

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 28.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.92 of 2016

and

CMP No.932 of 2016

The Manager,
Oriental Insurance Company Limited,
Divisional Office, FU,
Visitors Road, Neyveli-1. ..Appellant/2nd Respondent

Versus

1.Selvaraasu
2.Manikandan
3.Minor Venkatesan ...Respondents 1to3/Petitioners
(minor rep. by his next
friend/guardian R1)
4.R.Shanmugam ...4thRespondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 15.07.2015 made in MCOP No.108 of 2012 on the file of Motor Accident Claims Tribunal, Sub Court, Neyveli.

For Appellant :: Mr.S.Manohar

J U D G M E N T

This civil miscellaneous appeal is taken up for disposal at the stage of admission itself.

2.Aggrrieved by the impugned award dated 15.07.20115 passed by the learned Motor Accident Claims Tribunal cum Sub Court, Neyveli in MCOP No.108 of 2012 in awarding a total compensation of Rs.6,61,000/-, the appellant Insurance Company has filed the present appeal, questioning the compensation awarded under the heads of loss of estate and loss of love and affection. On 30.03.2012 at about 6.30 p.m., while the deceased Chandra was waiting for a bus near Veppur bus stand, a mini lorry bearing Registration No.TN-34-C-2217 belonging to the first respondent driving by its driver in a rash and negligent manner dashed against the deceased Chandra. Immediately after the accident, though she took treatment at various hospital, everything went in fruitless and finally she died on 24.04.2012.

3.Learned counsel for the appellant has relied on the decision of the Apex court in Jayakodi vs Branch Manager, National Insurance Co. Ltd. in 2010 ACJ 697, wherein it was held that when a person dies in a motor accident and his dependent legal representatives claim compensation, the general damages is made up towards the loss of dependency and loss of estate. Therefore, on this basis, he pleaded that only a token sum towards loss of estate has to be awarded, however, ignoring the above principle, the learned Tribunal has awarded huge amount of Rs.1,00,000/- and the same is liable to be set aside.

4.This court hardly finds justification for the reason that when the deceased Chandra aged 40 years old was waiting at Veppur busstop, unfortunately, the first respondent's mini lorry bearing Registration No. TN 34 C 2217 driven by its driver in a rash and negligent manner dashed against the deceased who was waiting for the bus at the bus stop to reach her destination. Therefore, the learned Tribunal, after taking into account the registration of FIR filed against the driver of the offending vehicle on the file of Veppur Police station, in Crime No.109/2012 and taking further support from the report of the Motor Vehicle Inspector marked as Ex.P2 showing that the accident had occurred only due to the rash and driving of the offending driver of the vehicle, has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the first respondent's driver.

5.Further, the learned Tribunal has wrongly fixed monthly income of the deceased at Rs.3,000 and deducted 1/3 thereof, which is absolutely unjustified. Therefore, the amount of Rs.3,36,000/- awarded towards future income of the dependents family cannot be construed to be just and proper compensation, in the light of the ratio laid down in the case of Rajesh vs. Rajbir Singh reported in 2013(9) SCC 54, wherein it has been reiterated that both the Tribunals and Courts should discharge their obligation to fix just and reasonable compensation even though the claimants failed to ask the same. In this background, as the deceased aged about 40 years died suddenly as she was waiting at the bust stop for bus to reach her destination leaving behind the claimants viz., husband aged about 46 years and minor son aged about 17 years and son aged about 24 years, this court redetermines the loss of dependency by adding Rs.75,000/- towards loss of dependency viz., $Rs.3,36,000 + Rs.75,000 = 4,11,000/-$ and awards a sum of Rs.25,000/- towards loss of estate. Further, although the Hon'ble Apex Court laid down the general principles, in the present case, the award of Rs.1,00,000/- towards loss of estate has been modified by awarding another sum of Rs.75,000/- towards loss of dependency and redetermining Rs.25,000/- towards loss of estate. Since the accident took place on 30.03.2012, very meager amount

has been awarded towards loss of dependency and as such, the award of the Tribunal remains unaltered and thus, the award is confirmed.

5.The learned Tribunal also applying the principles of pay and recovery directed the appellant Insurance company to recover the award amount later from the insured for the simple reason that the first respondent had a driving license but he had no valid badge to drive mini lorry during the accident. Therefore, the principles of pay and recovery followed by the Tribunal is upheld. This court further confirms the award of interest at 9% p.a. passed by the Tribunal.

6.In the result, the civil miscellaneous appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

7.Mr.S.Manohar, learned counsel for the appellant Insurance Company has fairly submitted that as per the order of this court, the entire amount has been deposited. It is open to the claimants to withdraw the amount along with interest accrued thereon by moving appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vri

To

The Motor Accident Claims Tribunal,
Sub Court, Neyveli.

+1cc to Mr.S. Manohar, Advocate, S.R.No.5338

GJ-II(CO)
EU(19/05/2016)

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