

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2016

CORAM

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

C.M.A.No.3112 of 2014

and M.P.No.1 of 2014 and M.P.No.1 of 2015

The Oriental Insurance Co. Ltd.,
rep. By its Branch Manager,
R.V.K.Building, First Floor,
No.54, Thali Road,
Udumalaipettai. Appellant/3rd Respondent

vs.

1.R.Annapoorani
2.M.Rangasamy gounder
3.R.Thangaraj Respondents 1 to 3
/Petitioners 1 to 3
4.K.Amanalingam
5.S.Santhalingam Respondents 4 & 5
/Respondents 1 and

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 30.04.2014 passed in M.C.O.P.No.72 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub Court), Pollachi.

For Appellant :Mr.S.Manohar

For Respondents:Mr.Ma.Pa.Thangavel for R1 to R3.
For R4 and R5-No appearance.

JUDGMENT

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

The Oriental Insurance Company is on appeal challenging the award dated 30.04.2014 passed in M.C.O.P.No.72 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub Court), Pollachi.

2. It is a case of fatal accident. On 03.05.2011, when the deceased, aged 27 years was riding a Motor cycle bearing Registration No.TN-41-AB-8910 in Chettikkapalayam road facing towards west to east at about 8.45 a.m., the 4th respondent herein/K.Amanalingam had driven the Tata 608 goods carrier vehicle bearing Reg.No.TN-31-A-2993 in a rash and negligent manner, dashed upon the Kathirvel's Motor cycle, as a result, the deceased sustained fatal injuries and died on the same day. The claimants, who are mother, father and brother of the deceased have filed a claim for compensation for a sum of Rs.29,90,000/-. According to the claimants, the deceased was working as Motor coil winding worker at casting and molding section, ACA Alice Private Limited, Thamaraikulam, Pollachi and was earning a sum of Rs.20,000/- per month.

3. In support of the claim, the mother of the deceased viz.,Annapoorani was examined as P.W.1; A.Annadurai, Gunasekaran and Sivakumar were examined as P.Ws.2, 3 and 4 respectively. Exhibits P-1 to Ex.P-13 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Xerox copy of First Information Report
P2	Xerox copy of Post Mortem Certificate
P3	Copy of Motor Vehicle Inspection Report
P4	Copy of Motor Vehicle Inspection Report
P5	Discharge summary
P6	Death Certificate
P7	Legal Heir Certificate
P8	Medical Bills
P9	Repair charges bills for the motor cycle
P10	Xerox copy of Annadurai's Election card.
P11	Xerox copy of Gunasekaran's Election card
P12	Sivakumar's permission letter for giving evidence
P13	Pay Slips of the deceased.

On behalf of the respondents, R.W.1-Amanalingam, R.W.2-Santhalingam and R.W.3-C.P.MohanKumar were examined and Exhibits R.1 to R4 were marked.

4. The Tribunal based on the oral evidence of the witnesses and the F.I.R. came to conclusion that the fourth respondent herein was rash and negligent and was responsible for the

accident and consequently liability was fixed on the appellant/Insurance Company, and the 5th respondent herein, to compensate the claimants. On this issue, learned counsel for the appellant has raised a plea that even though the offending vehicle was insured with the appellant/Insurance Company, since the driver of the said vehicle had no proper licence to drive goods vehicle on the date of accident, the owner of the vehicle is liable to compensate the claimants.

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	Pecuniary loss to the dependents	Rs.15,30,000/-
2	Loss of love and affection	Rs. 30,000/-
3	Funeral expenses	Rs. 10,000/-
4	Transport expenses	Rs. 10,000/-
5	Medical expenses	Rs. 52, 640/-
	Total	Rs. 16,32,640/-

6. The Tribunal fixed the average monthly income of the deceased as Rs.15,000/-, deducted $\frac{1}{3}$ towards personal expenses as the deceased was a bachelor, arrived the annual loss of income to the dependents at Rs.7500 x 12=Rs.90,000/-. Thereafter, by applying multiplier 17, arrived the pecuniary loss at Rs.15,30,000/-. We find that the loss of income arrived at by the Tribunal is perfectly justifiable and we find no error on the same.

7. Insofar as the compensation under other conventional heads are concerned, we find that the same are just and proper.

8. Accordingly, the compensation awarded by the Tribunal stands confirmed. As far as the plea of the learned counsel for the appellant/Insurance Company, that the driver of the offending vehicle had no proper licence to drive the goods vehicle at the time of accident is concerned, it is seen that though 4th and 5th respondents are served, there is no appearance before this court. Hence, we have no other option except to hold that the insurer of the Tata 608 goods carrier vehicle i.e, the appellant herein is liable to pay the compensation to the claimants and the Insurance Company shall recover the same from the owner of the vehicle in accordance with law.

In the result, the Civil Miscellaneous Appeal is disposed of on the following terms:-

- (i) The award of the Tribunal at Rs.16,32,640/- is confirmed.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The appellant/Insurance Company is directed to pay the compensation and then recover the same from the owner of the vehicle.
- (iv) The award amount is apportioned between the claimants as per the order of the Tribunal.
- (v) This Court by order dated 03.11.2014 directed the appellant insurance company to deposit the entire award amount along with accrued interest and costs. Further, this court, by order dated 09.06.2015, permitted the claimants to withdraw 50% of the amount deposited by the appellant/Insurance Company.
- (vi) The claimants are permitted to withdraw the award amount along with accrued interest less the amount already withdrawn by them.
- (vii) There will be no order as to costs in this appeal.
- (viii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Judge,
Sub Court
(The Motor Accidents Claims Tribunal),
Pollachi.

2.The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to Mr.S.Manohar, Advocate sr.17605
+1cc to Mr.P.Thangavel, Advocate sr.17896

C.M.A.No.3112 of 2014

ad(CO)
srg(10/05/2016)