

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2016

CORAM

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

C.M.A.No.2743 of 2014

The Divisional Manager
M/s National Insurance Co. Ltd.,
Divisional Office
No.50, Janpath
New Delhi.

... Appellant/2nd Respondent

vs.

1. Matheena Beevi
2. Abroja Begam
3. Faragath Ali
4. Sivakumar
5. The Divisional Manager
M/s National Insurance Co. Ltd.,
Divisional Office,
No.122/165, Nethaji Road
Manjakuppam Village,
Cuddalore Taluk & District

... Respondent 5/ respondent 2

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 27.06.2012 passed in M.C.O.P.No.157 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Mayiladuthurai District.

For Appellant :Mr.J.Chandran

For Respondents:Mr.A.Muthukumar, R1-3
R4 & 5 not ready in notice

JUDGMENT

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

The Insurance Company is on appeal challenging the award dated 27.06.2012 passed in M.C.O.P.No.157 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Court), Mayiladuthurai District.

2. It is a case of fatal accident. On 16.08.2006 at about 7.30 a.m., when the deceased Abdul Kabur, was proceeding on his motorcycle from Sirkali to Sethangudi road towards north to south, while going by the left side of Sethangudi Kulam, at that time, a herohonda bearing Registration No.PY 01 Ac 3431 which was driven in a rash and negligent manner came in the opposite direction dashed against Abdul Kabur. In the said accident, the Abdul Kabur sustained grievous head injuries. Subsequently, he died on 19.06.2007, even though treatment was given. The claimants, who are the wife, married daughter and unmarried son of the deceased have filed a claim for compensation for a sum of Rs.15,00,000/-.

3. In support of the claim, Faragath Ali was examined as P.W.1 and Dr.Hari was examined as P.W.2. and Ex.P-1 to Ex.P.16 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR
P2	Copy of Accident Register
P3	Copy of the report of the Motor Vehicle Inspector
P4	Copy of Accident Register
P5	Discharge summary
P6	Copy of policy
P7	Death certificate
P8	Legal heirship certificate
P9	Income Tax form 2D
P10	Medical bills

Ex.No.	Details
P11	Medical prescriptions
P12	Medical bills
P13	Medical Bills
P14	Discharge summary copy
P15	C.T.Scan
P16	X-rays

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 4th respondent herein remained exparte.

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 due to the rash and negligent driving of the 4th respondent herein, the accident had occurred and he alone was responsible for the accident and consequently liability was fixed on the insurance company, as the vehicle was insured with the appellant insurance company, 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 income	Rs.4,08,960/-
2	Loss of consortium	Rs. 25,000/-
3	Attender charges	Rs. 20,750/-
4	Medical bills	Rs.9,92,338/-
5	Loss of Love and affection	Rs. 20,000/-
6	Funeral expenses	Rs. 5,000/-
	Total	Rs.14,72,048/-

6. The learned counsel for the appellant would submit that the awarding a compensation of a sum of Rs.14,72,048/- towards

the death of 59 years old Kahffor in favour of wife, married daughter and unmarried son is highly excessive and unsustainable. The Tribunal ought to have disbelieved the evidence of P.W.2 Dr.Hari in the absence of any authorization, Old X-rays and continuous treatment records to prove the nexus injuries to the death. So far as medical bills are concerned, the Tribunal ought to have disbelieved the same as falsely fabricated for want of corroborative admissible evidence. The learned counsel for the appellant would further plead that a perusal of the findings of the Tribunal would clearly go to show that the Tribunal without considering the oral and documentary evidence, on its own discretion has given such a finding. Hence, the learned counsel for the appellant has sought for allowing of the Civil Miscellaneous Appeal.

7. This Court heard the submissions of the learned counsel for the respondents/claimants and the submissions made by the learned counsel for the appellant.

8. Insofar as the award of compensation is concerned, based on the evidence adduced before the Tribunal, as against the annual income claimed to the tune of Rs.76,650/-, by taking the average, the Tribunal fixed the monthly income of the deceased at Rs.6,387/- rounding off to Rs.6,390/- and by deducting 1/3rd towards his personal expenses and by adopting 8 multiplier, arrived a sum of Rs.4,08,960/- towards loss of income, which in our opinion, is very reasonable.

9. The Tribunal has awarded a sum of Rs.25,000/- towards consortium, which appears to be justifiable. So far as the compensation of a sum of Rs.20,750/- awarded under the heading "Attendant charges", in our opinion is also justifiable, so also a sum of Rs.9,92,338/- granted for the medical bills, considering the treatment undertaken by the deceased from the date of accident till his death. Rs.20,000/- towards loss of love and affection to the children of the deceased, which, in our opinion is very reasonable. The amount awarded under the heading funeral expenses also in our opinion is also justified.

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

11. Finding no merit, the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. It is stated that entire award amount has already been deposited to the credit of M.C.O.P.No.157 of 2008 on the file of the Motor

Accidents Claims Tribunal, Principal Subordinate Judge, Mayiladuthurai and the 1st claimant was permitted to be withdraw 50% of her share by this Court. Hence, the 1st claimant is permitted to withdraw her balance amount in the award of the Tribunal as confirmed by this Court by filing necessary application before the Tribunal. The other claimants are also permitted to withdraw their share amount. There will be no order as to costs in this appeal. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
(Motor Accidents Claims Tribunal)
Mayiladuthurai District.

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

+1cc to M/S.J.Chandran, Advocate, S.R.No.13054

+1cc to M/S.A.Muthukumar, Advocate, S.R.No.13023

C.M.A.No.2743 of 2014

rsi(CO)
srg(30/03/2016)

WEB COPY