

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.03.2016

CORAM

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

C.M.A. NO. 3136 OF 2014

M.P. NO. 1 OF 2014

AND

C.M.P. NO. 2021 OF 2016

Oriental Insurance Co. Ltd.
No.17-A, Krishnagiri Road
SKS Complex, Ranipet
Vellore District 632 401. .. Appellant/2nd Respondent

- Vs -

1. S.Shri Lakshmi
2. Minor S.Mahalakshmi
(Minor rep. by mother
& natural guardian R-1)
3. C.Vasanthi
4. M.Chandran
5. M.Pandiyar .. Respondents/Petitioners/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.06.2014, passed by the Motor Accident Claims Tribunal, (II Addl. District & Sessions Court), Ranipet, Vellore District, made in MCOP No.276 of 2012.

For Appellant : Mr. S.Manohar

For Respondents: Ms.Usharaman - R1 to R4

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the claimants.

2. The appellant/insurer of the vehicle has filed the appeal challenging the award dated 24.06.2014, passed by the Motor Accident Claims Tribunal, (II Addl. District & Sessions

Court), Ranipet, Vellore District, made in MCOP No.276 of 2012.

3. It is a case of fatal accident. On 26.11.2011, at about 04.30 p.m., when the deceased Senthilkumar, aged about 27 years, was riding his Hero Honda Motorcycle bearing Regn. No.TN-23-AK-7608 from Walajahpet to Sathambakkam, the lorry, bearing Regn. No.TN-24-F-1455 belonging to the fifth respondent herein, driven by its driver in a rash and negligent manner, hit the motorcycle in which the deceased was riding from behind due to which the deceased fell down and sustained grievous injuries. The deceased was immediately taken to the Government Hospital, Walajah, where he was declared dead. A case was registered against the driver of the lorry in Cr. No.792/2011 under Sections 279 and 304 (A) IPC.Mahindra Pickup Van under Section 279 and 304 (A) IPC by the Kandhikuppam Police.

4. The deceased, on the date of accident, was working as a lorry driver in Duraivel Lorry Service and earning a salary of Rs.13,000/= per month. The respondents, viz., the wife, minor child and parents of the deceased have filed the claim petition claiming a sum of Rs.40,00,000/= as compensation.

5. In support of the claim, the first claimant, viz., the wife of the deceased was examined as P.W.1. One Bharathidasan, eye witness to the occurrence was examined as P.W.2 and Exs.P-1 to P-10 were marked, the details of which are as follows:-

Ex.P-1	-	Xerox Copy of the FIR
Ex.P-2	-	Certified xerox copy of Motor Vehicle Inspector report issued for motorcycle TN-23-AV-7608
Ex.P-3	-	Certified xerox copy of Motor Vehicle Inspector report issued for lorry TN-04-K-3309
Ex.P-4	-	Xerox copy of post mortem certificate
Ex.P-5	-	Xerox copy of insurance policy of lorry bearing Regn. No.TN-04-K-3309
Ex.P-6	-	Xerox copy of record sheet of the deceased
Ex.P-7	-	Family Photo of petitioners/claimants
Ex.P-8	-	Xerox copy of notice sent by Judicial Magistrate Court No.II, Walajahpet to Krishnamoorthy
Ex.P-9	-	Xerox copy of protest petition filed by Krishnamoorthy before the Judicial Magistrate No.II, Walajahpet
Ex.P-10	-	Certified xerox copy of docket notes order passed by Judicial Magistrate No.II, Walajahpet in CMP No.169/2012

6. On the side of the respondents, one Chandrasekaran was examined as R.W.1 and Exs.R-1 to R-3 were marked, the details of which are as follows:-

Ex.R-1	-	Investigation Report
Ex.R-2	-	Xerox copy of FIR
Ex.R-3	-	Xerox Copy of mistake of fact report submitted by the Inspector of Police, Arcot Taluk Circle
Ex.R-4	-	Xerox copy of Motor Vehicle Inspector reports of both vehicles involved in the accident.

7. The Tribunal based on the oral evidence of the P.W.1, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of P.W.2, eye witnesses to the occurrence, which has been adduced to prove that the lorry was driven in a rash and negligent manner coupled with the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant to refute the eye witness testimony as to the rash and negligent driving of the lorry, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the lorry and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads:-

Loss of Income	-	Rs.18,36,000 /=
Loss of consortium for first claimant	-	Rs.50,000/=
Loss of Love & Affection for claimants 1 to 4 (Rs.10,000 X 4)	-	Rs.40,000/=
Loss of Estate	-	Rs.10,000/=
Transportation Expenses	-	Rs.4,000/=
Funeral Expenses	-	Rs.10,000/=
Total Compensation	-	Rs.19,50,000/=

8. In all the Tribunal awarded a compensation of Rs.19,50,000/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit with appropriate apportionment of the same between the claimants. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

9. Learned counsel appearing for the appellant submitted

that the contributory negligence on the part of the deceased has not been considered properly by the Tribunal while fixing the compensation. It is further submitted by the learned counsel for the appellant that the income of the deceased has not been properly substantiated with documentary evidence and, therefore, fixing Rs.8,000/= as income of the deceased and adding 50% towards future prospects is not sustainable.

10. Per contra, learned counsel appearing for the claimants submitted that the Tribunal has analysed the evidence threadbare and has arrived at the finding fixing the negligence on the driver of the lorry. It is further submitted that the income along with future prospects fixed by the Tribunal is just and reasonable. Further, it is submitted that the compensation awarded on the other heads are on the lower side and this Court may consider enhancing the same.

11. This Court has given its careful consideration to the above contentions advanced by either parties. Insofar as the question of negligence is concerned, the Tribunal, based on the ocular testimony of P.W.2, who has clearly deposed that it was the lorry, which was driven in a rash and negligent manner, which resulted in the accident, had fixed the liability on the insurer of the vehicle to compensate the claimants. No evidence contrary to the same has been adduced by the insurer to dispute the said fact. In such circumstances, this Court is of the considered opinion that there is no reason to take a view different to the one taken by the Tribunal.

12. The deceased is aged 27 years, as is accepted by the parties and proper multiplier has been adopted to arrive at the compensation. Further, this Court finds that the Tribunal has fixed the income of the deceased at Rs.8,000/= per month and adding 50% future prospects has fixed the income at Rs.12,000/= which considering the date of accident, viz., 26.11.2011, is just and reasonable and deducting one-fourth towards personal expenses, has arrived at the compensation of Rs.18,36,000/=. Further, it is to be pointed out that the Tribunal has awarded very meagre sums towards loss of consortium, loss of love and affection and loss of estate. Even if the income has been fixed on the higher side, as contended by the learned counsel for the appellant, non-enhancement of compensation under the heads of loss of consortium, loss of love and affection, loss of estate, would very much offset the overall difference in the compensation. Therefore, for the reasons abovesaid, this Court is of the considered view that no interference is warranted with the award passed by the Tribunal.

13. In the result, this Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. It is stated that the entire award amount has been deposited along

with interest to the credit of MCOP No.276/2012. In such circumstances, the claimants are permitted to withdraw the amount in deposit as per the apportionment made by the Tribunal. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

GLN

To
The II Addl. District & Sessions Court
(Motor Accident Claims Tribunal)
Ranipet, Vellore District.

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

+1 cc to M/s.UshaRaman, Advocate, sr.13721
+1 cc to Mr.S.Manohar, Advocate, sr.13623

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