

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2016

CORAM

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

C.M.A.No.600 of 2015
and M.P.No.1 of 2015

The Branch Manager
New India Assurance Co. Ltd.,
F-4, Visitors Road
Block-2, Neyveli 1

... Appellant/2nd Respondent

vs.

1. Chitra
2. Minor Aravindsamy
3. Minor Akash
4. Dhanalakshmi

(Minors 2 & 3 represented by
their Mother 1st respondent herein)

..Respondents 1-4/Claimants

5. Arukkani

(Minors 3 & 4 are represented
by mother/guardian - 1st respondent)

..5th Respondents/1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 28.08.2014 passed in M.C.O.P.No.236 of 2012 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Cuddalore at Vridhachalam.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.S.Udayakumar (R1-4)
No appearance for R5

JUDGMENT

(Judgment of the Court was delivered by S.VAIDYANATHAN,J

The Insurance Company has preferred this Civil Miscellaneous Appeal challenging the Judgment and decree dated 28.08.2014 passed in M.C.O.P.No.236 of 2012 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Cuddalore at Vridhachalam.

2. It is a case of fatal accident. On 02.06.2012 at 7.30 p.m., when the deceased Krishnakumar was proceeding in his Maruthi Car bearing Registration No.TN 23/D 9415 from Ponneri to Periyar Nagar on the extreme left of the by-pass road from South to North direction, at that time, the 5th respondent's Tractor bearing Registration No.TN 31/Q 9852, which came from North to South direction in a rash and negligent manner dashed against the Maruthi Car, thereby, the deceased sustained injury and subsequently died on the same day. The wife, two children and the mother of the deceased who are the claimants have filed a claim for compensation for a sum of Rs.50,00,000/-.

3. In support of the claim, Chitra, wife of the deceased was examined as P.W.1 and one T.Ramesh was examined as P.W.2.and Exs.P-1 to Ex.P.9 were marked, the details of which are as follows:-

Ex.No.	Details
P1	xerox copy of FIR
P2	Xerox Copy of M.V.I. report
P3	Xerox Copy of R.C.Book
P4	Xerox Copy of Insurance Policy
P5	Xerox copy of driving licence for 1st respondent's vehicle driver
P6	Xerox copy of postmortem certificate
P7	Salary slip for the month of may 2012
P8	Legal heirs certificate
P9	Xerox copy of Transfer certificate

On behalf of the Insurance Company, no witness was examined and no document was marked before the Tribunal

1. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and taking note of the fact that the deceased was having valid driving licence to drive the two wheeler

came to conclusion that due to the rash and negligent driving of the driver of the offending vehicle the accident had occurred and he alone was responsible for the accident and consequently liability was fixed on the appellant, to compensate the claimants.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of estate	Rs.30,38,448/-
2	Loss of consortium	Rs. 50,000/-
3	Loss of love and affection to claimants 2&3	Rs. 1,50,000/-
4	Loss of love and affection to claimant 4	Rs. 25,000/-
5	Funeral expenses	Rs. 15,000/-
	Total	Rs.32,78,448/-

6. The learned counsel for the appellant would submit that awarding a compensation of a sum of Rs.32,78,448/- towards the death of a 44 year old, who was working as Tradesman in the Tamil Nadu State Transport Corporation, in favour of his wife, two children and the mother of the deceased is highly excessive and unsustainable. The Tribunal has erred in fixing the monthly income of the deceased at Rs.20,610/- without deducting income tax. Hence, the learned counsel for the appellant has sought for allowing of the Civil Miscellaneous Appeal.

7. On the other hand, the learned counsel for the claimants would submit that the compensation awarded by the Tribunal is not adequate and too low. The Tribunal was correct in awarding the compensation under the heading loss of income, since, the Tribunal, taking note of the fact that the deceased was working as Tradesman in the Tamil Nadu State Transport Corporation as per Ex.P.7 Salary slip and fixed the income of the deceased at Rs.20,610/-, which cannot be found fault with. Thus, the learned counsel for the claimants has sought for dismissal of the above Appeal.

8. This Court heard the submissions of the learned counsel on either side and perused the materials available on record.

9. The deceased Krishnakumar was working as a Tradesman in the Tamil Nadu State Transport Corporation and was earning a sum of Rs.20,610/- per month and by adding 30% towards future prospects and by deducting 1/4th towards personal expenses, since there are four claimants and by adopting 14 multiplier, has correctly calculated the loss of estate. The only ground taken by the learned counsel for the appellant is that income tax deduction has not been taken into account while awarding compensation. A glance of the award would clearly reveal that income tax deduction at 10% on the income of the deceased has been taken note of and the Tribunal has fixed the income. Thus, we find no error in the compensation awarded under the heading loss of estate. Further, a perusal of the Judgment of the Tribunal reveals that the compensation granted under the other heads also appear to be reasonable. Hence, we find no reason to modify the compensation awarded by the Tribunal.

10. There is no serious objection with respect the interest granted at 7.5% per annum.

11. In the above circumstances, finding no merit, the Civil Miscellaneous Appeal is dismissed. Since this Court has already directed to deposit the entire award amount and the major claimants were permitted to withdraw their respective 50% shares, the major claimants are now permitted to withdraw their balance respective shares as apportioned by the Tribunal by filing appropriate application before the Tribunal. As far as the share of the minors are concerned, the same shall be invested in a Nationalized Bank in reinvestment scheme till they attain majority. It is made clear that the interest accrued on such deposit shall be withdrawn by the 1st claimant/wife of the deceased once in three months. There will be no order as to costs in this appeal.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.

2.The Section Officer,
VR Section, High Court, Madras-104.

+lcc to Mr.N.Vijayakumar, Advocate sr.18931

+lcc to Mr.S.Udayakumar, Advocate Sr.18555

C.M.A.No.600 of 2015

kgk (CO)
srg (28/04/2016)



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