

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2016

CORAM

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

C.M.A.No.497 of 2016
and C.M.P.No.4192 of 2016

The Oriental Insurance Company Limited
Arcot Road, Vellore.

..... Appellant/2nd Respondent

Vs.

1. Vasantha

..... Respondent/Petitioner

2. Gajalakshmi

..... Respondent/1st Respondent

APPEAL filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.10.2015 made in M.C.O.P.No.884 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirupattur.

For Appellant : Mr.S.Manohar

For Respondents : Mr.PA.Sudesh Kumar - R1

J U D G M E N T
सत्यमेव जयते

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

Oriental Insurance Company Limited is on appeal challenging the award dated 28.10.2015 made in M.C.O.P.No.884 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirupattur.

2. It is a case of fatal accident. On 06.10.2012, at about 3.30 p.m. at Athurkuppam when the deceased Rajendran, aged 23 years was proceeding in a motor cycle on the extreme left side of the road, a tanker lorry bearing Registration No.TN-01-P-9279 driven by its driver in a rash and negligent manner, dashed

against the deceased Rajendran, as a result, the deceased sustained grievous injuries and died on the spot. In this regard, a case in Crime No.677 of 2012 was registered against the driver. The claimants, who are father and mother of the deceased have claimed compensation of Rs.50,00,000/-. According to the claimants, the deceased was working in Singapore as Process Maintenance and Construction Worker and was earning a sum of Rs.75,000/- per month.

3. In support of the claim, the mother of the injured was examined as P.W.1; one Poovendiran was examined as P.W.2 and Gajendiran, driver of the tanker lorry was examined as P.W.3 and Ex.P-1 to Ex.P-19 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Xerox Copy of the First Information Report
P2	Xerox copy of the post mortem certificate
P3	Xerox copy of the motor vehicle inspection report
P4	Xerox copy of R.C. Book
P5	Xerox copy of Insurance policy
P6	Xerox copy of permit (form Goods Carriage Permit)
P7	Xerox copy of driving licence
P8	Xerox copy of family card
P9	Xerox copy of passport
P10	copy of permit card
P11	Copy of welder's certificate
P12	Copy of welder's ID card
P13	Copy of Jurong Island Safety pass
P14	Copy of salary certificate
P15	Copy of death certificate
P16	Xerox Copy of death certificate
P17	Copy of legal heirship certificate
P18	Xerox copy of passport
P19	Xerox copy of work permit card

On behalf of the Insurance Company, one Samikannu was examined as R.W.1; One Venkatragavan was examined as R.W.2 and one Natarajan was examined as R.W.3 and Ex.R-1 to Ex.R-3 were marked, the details of which are as follows:-

Ex.No.	Details
R1	Xerox copy of sketch of the accident occurrence
R2	Copy of Inspection report by the Motor Vehicle's Inspector for the goods carriage
R3	Copy of Inspection report by the Motor Vehicle's Inspector for the vehicle.

4. The Tribunal based on the oral evidence of the witnesses, and the F.I.R. came to conclusion that though the driver of the tanker lorry had driven the vehicle in a wrong direction, the deceased drove an unregistered motorcycle without any licence and could have averted the accident. Hence the Tribunal fixed the liability of negligence at 25% on the deceased and 75% on the driver of the tanker lorry and consequently the appellant Insurance Company was liable to pay the compensation, since the vehicle was insured with the appellant.

5. With regard to the negligence issue, learned counsel for the appellant has submitted that in order to fill petrol, the driver of the tanker lorry took turn to the petrol bunk and the deceased without noticing the turn, hit against the lorry. Even though the Tribunal found that the deceased did not have any licence to drive the vehicle and had driven the unregistered motorcycle, the Tribunal has committed wrong in fixing the higher negligence on the driver of the tanker lorry.

6. We find that the Tribunal after taking into consideration the nature of accident and the rough sketch Ex.R.1 came to the conclusion that though there was a "U" turn, the tanker lorry did not take "U" turn, instead tried to reach the petrol bunk, which is 100 ft. away from "U" turn and hence, the driver of the tanker lorry had driven the vehicle in a wrong direction. We find that the finding of the Tribunal is correct, as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

7. As far as the quantum of compensation, 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 income (19,908x12x14)	Rs.33,44,544/-
2	Love and affection	Rs. 50,000/-
3	Loss of estate	Rs. 10,000/-

Sl. No.	Head	Amount granted by the Tribunal
4	Funeral Expenses	Rs. 10,000/-
	Total	Rs.34,14,544/-
	Less: contributory negligence at 25%	Rs. 8,53,636/-
	Total compensation	Rs.25,60,908/-

8. The objection raised by the learned counsel appearing for the appellant/Insurance company is that the loss of income arrived at by the Tribunal is on the higher side.

