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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.06.2016

DELIVERED ON: 22.07.2016

CORAM:

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

C.M.A. (MD) No.1337 of 2011

Manager,
Oriental Insurance Company Ltd.,
Rajapalayam.

... Appellant/2nd Respondent

Vs.

1.Saraswathi
2.Aparajithan

... Respondents 1 & 2/
Petitioners 1 & 2

3.K.S.Muthu Singaraja
(3rd Respondent remained exparte
before the Lower Court)

... 3rd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.1 of 2010, dated 30.03.2011, on the file of the Motor Accidents Claims Tribunal cum Principal District Court, Virudhunagar District at Srivilliputtur.

For Appellant : Mr.K.Bhaskaran
For Respondents : Mr.M.Karthikeyan for R.1 & R.2
No appearance for R.3
(set Exparte before Tribunal)

JUDGMENT

NOOTY.RAMAMOHANA RAO.J.

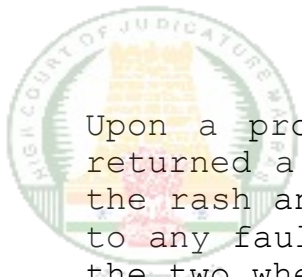
This Civil Miscellaneous Appeal is preferred on behalf of Oriental Insurance Company Limited, calling in question, the award made in M.C.O.P.No.1 of 2010, on 30.03.2011, by the Motor Accident Claims Tribunal cum Principal District Judge, Virudhunagar District at Srivilliputtur.

<https://hcservices.ecourts.gov.in/hcservices/> 2. The respondents 1 and 2 are the claimants in the aforementioned petition. The third respondent is the owner of the offending bus, which was found responsible for causing the fatal



accident that occurred on 21.08.2009, at around 11.45 a.m., near Lorry Owners' Association building situated on Rajapalayam - Srivilliputtur main road. The husband of the first respondent herein and father of the second respondent, by name, Sri.Ramanujam was proceeding on his motor bike bearing Registration No.TN-67-V-4291. He was proceeding from Rajapalayam to Srivilliputtur. The deceased Ramanujam was an Ex-service man and after his discharge from the Indian Army, he joined Brakes India Limited. The said Brakes India Limited, in recognition, of his meritorious services, rendered to the said company, has awarded him the cash incentives of Rs.20,000/- on 19.06.2001 and Rs.25,000/- on 01.08.2002. Further, after superannuating from Brakes India Limited, the deceased Ramanujam seems to have been employed with Turbo Energy Limited. The said company also in recognition of the meritorious services rendered by the deceased Ramanujam rewarded him with an incentive of Rs.36,000/- paid on 29.04.2008. Necessary documentary evidence in respect thereof has been brought on record of the Tribunal as Ex.P.13. The deceased Ramanujam, apart from bringing discipline and dedication to his service, appears to be having an academic bent of mind also. He has secured M.A., M.Phil., Degrees from Madurai Kamaraj University. Ex.P.14, dated 26.04.1999, vouches for the academic pursuits of the deceased Ramanujam. It appears that he has completed his Thesis and submitted the same for evaluation for award of Doctoral Degree before this fatal accident denied him the credit. Viva-vice examination is due to be taken by him at the time of his death. After leaving the employment of Turbo Energy Limited, it appears that the deceased Ramanujam has established his own Manpower Supply Agency Firm and was supplying the required manpower to several industries.

