



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.911 of 2016
and
CMP(MD)No.8353 of 2016

The Oriental Insurance Company Ltd.,
through its Branch Manager,
Office at SKG Samy Complex,
First Floor, No.28,
North Car Street, Tenkasi.

: Appellant/R2

Vs

1.Minor Rishik Maha Aravind
2.Minor Sri Ram
[Minors represented through their
Grandmother and next friend
Guardian 3rd Respondent herein]

3.Shanthi : R1 to R3/Petitioners 1 to 3
4.Paulsamy : 4th Respondent/R1
[R4 given up]

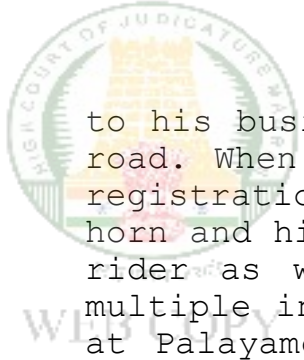
Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP No.1384 of 2011, dated 12.10.2012 on the file of the Motor Accident Claims Tribunal-cum-III Additional District and Sessions Judge, Tirunelveli.

For Appellant : Mr.C.Jawahar Ravindran

JUDGMENT

The appeal is filed by the appellant Insurance Company questioning the award of compensation by the Motor Accidents Claims Tribunal (III Additional District and Sessions Judge), Tirunelveli, made in MCOP No.1384 of 2011, dated 12.10.2012.

2.MCOP No.1384 of 2011 was filed by the respondents 1 to 3 claiming compensation of Rs.50,00,000/- for the death of father of the respondents 1 and 2 and the son of the 3rd respondent, in a motor vehicle accident. It is alleged in the claim petition that on 24.08.2011, the deceased Esakkiappan @ Iyyappan was travelling in a motor cycle bearing registration No.TN-72-AB-8640 from his residence



to his business place at KTC Nagar on Tirunelveli-Tuticorin fourway road. When the motor cycle reached the service road, a car bearing registration No.TN-72-AE-0128 came in a high speed without blowing horn and hit against the the motor cycle. As a result of which, the rider as well as the pillion rider of the motor cycle sustained multiple injuries. Immediately they were taken to T.V.M.C. Hospital at Palayamcottai, for treatment, however, the deceased Esakkiappan died on the same day. A case stands registered in Crime No.258 of 2011 under sections 279, 338 and 304(A) of IPC against the driver of the car by the Inspector of the police Traffic Investigation Wing Police Station, Tirunelveli.

3.In the counter, the appellant has contended that the owner of the vehicle did not inform about the accident as per the policy condition. So, they are not liable to pay any compensation. They also disputed the manner of the accident.

4.Before the tribunal, on behalf of the claimants PW1 to PW3 were examined and Exs.P1 to P10 were marked. The appellant has examined two witnesses and produced Exs.R1 and R2. Upon consideration of the oral and documentary evidence, the Tribunal held that the driver of the car was responsible for the accident and awarded compensation of Rs.12, 25,000/- together with interest @ 8% p.a. Challenging the said award, the present appeal has been filed.

5.Heard the learned counsel appearing for the appellant Insurance Company and perused the materials available on record.

6.PW2 who is the eye witness to the alleged accident has deposed that the driver of the car came in a rash and negligent manner and hit against the motor cycle. PW2 has also marked the copy of the First Information Report and the observation mahazar. Based on the evidence, the tribunal held that the claimants have proved the negligence of the rider of the car. So, he is liable to pay the compensation.

7.In the claim petition, it is contended that the deceased was 42 year old on the date of the accident and he was doing whole sale business of pharmacy and thereby he was earning Rs.4,00,000/- per annum. However, the claimants have not filed any documentary evidence to prove the age of the deceased. Ex.P2 the postmortem certificate shows that the deceased was about 50 years at the time of the accident. Ex.P4 is the certificate of registration of Pharmacist. It also shows that the deceased born on 14.09.1969. After considering the evidence, the tribunal has fixed the age of the deceased as 41 years and his income as Rs.1,20,000/- per annum. After deducting 1/3rd towards his personal expenses, the tribunal has held that he was contributing Rs.80,000/- to his family and by applying multiplier of 15, awarded Rs.12,00,000/- under the head of loss of dependency. Further, a sum of Rs.10,000/- was awarded for funeral expenses and Rs.5,000/- towards loss of love and affection. In total, the tribunal has awarded Rs.12,25,000/- together with interest @ 8% p.a. This court is of the considered view that the

award of the tribunal is fair and reasonable.

8. In fine, the appeal is dismissed and the award of the Tribunal is confirmed. The appellant Insurance Company is directed to deposit the entire amount together with the interest and costs within a period of eight weeks from the date of receipt of a copy of this order, if not deposited already. On such deposit, the major claimants are permitted to withdraw the entire amount as apportioned by the tribunal without filing any formal application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

SD/-

ASSISTANT REGISTRAR (CS-III)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To,

The Presiding officer, Motor Accident Claims Tribunal/
III Additional District and Sessions Judge,
Tirunelveli.

+1 CC TO MR.C.JAWAHAR RAVINDRAN, ADVOCATE, SR NO.49566

er

MAS/RR:27.03.2017:3P-3C

Judgment made in

CMA (MD) No.911 of 2016
01.09.2016