

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.710 of 2009

and

M.P.No.1 of 2009

The Oriental Insurance Co. Ltd.,
Gobichettipalayam.

...Appellant

Vs.

1. Kasiappa Gounder
2. Thangammal
3. Mohanadevi
4. Minor Bhavanya
5. Minor Dharaneesh
(Minors represented by their
mother Mohanadevi)
6. R.Mohanasundaram
7. T.C.Ramasamy

... Respondents

Prayer: Civil Miscellaneous Appeal is filed Under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 08.08.2003 and made in O.P.No.1083 of 2001 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Erode.

For Appellant

: Mr.Arun Kumar

For Respondents 2 to 5

: Mr.N.Manokaran

JUDGMENT

Challenging the quantum of compensation, the appellant/Insurance Company, who is the 3rd respondent, in the claim petition has preferred this appeal under Section 173 of Motor Vehicles Act, 1988.

2. The respondents 1 to 5 herein had moved the Motor Accident Claims Tribunal(Principal District Judge), Erode with a claim petition in M.A.C.T.O.P.No.1083 of 2001 claiming a sum of Rs.10,00,000/- for the death of their son namely Viswanath in a road traffic accident said to have been taken place on 05.03.2001 at about 7 a.m., involving a tractor bearing Reg.No.TN-33-M-7967 belonging to the 2nd respondent. The 1st respondent was on the steering wheel at the relevant point of time. However, the respondents 1 and 2 had not chosen to contest the claim. The 3rd respondent being the insurance company in which the offending vehicle (Tractor) was insured at the material time had alone contested the claim. But, on perusal, it seems that the 3rd respondent had only filed their formal counter without projecting effective objection, setting forth the contrary grounds to disprove the claim.

3. According to the respondents 1 to 5/claimants that on 05.03.2001 at

about 7 a.m., when the deceased Viswanath along with his friends was standing on the main road leading to Poondurai to Modakkurichi near Vaikalmedu bus stop, the 1st respondent had driven the above said Tractor in a rash and negligent manner and dashed against the deceased, and as a result of which, the deceased had succumbed to injuries in the hospital on 13.03.2001, while he was on treatment. The deceased was doing agricultural work and milk vending business and thereby earned a sum of Rs.10,000/- per month. Therefore, claiming a sum of Rs.15,00,000/-, the respondents 1 to 5/claimants had moved the Motor Accident Claims Tribunal as aforestated.

4. The claims Tribunal, on appreciation of evidences both oral and documentary, had proceeded to pass an award of Rs.9,47,000/-, directing the respondents 2 and 3 to pay this amount jointly and severally along with interest at the rate of 9% to the claimants from the date of petition.

5. Challenging the quantum of award, the 3rd respondent/Insurance Company stands before this Court.

6. Since the appellant/Insurance Company has questioned the quantum

alone, the other facts with regard to rashness and negligence including liability need not be traversed. The Tribunal had determined that the deceased was aged about 32 years. Based on this determination as well as the evidence given by the 3rd claimant who is none other than the wife of the deceased, the Tribunal had fixed the monthly income of the deceased at Rs.6,000/-. After giving deduction towards personal and living expenses of the deceased, the 2/3rd remainder was arriving at Rs.4,000/-. Accordingly, the annual dependency of the family was calculated at Rs.48,000/- (Rs.4,000/- X 12). Since the deceased was aged about 32 years at the time of his death, as per the second schedule of Section 163-A of Motor Vehicles Act, the Tribunal had calculated the loss of dependency of the family at Rs.8,16,000/- (Rs.48,000/- X 17).

7. Besides this, based on Exs.A9 to A14 and A17, the Tribunal had awarded a sum of Rs.1,04,301/- towards medical expenses which was rounded off to Rs.1,04,000/-. Apart from this, the Tribunal had also awarded a sum of Rs.2,000/- towards Funeral expenses and another sum of Rs.5,000/- towards loss of consortium. Towards loss of love and affection for the minor claimants 4 and 5, the Tribunal had awarded a sum of Rs.20,000/-.

The break up details are given as under:

1. Loss of dependency of the family (Rs.48,000/- X 17)	Rs.8,16,000/-
2. Medical Expenses	Rs.1,04,000/-
3. Funeral Expenses	Rs. 2,000/-
4. Loss of Consortium	Rs. 5,000/-
5. Loss of love and affection for the minor claimants 4 and 5.	Rs. 20,000/-
Total	Rs.9,47,000/-

8. In total, the Tribunal had awarded Rs.9,47,000/-, directing the appellant/Insurance Company and the 7th respondent, who is the owner of the vehicle, to pay this amount to the respondents 1 to 5 / claimants along with interest at the rate of 9% per annum jointly and severally within two months from the date of claim petition.

9. This Court has carefully examined and analysed the award of the Tribunal with the help of the evidences adduced by P.W.1 and P.W.2. It is pertinent to note here that the appellant, being the contesting respondent,

had not chosen to adduce any oral or documentary evidence.

10. Keeping in view of the above fact, this Court is of considered view that the award passed by the Tribunal is just and reasonable and does not require any interference. Accordingly, this Civil Miscellaneous Appeal is dismissed after confirming the award passed by the Tribunal. It is brought to the notice of this Court that pending disposal of the appeal, 50% of the award amount had already been deposited by the appellant / Insurance Company. The Appellant / Insurance Company is directed to deposit the remaining 50 % of the award amount along with the accrued interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit in respect of the remaining balance being made, the claimants are permitted to withdraw the entire award amount with the accrued interest and costs, without filing any formal application seeking permission. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
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To

1. The Motor Accident Claims Tribunal,
Principal District Judge,
Erode.

2. The Oriental Insurance Co. Ltd.,
Gobichettipalayam.



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T.MATHIVANAN,J.

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