IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM

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

C.M.A.No.3259 of 2013

The Manager
M/s. The Oriental Insurance Co. Ltd.,
No.90-A Duriyur Salai,
Namakkal. ... Appellant/2nd Respondent

vs.

1. Tmt.Pushpa
2. Miss.Priyadharshini
3. Miss.Vahini
4. Miss. Yogeshwari
5. Minor. Arulmurugan
6. Tmt.Meenakshi ... Respondents/Petitioners 1 to 6
(Minor 5th respondent is rep.
by 1st respondent mother)
7. Thiru Kandhasamy 7th Respondent/1stRespondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 23.11.2011 passed in M.C.O.P.No.2 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Namakkal.

For Appellant : Mr.J.Chandran

For Respondents : Mr.C.Kulanthaivel-R1 to R6

JUDGMENT

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

The Insurance Company is on appeal challenging the award dated 23.11.2011 passed in M.C.O.P.No.2 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Namakkal.

2. It is a case of fatal accident. On 03.10.2007 at about 5.00 p.m., when the deceased Dhandapani, aged about 45 years was driving two wheeler bearing Registration No.TN 28 M 9180, near Muthu Lorry Body Labour Works, a tanker lorry bearing Registration No.TN 28 M 8061 came in a rash and negligent manner behind the back of the deceased and hit against the deceased, resulted in the accident. In the said accident, the deceased sustained injuries and inspite of treatment, the said Dhandapani died. FIR was registered against the driver of the tanker lorry. The claimants, who are wife aged 39 years, daughters, aged 23, 20 and 19 years, son, aged 15 years and mother, aged 65 years of the deceased have filed a claim for compensation for a sum of Rs.25,00,000/-. According to the claimants, the deceased was stamp vendor and was also running Dhandapani Xerox, Kalayana Store and he was doing business by selling crackers and also holding milk agency. According to the claimants, the deceased was earning a sum of Rs.25,000/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1; one Chandrakumar, who is stated to be eye witness was examined as P.W.2; One Pasupathi, who is stated to be the sales executive in Indian Toners, was examined as P.W.3 and One Dinesh, who is stated to be the manager in the deceased shop, was examined as PW.4 and Ex.P-1 to Ex.P.17 were marked, the details of which are as follows:-

Ex.No.	Date	Details
P1	03.10.2007	Copy of the FIR
P2	04.10.2007	Postmortem certificate (certified copy)
P3	12.10.2007	Death certificate (Original)
P4	07.11.2007	Legalheirship certificate (xerox)
P5	-	Sri Dhandapani Kalayana Stores Receipts
P6	-	Professional Tax Receipt for the year 2007
P7	19.08.1986	Stamp Vendor Licence
P8	24.02.2004	Stamp Vending receipts
P9	03.10.2007	Payment of amount into Treasury
P10	27.03.2003	Income tax Returns
P11	-	Income Tax Returns for the year 2005-2006
P12	-	Income Tax Return
P13	30.3.2007	Toner supplied Bill

Ex.No.	Date	Details
P14	-	Professional Tax 2007 to 2008
P15	26.10.2003	Licence to purchase fireworks materials
P16	-	Fireworks bills
P17	-	Letter of appointment for the post of sales executive - Pasupathi

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal.

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 the driver of the lorry was rash and negligence and was responsible for the accident and consequently liability was fixed on the insurance company and the 7th respondent herein jointly and severally, as the vehicle was insured with the appellant insurance company, to compensate the claimants. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed 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
21	Loss of pecuniary benefits to the dependents of the deceased	Rs.12,00,000/-
2	Loss of love and affection	Rs. 60,000/-
3	Loss of consortium to the wife	Rs. 10,000/-
4	Funeral expenses	Rs. 10,000/-
	Total	Rs.12,80,000/-

6. Insofar as the compensation is concerned, based on the evidence of the first claimant as against the income of Rs.25,000/- per month claimed, the Tribunal fixed the income of the deceased at Rs.3,000/- per month in respect of the 45 years old deceased, which is very reasonable and is justified.

7. The Tribunal deducted 1/3 towards personal expenses of the deceased. This appears to be justified in view of the large family that he was supporting.

8. The only serious objection is with regard to multiplier adopted by the Tribunal stating that 15 multiplier is higher and the actual multiplier should be 14. The Tribunal adopted 16 multiplier in terms of Second Schedule to Section 163A of the Motor Vehicles Act, considering the age of the deceased who was 45 years old at the time of death and this is in consonance of the Apex Court's decision in Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC). Therefore, this Court finds no good reason to reduce the multiplier and the quantum of compensation awarded. The Tribunal has awarded only a sum of Rs.10,000/- towards loss of consortium to a young wife aged 39 years, which is very meagre. Also, the Tribunal has awarded a sum of Rs.60,000/- towards loss of love and affection to the four children and mother (totally 5 persons), which is also very meagre.

9. There is no serious objection in respect of the other amounts granted or the interest granted at 7.5% per annum.

10. Finding no merit, the Civil Miscellaneous Appeal is dismissed. It is submitted by the learned counsel appearing for the appellant that the appellant had deposited the entire award amount and the claimants 1 to 4 and 6 were permitted to withdraw 50% of their share with proportionate accrued interest and costs. Hence, the major claimants are permitted to withdraw their respective balance share as ordered by the Tribunal. The share of the minor shall continue to be in deposit till he attains majority.

sl

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The District Judge,
(Motor Accidents Claims Tribunal)
Namakkal.

+ 1 cc to Mr.C.Kulanthaivel, Advocate SR 7064

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