IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2016

CORAM

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

C.M.A.No.762 of 2016
and CMP No.6270 of 2016

The Oriental Insurance Company Limited
Motor TP HUB
Oriental House, II Floor
No.115, Broadway, Chennai 108.
... Appellant/2nd Respondent

vs.

1. Rani
2. P.Vinoth
3. P.Vignesh
4. Minor Meenakshi
5. Palaniammal

6. Ramasamy
(4th minor rep. By her mother
1st respondent)
..Respondents 1-6/Petitioners1-6

7. M/s J.J.Transports
No.153, West Pole Pettai,
Thittakudi Tk & Dt. ... Respondent 7/Respondent 1

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 03.11.2015 passed in M.C.O.P.No.287 of 2014 on the file of the Motor Accidents Claims Tribunal (III Additional District and Sessions Judge), Virudhachalam, Cuddalore District.

For Appellant : Mr.J.Chandran
For Respondents: Mr.S.Udayakumar (R1-6)

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

The Insurance Company is on appeal challenging the Judgment 03.11.2015 passed in M.C.O.P.No.287 of 2014 on the file of the Motor Accidents Claims Tribunal (III Additional District and Sessions Judge), Virudhachalam, Cuddalore District.

2. It is a case of fatal accident. On 07.07.2014 at about 17.00 hours, when the Panneerselvam was proceeding in his motorcycle towards Vridhachalam from Karmangudi Village and when reached opposite to Golden Brick Chamber near Chittalur By-pass, the 7th respondent's lorry bearing Registration No.TN-69-J-4797, which came in a rash and negligent manner, dashed against the deceased vehicle and caused the accident, due to which, the deceased sustained injuries and was taken to Government Hospital, Virudhachalam, where, he was declared as died. The claimants, who are wife, two sons, a daughter and the parents of the deceased have filed a claim for compensation for a sum of Rs.25,00,000/-.

3. In support of the claim, the wife of the deceased was examined as P.W.1 and one C.Durai Murugan and S.Rajkumar were examined as P.W.2. and P.W.3 respectively and Exs.P-1 to Ex.P.28 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Xerox Copy of the FIR
P2	Xerox copy of MV report
P3	Xerox copy of Registration certificate
P4	Xerox copy of permit
P5	Xerox copy of Insurance policy
P6	Xerox copy of driving licence of Pazhanivel
P7	Xerox copy of driving licence of R.Panneerselvam
P8	Xerox copy of postmortem certificate
P9	Xerox copy of legal heir certificate
P10	Certificate issued by Annai Stores for employment
P11	Service certificate issued by Annai Stores
P12	Income Tax for wage month of June 2014
P13	Certificate of registration for Annai Stores
P14	General ledger from 01.04.2014 to 31.03.2010
P15	Xerox coy of driving licence of Thiru.S.Rajakumar
P16	Authorisation for partnership of Annai Stores
P17	Xerox copy of sale deed
P18	Xerox copy of agreement of sale deed
P19	Xerox coy of construction agreement deed

Ex.No.	Details
P20	Bank statement for loan particulars
P21	Xerox copy of agreement housing loan particulars
P22	Xerox copy of house tax receipts
P23	Xerox copy of challan for employees providend fund
P24	Xerox copy of Indian Bank pass book
P25	Xerox copy of partnership deed
P26	Salary details of Panneerselvam issued by Annai Stores
P27	Xerox copy of salary voucher
P28	Xerox copy of attendance register

On behalf of the Insurance Company, no witensses were examined and no documents were marked before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to conclusion that the driver of the lorry was rash and negligence and was responsible for the accident and consequently liability was fixed on the Insurance Company, being the insurer of the accident vehicle to compensate the claimants. On this issue, learned counsel for the appellant has not placed any material to come to a different conclusion from that of the conclusion arrived by the Tribunal.

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(16472 x 12 x 13)	Rs.25,69,632/-
2	Loss of Consortium to the 1st claimant	Rs. 25,000/-
3	Loss of love and affection for the 2nd to 6th claimants each Rs.25,000/-	Rs. 1,25,000/-
4	Funeral expenses	Rs. 25,000/-
	Total	Rs.27,44,632/-