3. The offending bus owned by the third respondent, was coming from the opposite direction. It was driven in such a rash and negligent manner that it has dashed the two wheeler driven by the deceased Ramanujam and dragged him further for quite some distance before the bus could be brought to a halt. Because of the severe injuries sustained in the process, the deceased Ramanujam died on the spot. Ex.P.1 is the First Information Report, registered by Rajapalayam North Police Station in Cr.No.471 of 2009 under Section 304-A I.P.C. against the driver of the offending bus. Ex.P.2 is the final report submitted by the police after investigation to the Court clearly bringing out that the deceased was riding his motor bike by following the traffic rules, on the left side of the road, while proceeding from south to north, while the offending bus which is coming from the opposite direction from north to south, has gone and dashed against the motor bike, because the bus was driven in a rash and negligent manner by its driver. Ex.P.3 is the rough sketch drawn by the police which clinchingly establishes that the deceased Ramanujam was driving his vehicle on the correct side of the road. Whereas the offending bus was found to have travelled on to the wrong end. The accident had occurred, because the driver lost control over the vehicle and then, dashed against the motor bike driven by the deceased Ramanujam. Ex.P.4 is the Observation Mahazar.



Upon a proper consideration of Exs.P.3 and P.4, the Tribunal has returned a finding of fact that the accident has been caused due to the rash and negligent driving of the bus by its driver, but not due to any fault attributable to the deceased Ramanujam, who was driving the two wheeler in the opposite direction.

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4. These findings of fact recorded by the Tribunal do not call for any interference at our hands as Exs.P.3 and P.4 clearly demonstrate that it is the offending bus which came and hit the two wheeler driven by the deceased Ramanujam, while he was driving the said two wheeler on the left side of the road from south to north and hence, the deceased was not at fault.

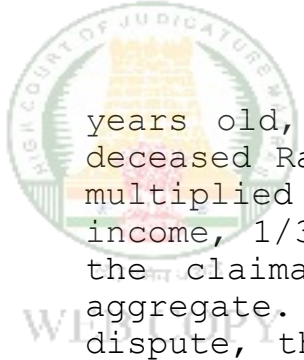
5. Ex.P.5 is the report submitted by the Motor Vehicle Inspector which clearly brings out that the Fitness Certificate granted to the offending bus was valid upto 19.07.2010 and hence, as on 21.08.2009, it has a valid Fitness Certificate. Further, Permit granted by the Department is also valid upto 01.01.2010. The policy of Insurance is valid for the period from 08.07.2009 to 07.07.2010. Thus, as on the date of accident on 21.08.2009, the offending vehicle was having a valid Permit, valid Fitness Certificate and valid Insurance Policy. This apart, the driver of the offending vehicle, has a proper and valid licence to drive the vehicle upto 19.03.2012. These factors automatically render the Insurer liable to indemnify and pay the compensation amount inasmuch as no terms and conditions of the insurance policy could be held established as to have been breached.

6. The deceased Ramanujam was also having a valid licence to drive the class of vehicle, which he was found driving at the time of accident. Ex.P.8 - the Income Tax Return for the assessment year 2008-2009, reflects his income as Rs.6,73,228/-. Ex.P.9 is the Income Tax Return Verification Form for the assessment year 2008-2009. Most significantly, this return reflected the tax deducted at source as Rs.7,27,303/-. Ex.P.10 is the Income Tax Return Verification Form for the assessment year 2009-2010, which reflected the Gross Total Income of the deceased Ramanujam as Rs.8,29,000/- and after deducting the standard deduction of Rs.1,00,000/-, the Taxable Income, has worked to Rs.7,29,000/-. The criticism against Ex.P.10 was that this return was filed by the first claimant on 30.09.2009, i.e. subsequent to the death of the deceased Ramanujam and hence, the income for the assessment year 2009-2010, has been deliberately inflated.

7. Ex.P.9 is the Income Tax Return filed by the deceased himself on 25.09.2008. He has returned Gross Income of Rs.4,45,000/-. Therefore, when a comparison is drawn between Exs.P.9 and P.10, the income reflected in Ex.P.10, does not appear to be a result of inflation, but would only reflect the genuine income in the hands of the deceased Ramanujam.

