BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1324 of 2015
and
M.P(MD)No.1 of 2015

The Oriental Insurance Company Limited,
Through its Divisional Manager,
Madurai, Office at 6-A, West Veli Street,
Madurai - 625 001. .. Appellant/2nd Respondent

-Vs-

1.Gnana Sakunthala
2.Minor Bavatharani
3.Minor Ananthi
4.Ellammal .. Respondents 1 to 4/Petitioners 1 to 4

5.Y.G.Rajanna .. 5th Respondent/1st Respondent

(RR 2 & 3 are rep. By their mother/
natural guardian, first respondent)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.04.2015 made in M.C.O.P.No.876 of 2013 on the file of the Motor Accident Claims Tribunal cum V Additional District Court, Madurai.

For Appellant : Mr.K.Bhaskaran
For RR 1 to 3 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal has been preferred against the Judgment and Decree, dated 10.04.2015 made in M.C.O.P.No.876 of 2013 by the Motor Accident Claims Tribunal cum V Additional District Court, Madurai.

2.Unfortunate fatal accident took place on 26.10.2012 at about 11.30 p.m., near Vadipatti to Viralipatti Junction, Madurai to Dindigul Four Way Road. The heirs of the deceased filed a claim petition in M.C.O.P.No.876 of 2013 and the Motor Accidents Claims Tribunal cum Additional District Court, Madurai, awarded

Rs.11,44,000/- towards total compensation considering various heads.

3.The appellant/Insurance Company preferred the present appeal mainly on the ground that the accident took place due to the negligence of the deceased, who was riding his two-wheeler and crossed the road negligently. The insured car driven by the owner carrying his family members coming in a normal speed and the deceased negligently crossed the road suddenly and contributed for the fatal accident.

4.The learned counsel appearing for the appellant/Insurance Company has cited the deposition of R.W.1 stating that the deceased crossed the road suddenly and negligently and he was unable to stop the vehicle and the deceased dashed with the front windscreen and sustained grievous injuries. R.W.2-the Sub-Inspector of Police also deposed that the deceased contributed for the accident and the owner of the car is not responsible for the accident. Citing the above depositions, the learned counsel appearing for the appellant/Insurance Company argued that the Tribunal failed to consider the contributory negligence on the part of the deceased and granted compensation of Rs.11,44,000/- which is excess.

5.None appeared for the respondents.

6.Though it is brought to the notice of this Court that the deceased contributed for the negligence, this Court is of the view that crossing of the road is a common scenario in our State, especially in National Highways and there are no barricades or signals properly installed in all the National Highways. The State authorities are also responsible for not installing proper sign boards and required warning signals as per the Act and the Rules. In the absence of such warning signals, boards and barricades, the citizens, without knowing the consequences, crossing the roads frequently and meeting with fatal accidents. It is an unfortunate situation prevailing in this State, and the authorities of the State have to take necessary steps to avoid such fatal accidents, especially in National Highways roads. Under these circumstances, by accepting such kind of contributory negligence as argued by the learned counsel for the appellant, just compensation cannot be denied to the victims since the deceased is aged about 34 years at the time of accident and survived by wife, two minor children and aged mother. This Court has to consider the plight of the family, after the death of the sole bread winner of the family and the interest of the minor children also has to be considered. The future educational and other expenses to be met out for the minor children also has to be considered while awarding compensation to the victims.

7.In the present case on hand, the age of the deceased is 34 years and he was the owner of a Hotel and the monthly income is fixed as Rs.6,000/- and there is no error or excessiveness in fixing the monthly income of the deceased. Accordingly, this Court finds no infirmity in the award passed by the Tribunal and accordingly, the Judgment and Decree, dated 10.04.2015 made in M.C.O.P.No.876 of 2013 by the Motor Accident Claims Tribunal cum Additional District Court, Madurai is confirmed and the Civil Miscellaneous Appeal is dismissed.

8.The learned counsel appearing for the appellant/Insurance Company represented that 50% of the award amount has been deposited and the appellant/Insurance Company is directed to deposit the balance 50% of the award amount along with proportionate interest and costs within a period of four weeks from the date of receipt of a copy of this order and thereafter, the respondents 1 and 4/claimants 1 and 4 are permitted to withdraw their respective shares, as per the ratio of apportionment made by the Tribunal, with proportionate accrued interest and costs by filing necessary application before the Tribunal. The Tribunal is directed to deposit the share of the minors-second and third respondents in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest of the minor once in three months directly from the bank, only for the welfare of minors. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
cum V Additional District Court, Madurai.

Copy To:The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.K.Bhaskaran, Advocate in SR.No. 66926

PS
CSL/PV/SAR-II/16.12.2016: 3P/4C

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