6. Insofar as the compensation is concerned, a plea was raised on behalf of the Insurance Company that before the Tribunal though a plea was raised that Pay Register, Attendance Register, Service Register, etc., of the Annai Stores where the deceased were not produced to show the actual income of the deceased was worked and hence the nominal amount has to be fixed, the Tribunal, taking into account the oral and documentary evidence produced by P.W.3, Accountant of Annai Stores, fixed the monthly income of the deceased at Rs.19,800/-, which is not sustainable inasmuch as no appointment letter, basic educational qualification, pay register etc. was produced. Further, according to him, in the absence of provident fund payment, gratuity record duly attested and sealed by labour department in the attendance register, the Tribunal is erred in accepting the documents produced by P.W.3. In short, according to the learned counsel for the Insurance Company, in the absence of relevant documents, the Tribunal ought to have rejected the plea of employment as sales man and fixing the income at Rs.19,800/-. Further, according to him, the findings arrived at by the Tribunal is purely on its discretion rather than on the basis of either oral and documentary evidence available on record. As far as compensation granted under other heads are concerned, according to the learned counsel, the same is on the higher side.

Based on these, the learned counsel has sought for reduction in the compensation awarded by the Tribunal.

7. On the contrary, the learned counsel for the claimants submitted that the Tribunal is justified in granting the compensation to the claimants since, the Tribunal has granted the compensation only based on oral and documentary evidences.

8. This Court has considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. On a plain reading of the Judgment, it is very clear that the monthly income of the deceased was fixed at Rs.19,800/- based on Ex.P.26. However, as rightly contended by the learned counsel for the Insurance Company, neither any document was produced to show the qualification of the deceased nor the appointment letter was produced. Hence, in the absence of relevant documents to show the actual income of the deceased, except Ex.P.26, this Court is of the view that the income of the deceased can be fixed at Rs.12,000/- per month. Taking into account the monthly income of the deceased at Rs.12,000/-, by adding 30% towards future prospects viz., Rs.3,600/-, by deducting 1/5th towards personal expenses viz., Rs.3,120/-, the income of the deceased comes to Rs.12,480/- per month and

therefore, the annual income would be Rs.1,49,760/-, for which, no tax deduction shall be made and by adopting 13 multiplier, the loss of income would be Rs.19,46,880/-.

10. As far as compensation awarded under the head loss of consortium is concerned, the Tribunal has granted a sum of Rs.25,000/- to the wife, towards loss of consortium, who is aged around 41 years, which, in our opinion, is very meager. Hence, as per the dictum laid down by the Hon'ble Supreme Court, we are inclined to grant a sum of Rs.1,00,000/- towards loss of consortium. That apart, though the Tribunal has granted a sum of Rs.25,000/- towards funeral expenses, we are of the view that the said amount of Rs.25,000/- shall be granted under the head Transport and funeral expenses.

11. As far as the compensation awarded by the Tribunal under the heading "loss of love and affection" is concerned, though a plea has been taken that the compensation under this head is excessive, considering the fact that age of the children who were 21, 19 and 17 respectively at the time of accident and the aged parents have lost their son, we are of the opinion that a sum of Rs.2,50,000/- shall be awarded under the head "loss of love and affection.

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

13. Accordingly, the award of the Tribunal is modified as under:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of Income	Rs.25,69,632/-	Rs.19,46,880/- (12000+30%-1/5x12x13
2	Loss of Consortium	Rs. 25,000/-	Rs. 1,00,000/-
3	Loss of love and affection	Rs 1,25,000/-	Rs. 2,50,000/-
4	Funeral and Transport expenses	Rs. 25,000/- (Funeral)	Rs. 25,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
	Total	Rs.27,44,632/-	Rs.23,21,880/- rounded off to Rs.23,22,000-

14. There is no serious objection with respect to the interest granted at 7.5% per annum and the same is confirmed.

15. In the result, the Civil Miscellaneous Appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced to Rs.23,22,000/- from Rs.27,44,632/.

(ii) The interest granted at 7.5% is confirmed.

(iii) The claimants are entitled to share the compensation amount awarded by this Court as apportioned by the Tribunal.

(iv) The appellant is directed to deposit the entire award amount as ordered by this Court, after deducting the amount already deposited if any, to the credit of M.C.O.P.No.287 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Fast Track Court III, Virudhachalam, within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit, the major claimants are permitted to withdraw their share amount as apportioned by the Tribunal by filing necessary application before the Tribunal.

(vi) As far as the share amount of the minor is concerned, since the minor claimant would have attained majority now, she is also permitted to withdraw her share amount as apportioned by the Tribunal, by filing necessary application before the Tribunal.

(vii) The excess Court fee paid is directed to be refunded as per rule.

There will be no order as to costs in this appeal. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

Motor Accidents Claims Tribunal
The III Additional District and Sessions Judge,
Vrichachalam.

C.M.A.No.762 of 2016

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