9. Insofar as the quantum of compensation is concerned, the Tribunal considering the salary certificate Ex.P.14 of the deceased has fixed the income at Rs.49,770/- per month. After deducting personal expenses and income tax, the Tribunal arrived at the monthly income of the deceased at Rs.19,908/- Even though the appellant/Insurance company has questioned the monthly income fixed by the Tribunal, it is seen that the Tribunal has not granted any amount towards future prospects and the multiplier adopted is also on the lower side. Hence, if the monthly income of the deceased is decreased, the same is adjusted towards future prospects and multiplier. Hence, we do not find any reason to modify the award.

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

11. Accordingly, the Civil Miscellaneous Appeal is dismissed as follows:-

- (i) The award of the Tribunal granting compensation to the tune of Rs.25,60,908/- is confirmed.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) Learned counsel appearing for the appellant seeks time to deposit the award amount. The appellant/Insurance Company is granted 8 weeks time to deposit the amount.
- (v) On such deposit, the claimant is permitted to withdraw the same.

(vii) There will be no order as to costs in this appeal.

(viii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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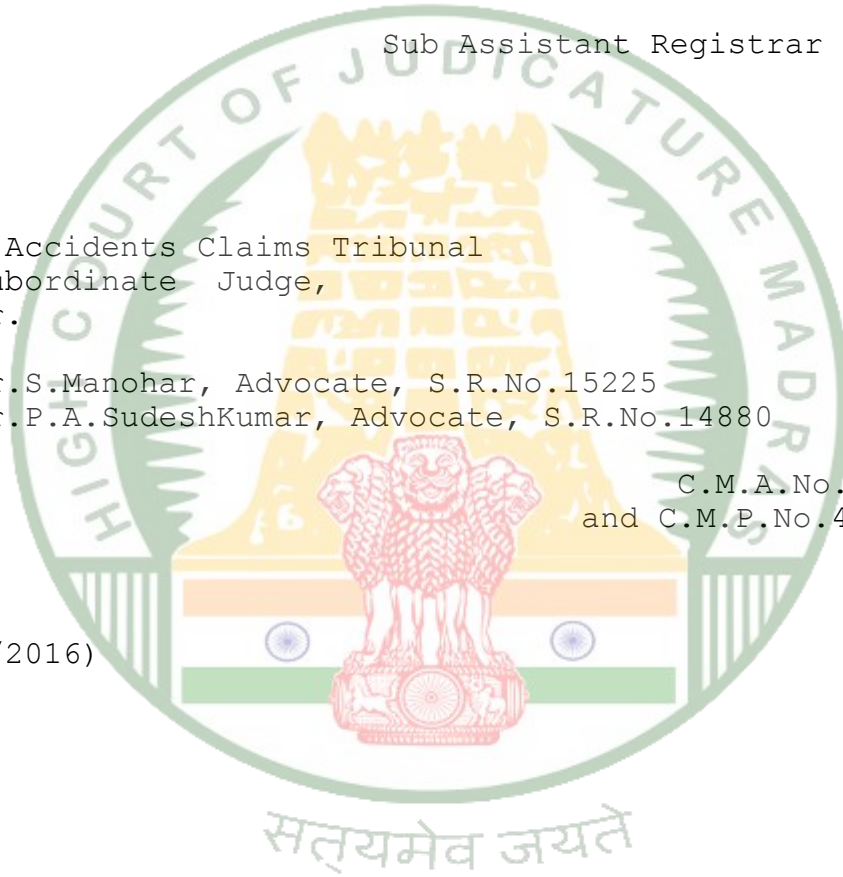
The Motor Accidents Claims Tribunal
Special Subordinate Judge,
Tirupattur.

+1cc to Mr.S.Manohar, Advocate, S.R.No.15225

+1cc to Mr.P.A.SudeshKumar, Advocate, S.R.No.14880

C.M.A.No.497 of 2016
and C.M.P.No.4192 of 2016

ksj (CO)
srg (28/03/2016)



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