



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

C.M.A.(MD) No.166 of 2016
C.M.P.(MD) No.2578 of 2016

The Branch Manager,
National Insurance Company Limited,
Jerome Building, 1st Floor,
Fort Station Road,
Trichy -2.

... Appellant/Respondent No.2

Vs.

1.D.Ruby
2.T.Duraiaraj
3.K.Dharmalingam

... Respondents 1 & 2/Petitioners
... 3rd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and award made in M.C.O.P.No.186 of 2006 dated 22.10.2010, on the file of the Motor Accidents Claims Tribunal, Kulithalai.

For Appellant : Mr.D.Sivaraman

For Respondents 1 and 2 : Mr.N.Sudhakar Nagaraj

For 3rd Respondent : No appearance

JUDGMENT

(Order of the Court was made by C.T.SELVAM, J.)

This Civil Miscellaneous Appeal arises out of the award made in M.C.O.P.No.186 of 2006 dated 22.10.2010, on the file of the Motor Accidents Claims Tribunal, Kulithalai.

2.One Christopher Sukumar met his death in an accident that took place on 01.03.2014 at about 03.00 hours. The deceased was riding his motorcycle bearing registration No.TN-39-Y 0112 with one Jayaraman riding pillion along Karur - Tiruchy main road near Marudhur turnoff. At such time, third respondent's car bearing registration No.TNG 9695 was driven in a rash and negligent manner from the opposite direction and the same hit the motorcycle. As a result, the deceased fell off the motorcycle, sustained injuries

and died. Respondents 1 and 2, his legal heirs, filed a claim petition in M.C.O.P.No.186 of 2006, before the Motor Accident Claims Tribunal, Kulithalai. Respondent 1 and 2/claimants examined 6 witnesses and marked 10 exhibits. On the side of the appellant/2nd respondent R.Ws.1 and 2 were examined and Exs.R.1 to 10 were marked. On appreciation of submissions and evidence before it, the Tribunal directed payment of Rs.13,20,000/- under the following heads:

1.Loss of income	: Rs.13,00,000.00
2.Funeral expenses	: Rs. 10,000.00
3.Loss of Love and affection	: <u>Rs. 10,000.00</u>
Total	: <u>Rs.13,20,000.00</u>

Aggrieved by the order of the Tribunal, the appellant/insurance Company has preferred the present appeal.

2.We have heard learned counsel for the appellant and perused the materials available on record.

3.Learned counsel for the appellant submitted that though P.W.2 claimed to have been riding pillion on the motorcycle driven by the deceased, and thus having witnessed the accident, in preferring the F.I.R., he has not informed the registration number of the car. Respondents 1 and 2/claimants had failed to prove that the vehicle bearing registration No.TNG 9695 insured with the appellant was the one involved in the accident. In the related criminal case, the driver of the car had contended that he had not been at the wheel. Finding no proof of involvement of the car, the Criminal Court had acquitted him. Before the Tribunal, he had been examined at the instance of the respondents 1 and 2/claimants as P.W.5 and he has deposed that he was the driver of the car. Learned counsel has also contended that the Tribunal has wrongly fixed the income of the deceased at Rs.11,600/- per month as against documentary proof in Ex.P.9 and as the deceased was a bachelor, instead of 1/3rd, 50% of income is to be deducted towards personal expenses. Contending thus, learned counsel for appellant sought setting aside of the order under challenge.

4.Allowing the claim, the Tribunal held that the 3rd respondent car was involved in the accident and its driver was responsible therefor and as the insurer of the car, the appellant is liable to pay compensation awarded to the claimants and fixed the same at Rs.13,20,000/-.

5.Before the Tribunal, the appellant initially had filed a counter admitting to the involvement of the car in the accident but subsequently, withdrawing the same a fresh counter has been filed contending the exact opposite. The Court below has rightly taken umbrage thereto. There can be no universal rule that in the case of a bachelor 50% of the income is to be deducted. The factual position necessarily would vary from case to case and the



Court may consider the same and apportion a particular percentage there toward. In the instant case, we find that a most reasoned approach has been adopted by the Court below. The order under challenge does not call for any interference.

6. In the result, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition also stands dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal, Kulithalai.

+1cc to Mr.R.M.Sivakumar, Advocate, Sr.No.16200
+1cc to Mr.N.Sudhakar Nagaraj, Advocate, Sr.No.16116
+1cc to Mr.D.Sivaraman, Advocate, Sr.No.15601

sj

JM/GSV-PM/SAR-III/06.06.2016/3P-5C

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