IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.421 of 2011

The Divisional Manager
The New India Assurance Co.Ltd.,
No.1, Bharathi Road, Arcot Woodlands Complex
Cuddalore (Now functioning at
No.10, Big Street, Vasavi Building
Thiruvannamalai 606 601 ..Appellant/II Respondent

-Vs-

1. Thennarasi
D/o Pakkiri
2. Panimalar
D/o Pakkiri ..Respondents/Petitioners

3. S.Murugavel
(R3 remained exparte before
lower Court) ..Respondents/1st Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 31.03.2010 made in M.C.O.P.No.294 of 2008 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.II, Additional District Judge, Tindivanam.

For Appellant :: Mr.S.Jayasankar

For Respondents :: Mr.K.Subburam for R1 & R2
R3-ex parte before Tribunal

JUDGMENT

This civil miscellaneous appeal is directed against the impugned award of the Motor Accidents Claims Tribunal, Fast Track Court No.II, Additional District Judge, Tindivanam in M.C.O.P.No.294 of 2008 dated 31.3.2010.

2. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 & 2.

3. The only ground of challenge made by the learned counsel for the appellant is that the Tribunal has erroneously fixed the notional income of the deceased at Rs.5,000/- and adopted the multiplier of 11, instead of 10, while awarding the compensation towards the loss of dependancy.

4. It is not in dispute that Mr.Pakkiri, aged 50 years, the father of the respondents 1 & 2, died in a road accident on 27.4.2007 at 24.00 hours near Aruvapakkam on the Tindivanam-Puducherry Road while travelling in a car bearing Registration No.TN-07-Z-5856 owned by the third respondent, due to the rash and negligent driving of his driver, which went out of control and dashed against a tamarind tree on the left side, as a result he sustained grievous injuries and also succumbed to the injuries on the way to the hospital. Therefore the respondents 1 & 2 filed the claim petition before the Tribunal seeking a total compensation of Rs.16,00,000/- for the loss of their father in the accident. Though the said claim was resisted by the appellant contending that there was no liability on the insurance company to pay the compensation, since the vehicle was owned by the third respondent for his personal use and there was no permit to carry the other occupants and that the accident would not have happened if the driver had taken a short route without touching Tindivanam, the Tribunal held both the owner and the insurance company liable to pay the compensation on the ground that the deceased had travelled in the vehicle only on the instructions of the owner and hence the claim petition was maintainable. However, the Tribunal, in the absence of sufficient proof produced as to the avocation of the deceased, has fixed the notional monthly income of the deceased at Rs.5,000/- per month and accordingly arrived at the annual income at Rs.60,000/-. After deducting one-third towards his personal and living expenses, the Tribunal has arrived at the annual income at Rs.40,000/-. This Court does not find any unreasonableness in the approach adopted by the Tribunal in fixing the annual income of the deceased at Rs.40,000/-. However, the Tribunal has erred in applying the multiplier as 11 instead of 13, since the deceased was aged 50 years on the date of accident. If the correct multiplier of 13 is applied, then the amount towards loss of dependancy comes to Rs.5,20,000/-. Hence, rejecting the contention of the learned counsel for the appellant that the Tribunal ought to have applied the multiplier of 10, this Court is inclined to award a sum of Rs.5,20,000/- towards loss of dependancy, instead of Rs.4,40,000/- awarded by the Tribunal, even though the respondents/claimants have not filed any appeal for enhancement, applying the correct multiplier of 13 on the facts of this case. In addition thereto, the respondents/claimants are also entitled to a sum of Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate as fixed by the Tribunal. Accordingly, the respondents/claimants are entitled to a total compensation of Rs.5,24,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of payment payable by the appellant insurance company, since the third respondent was set ex parte before the Tribunal, which shall be shared by the respondents/claimants in equal proportion. Since the appellant had deposited the entire amount of compensation as awarded by the Tribunal, the appellant is further directed to deposit the enhanced amount along with interest to the credit of the M.C.O.P.No.294 of 2008 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.II, Additional District Judge, Tindivanam within a period of two weeks from the date of receipt

of a copy of this order. On such deposit, it is open to the respondents/claimants to withdraw the entire amount with accrued interest by moving appropriate application before the Tribunal. With the above modification in the quantum of compensation awarded by the Tribunal, the civil miscellaneous appeal stands disposed of. Consequently, M.P.No.1 of 2011 is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To
1. The Motor Accidents Claims Tribunal
   Fast Track Court No.II
   Additional District Judge
   Tindivanam.

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

+ 1 cc to Mr.S. Jayasankar, Advocate SR.5419
+ 1 cc to Mr.K. Subburan, Advocate Sr.6002/16

C.M.A.No.421 of 2011

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Eu 06.5.16