi Main Road, opposite to PSG
College of Technology, a Tempo Van bearing Regn.No.TN39F 9990,
insured with the appellant-Oriental Insurance Company Limited,
driven by its driver in a rash and negligent manner, dashed
against the motorcycle, resulting in grievous injuries. Though,
the injured was provided intensive treatment in Coimbatore PSG
College, he died on 11.02.2005. In this regard, a case in
Cr.No.45 of 2005 has been registered against the driver of the
tempo van on the file of TIW East Police Station.

3. Parents filed MCOP No.515 of 2005 on the file of Motor Accidents Claims Tribunal (II Additional District and Sessions Judge), Tiruppur, claiming compensation of Rs.50 Lakhs. According to them, at the time of the accident, Prakash was aged about 22 years, and that he was in final year B.E. (Electronics and Communication), in PSG College of Technology. Before the tribunal, they have further stated that during college campus interview, he was offered employment in Cognizant Technology Solutions India Private Limited, Chennai, at an annual salary of Rs.2,11,500/-. In support of offer of employment, from the said company respondents/claimants have produced Ex.P10. To prove the educational qualifications respondents/claimants have marked Ex.P11, 10th standard marksheet, Ex.P12, 12th standard marksheet and Ex.P13, mark sheet issued by PSG College. That apart, respondents/claimants have marked, Ex.P9, medical bills and other documents.

4. Before the tribunal, the manner of accident and the quantum of compensation claimed under various heads have been opposed by the Insurance Company.

5. Evaluating the pleadings and evidence, the claims tribunal found that the driver of the tempo van bearing Regn.No.TN38F9990 insured with appellant-Insurance company was negligent in causing the accident. Determining the age of the deceased, at the time of accident as 22 years and taking note of the educational qualifications and Ex.P10, offer of employment from Cognizant Technology Solution India Private Limited, the tribunal fixed the monthly income of the deceased as Rs.15,000/- for the purpose of computing the loss of contribution to the family.

6. Following the decision of the Hon'ble Apex Court in Amrit Bhanu Shali & Others vs. National Insurance Co. Ltd & Others, reported in 2012 (2) TNMAC 321 SC, the tribunal applied '17' multiplier. Thereafter, the tribunal deducted 1/3rd towards the personal and living expenses of the deceased and computed the loss of contribution to the family as Rs.20,40,000/- (Rs.15000/- x 2/3 x 12 x 17). Tribunal awarded Rs.2,00,000/- towards loss of love and affection. On the basis of Ex.P9, medical bills, tribunal has awarded Rs.3,40,000/- for medical expenses, Rs.1,00,000/- for pain and sufferings, Rs.10,000/- for transportation and nutrition and Rs.6,000/- for funeral expenses. Altogether, the tribunal has awarded Rs.27,06,000/- as compensation with interest, at the rate of 7.5% per annum.

7. Though, Mr.N.Vijayaraghavan, learned counsel for the appellant submitted that the tribunal has erred in fixing the monthly income of the deceased at Rs.15,000/- and sought for reduction in the quantum of compensation on the ground that the tribunal has erred in deducting 1/3rd towards personal and

living expenses, when the deceased was a bachelor and that the tribunal ought to have deducted only $\frac{1}{2}$ towards personal and living expenses of the deceased, this Court is not inclined to reduce the quantum of compensation, for the reason that when Ex.P10, offer of employment from Cognizant Technology Solutions India Private Limited, Chennai, has been produced by the respondents/claimants, for an annual income of Rs.2,11,500/- the tribunal ought to have fixed the same. It could be noted that the son of the respondents/claimants was in the final year, and but for the untimely death, on completion of the course, he would have been employed in the said private company. Moreover, it is well known that Cognizant Technology Solutions India Private Limited, Chennai, is a reputed company.

8. The deceased was just 22 years at the time of accident. Considering the educational qualifications viz. Final year B.E. (Electronics and Communication) and the prospects in the said company, the tribunal ought to have considered awarding compensation under the head future prospects also, which is conspicuously absent. Award under the head funeral expenses is less.

9. Therefore, in the light of the above discussion, this Court is not inclined to interfere with the quantum of compensation and the Civil Miscellaneous Appeal is dismissed. No costs.

10. Consequent to the dismissal of the appeal, the appellant-Insurance Company is directed to deposit the entire award amount with proportionate accrued interests and costs, less the amount already deposited, to the credit of MCOP No.515 of 2005, on the file of the Motor Accidents Claims Tribunal (II Additional District and Sessions Judge), Tiruppur, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw the same, by making necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Motor Accidents Claims Tribunal,

II Additional District and Sessions Judge, Tiruppur

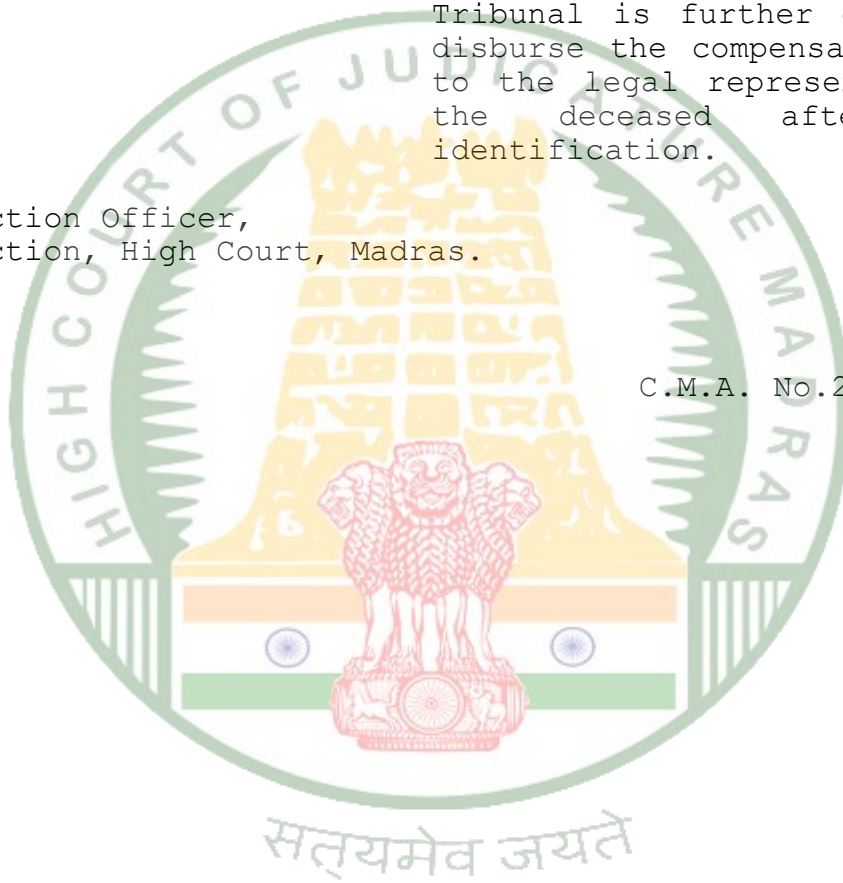
The Motor Accidents Claims Tribunal (II Additional District and Sessions Judge), Tiruppur, is directed to fix the results of the appeal in the notice board setting out the names of the parties and the MCOP Number. Tribunal is further directed to disburse the compensation amount to the legal representatives of the deceased after proper identification.

2. The Section Officer,

VR Section, High Court, Madras.

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