



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2016

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THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.M.A(MD) No.1061 of 2014
and
M.P. (MD) No.1 of 2014

The Oriental Insurance Company Limited,
Rep. By its Branch Manager,
Office at No.30/6E, Deen Plaza,
1st Floor, State Bank Road,
Mayiladuthurai.

: Appellant/2nd respondent

Vs.

1.Rajeswari
2.Minor Rajakumaran
3.Minor Senthamilselvi
[Minors 2nd and 3rd respondents rep.
By their mother & Legal Guardian of
1st respondent Rajeswari]
4.Thamayanathi
5.Viswanathan
6.Sakthivel

: R1 to R5/Petitioners 1 to 5
: 6th respondent/1st respondent

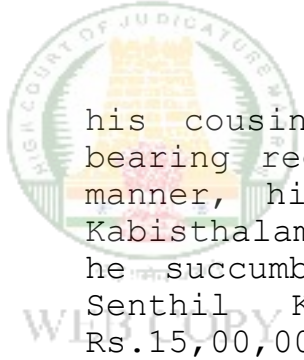
Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.20 of 2013, dated 29.04.2014 on the file of the Motor Accident Claims Tribunal-cum-Additional Subordinate Judge, Kumbakonam.

For Appellant : Mr.K.Bhaskaran
For R1 to R5 : Mr.S.Raja Prabhu

J U D G M E N T

Aggrieved over the award passed in MCOP No.20 of 2013, dated 29.04.2014 by the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Kumbakonam, the Insurance Company has preferred this appeal.

2.The brief facts of the case are that on 15.05.2012 at 10.30 am, the deceased Senthil Kumar was proceeding to Kabistharam with



his cousin brother Ramachandran by foot. At the time, a lorry bearing registration No.TN-28-L-5090 came in a rash and negligent manner, hit against the deceased. Immediately, he was taken to Kabisthalam Government Hospital and while he was taking treatment, he succumbed to the injuries. The legal-heirs of the deceased Senthil Kumar filed a petition claiming compensation of Rs.15,00,000/- on the ground that the accident was caused by the driver of the lorry.

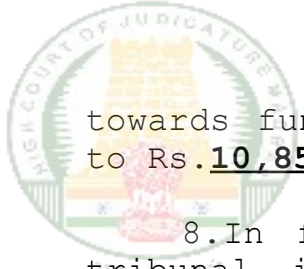
3.The appellant opposed the claim by filing a counter stating that the accident was occurred solely due to the negligence of the deceased. They also denied the age, income and occupation of the deceased and the manner of the accident and their liability to pay the compensation.

4.The claimants examined PW2, who is an eye witness to the accident. In his evidence, PW2 has spoken about the rash and negligent driving of the lorry driver. There was no contra evidence let in by the appellant. The tribunal, accepting the evidence of PW2 and based on Ex.R1 Copy of the Accident Register and Ex.P1 First Information Report, came to the conclusion that the driver of the lorry caused the accident.

5.PW1 has deposed that the deceased died at the age of 30 year. Ex.P4 postmortem certificate would show that the deceased was 37 year old. The tribunal, based on Ex.P4 fixed the age of the deceased as 37 years. PW1 has further stated that the deceased was working as Mason and he was earning Rs.6,000/- per month. However, they have not produced any salary certificate, so, the tribunal assessed the income of the deceased as Rs.9,000/- per month and awarded the compensation of Rs.12,15,000/- towards loss of dependency.

6.Mr.K.Bhaskaran, learned counsel appearing for the appellant would submit that the claimant has not produced any proof for the income of the deceased and the income taken by the tribunal is on the higher side.

7.Following the decisions of this court, the income could be fixed at Rs.6,000/- per month. As per dictum laid down in the Sarla Varma's case, the appropriate multiplier would be '15' and by applying the multiplier of 15, the claimants would be entitled to **Rs.8,10,000/-** [Rs.6,000/- x 12 x 15] towards loss of dependency. The tribunal has awarded Rs.10,000/- towards funeral expenses; Rs.50,000/- towards loss of love and affection; Rs.10,000/- towards consortium. It is seen that the 1st claimant has become a widow at the age of 26 years. In the considered view of this court, it would be appropriate to award **Rs.1,00,000/-** under the head. Taking into the consideration the fact that the the claimants 2 and 3 have lost their father at the age of 6 and 4, it would appropriate to award **Rs.1,00,000/-** to the children and **Rs.50,000/-** to the parents under the head loss of love and affection and **Rs.25,000/-** is awarded



towards funeral expenses. In total the claimants would be entitled to Rs.10,85,000/- with interest @ 7.5%.

8. In fine, the appeal is allowed in part. The award of the tribunal is reduced from Rs.12,85,000/- to Rs.10,85,000/-. The interest awarded by the tribunal is maintained. The No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Kumbakonam.

+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 45226

ER
TE/SS2-KSM : 23/01/2017 : 3P/3C

Judgment made in
CMA(MD)No.1061 of 2014 and
M.P. (MD)No.1 of 2014
17.08.2016