

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.293 of 2013

&

M.P.No.1 of 2013

The Manager,
The New India Assurance Company Ltd.,
45, Moore Street,
Chennai - 600 001. Appellant/2nd Respondent

Versus

1.Santhi
2.Minor Prabakaran
3.Minor Kalaiarasi
(Minor Respondents 2 & 3
Rep. by Mother & Guardian Santhi
Ist Respondent)
4.Kanniyappan
5.Govindammal
6.Ramakrishnan Respondents/Petitioners
Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 03.07.2012 made in M.C.O.P.No.112/2007 on the file of the Motor Accidents Claims Tribunal, (Additional Subordinate Judge), Chengalpet.

For Appellant : Mr.G.Udayasankar

For Respondents : Mr.E.Kumarakotti for R1 to R5
R6-exparte

J U D G M E N T

Aggrieved by the impugned award dated 03.07.2012 made in M.C.O.P.No.112/2007 on the file of the Motor Accidents Claims Tribunal, (Additional Subordinate Judge), Chengalpet, the Manager, New India Assurance Company Limited has brought this appeal.

2. According to the claimants, on 14.09.2006 at 11.00 a.m., after watching the construction work on the way to Sadras from Mamallapuram, while returning from Mamallapuram, when the deceased was riding the motor cycle bearing Registration No.TN 22 L 2342 along with one Gunasekaran as a pillion rider, the appellant's vehicle namely Tipper Sand Lorry bearing Registration No.TH 21 Q9784, driven by its driver in a rash and negligent manner, dashed against the two wheeler. As a result both of them got grievous injuries all over the body. Immediately they were taken to Medical College Hospital, Chengalpattu where the Doctors informed that both were dead. According to the claimants, the accident had occurred only due to the rash and negligent driving of the driver of the said Tipper Sand Lorry.

3. Questioning both the quantum of compensation and liability, learned counsel appearing for the appellant would submit that the learned Tribunal ought to have seen the fact that the deceased, who was driven the vehicle, could have also avoided the accident when he was also coming on the same road. As the deceased was also driven his two wheeler carelessly, he has invited the accident and therefore there was a clear negligence and carelessness on the part of the deceased. Hence, no liability whatsoever can be fastened on the part of the appellant/Insurance Company. Secondly the driver of the tipper sand lorry, having insurance coverage, has not made as a party before the Tribunal. This aspect has been overlooked by the Tribunal. Hence, the impugned award is liable to be interfered with.

3.1. Finding fault with the quantum of compensation, learned counsel appearing for the Insurance Company would submit that when there was no proof of age of the deceased before the learned Tribunal, it has chosen to fix the age of the deceased at 35 years and a sum of Rs.4,500/- has been taken as a notional monthly income in the absence of any piece of evidence to show his employment and salary and therefore, on this basis multiplier '16' was adopted and after deducting 1/3rd towards his personal expenses, a huge sum of Rs.5,76,000/- has been awarded towards loss of income. Moreover a sum of Rs.50,000/- has been awarded towards loss of consortium to the first claimant, another Rs.50,000/- has been awarded towards loss of love and affection to the claimants 2 and 3 at the rate of Rs.25,000/- each and a sum of Rs.20,000/- has been awarded towards loss of love and affection to the claimants 4 and 5 and therefore, the quantum being unreasonable is liable to be interfered with.

4. But this Court hardly finds any substance in the contentions made by the learned counsel appearing for the appellant/Insurance Company. While coming to the liability to pay the compensation to the claimants, it is seen that the deceased, who was a Civil Contractor, had met with an accident and due to the grievous injuries sustained all over his body, he died leaving behind his wife, aged about 29 years, two minor children namely one male child, aged about 5 years and another female child, aged about 4 years and aged parents. Therefore, a joint claim petition was filed making a claim of Rs.10,00,000/-. The appellant/ Insurance company has filed their counter affidavit before the Tribunal, refuting all the allegations stated in the claim petition and denying the fact that the vehicle involved in the accident had valid insurance permit and fitness certificate and therefore, the appellant/Insurance Company was not liable to pay any compensation. The learned Tribunal, considering the evidence of P.W.1, wife of the deceased, which was supported by an independent witness, P.W.2, who was an eye witness, has come to the conclusion that the accident had happened due to the rash and negligent driving of the offending lorry and as a result, the deceased died at the young age and thereby directed the Insurance Company to pay the compensation to the claimants. Therefore, this Court is not able to find any infirmity in the finding given by the Tribunal with regard to the liability part.

4.1. While coming to the quantum of compensation fixed by the learned Tribunal, although the claimants have made a claim that the deceased was a Civil Contractor and was earning a sum of Rs.35,000/- per month for the sudden demise of the deceased, the learned Tribunal finding that there was no proof to establish the income of the deceased, has fixed a sum of Rs.4,500/- as notional monthly income of the deceased. As the deceased died at the age of 35 years namely between the age group of 30 to 35, the learned Tribunal, chosen to adopt the multiplier '16' as shown in the Second Schedule of the Motor Vehicles Act and after deducting $1/3^{\text{rd}}$ towards his personal expenses, it has fixed Rs.5,76,000/- towards loss of income. Therefore, as contended by the learned counsel for the Insurance company, the amount of compensation fixed by the Tribunal cannot be construed as exorbitant. With regard to the head 'loss of consortium', Rs.50,000/- alone has been fixed to the first claimant/wife of the deceased, since she lost her husband at the young age. As the claimants 2 and 3 being the children of the deceased, lost the love and affection of their father, a sum of Rs.50,000/- has been fixed towards loss of love and affection namely Rs.25,000/- each has been fixed and a sum of Rs.20,000/- alone has been fixed to the claimants 4 and 5 being the father and mother of

the deceased. The compensation awarded under various heads namely a sum of Rs.5,000/- towards Transport expenses to hospital, Rs.20,000/- towards funeral expenses and Rs.1,000/- towards damage to clothing, also cannot be found fault with and therefore, the quantum of compensation fixed by the learned Tribunal are not exorbitant.

5. Therefore, this Court is not inclined to interfere with the impugned award and the same is confirmed. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

6. Since the learned counsel for the appellant submitted that the appellant had deposited a sum of Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimants to move a petition before the Tribunal for withdrawing the said amount as apportioned by the Tribunal.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Motor Accidents Claims Tribunal,
(Additional Subordinate Judge),
Chengalpet.

2. The Section Officer, सत्यमेव जयते
V.R. Section,
High Court, Madras.

+2cc's to Mr.E.Kumarakotti, Advocate, S.R.No.51338
+1cc to Mr.G.Udayasankar, Advocate, S.R.No.51869

C.M.A. No.293 of 2013

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M.P.No.1 of 2013

UG (CO)
CA (16/11/2016)