<https://hcservices.ecourts.gov.in/hcservices/>

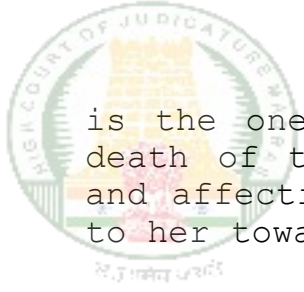
8. Since at the time of death, the deceased Ramanujam was 64



years old, multiplier 5 is employed. But the annual income of the deceased Ramanujam has been taken as Rs.7,29,000/- and then, it was multiplied by 5, which worked to Rs.36,45,000/-. From out of this income, 1/3rd amount has been deducted and the loss of dependency of the claimants, thus, has been worked out to Rs.24,30,000/- in aggregate. To this extent of the award, there was no serious dispute, that is liable to be entertained. Ex.P.12, is the licence granted in favour of Sara Industries Private Limited, bearing the name of the deceased Ramanujam. Further, the licence in favour of Sara Industries Private Limited, is renewed from time to time, reflecting that the manpower supply firm of the deceased was an active firm. For all the aforementioned reasons and in the absence of any contra material, brought on record, on behalf of the appellant, to discredit the evidence brought on record by the claimants, we are in agreement with the computation of loss of dependency worked out by the Tribunal.

9. The only serious issue which was stressed mainly by the learned Counsel for the appellant before us was the fact that Rs.6,00,000/- has been awarded by the Tribunal at the rate of Rs.3,00,000/- to each of the claimants, towards general damages for pain and sufferings, loss of love and affection on account of demise of the deceased Ramanujam. This was objected to by the learned Counsel for the appellant on the ground that it was an exorbitant amount.

10. There is no contra material let in by the appellant Insurance Company before the Tribunal, whereas the claimants have clearly brought out as to how the deceased Ramanujam has come up in life the hard way which they have demonstrated beyond any pale of doubt. With regard to the earning capabilities of the deceased Ramanujam, after his discharge from Indian Army, he worked for Brakes India Limited. He was consecutively awarded cash incentives in recognition of his meritorious service by that company. After getting superannuated from Brakes India Limited, the deceased Ramanujam took up employment with Turbo Energy Limited. Even that company, handsomely rewarded the deceased by a cash incentive of Rs.36,000/-. After leaving the employment of Turbo Energy Limited, the deceased Ramanujam established a Manpower Supply Firm, for which, licence was granted by the competent authority incorporating the name of Ramanujam therein. Therefore, there is hardly any doubt with regard to the nature of work ethics and dedication to work which Ramanujam possessed as a characteristic element. It is so obvious that the discipline which he has imbibed while serving the Indian Army, has been made a character to stay with him forever. Ex.P.14 reflects the academic bent of mind of Ramanujam. At the age of 60, we find hardly anyone pursuing, a Doctoral Degree programme, after obtaining M.A., and M.Phil., Degrees from Madurai Kamaraj University. Whereas the deceased Ramanujam has pursued his Doctoral Degree and he seems to have submitted his Thesis for evaluation and he is waiting for a turn to undergo vivo-vice test to defend his Thesis. The first claimant, being a widow of the deceased Ramanujam,



is the one who would have been impacted most due to the untimely death of the deceased Ramanujam. She lost her companionship, love and affection of the deceased. Therefore, awarding of Rs.3,00,000/- to her towards general compensation cannot be taken exception to.

11. That brings us to quantum of general damages to Rs.3,00,000/- awarded to the second claimant, who is the son of the deceased Ramanujam. It is the second claimant who lost the parental supervision and guidance due to the untimely death of the deceased Ramanujam. From a man of the experience of the deceased, if only he was alive, the second respondent would have surely received guidance more usefully than others. The deceased could have helped more than one way in shaping up the life of the second claimant. Looked at from this perspective, awarding Rs.3,00,000/- towards general compensation, we do not find it any exorbitant.

12. We do not find any merit in this Civil Miscellaneous Appeal and hence, the same is dismissed. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal cum
Principal District Judge,
Virudhunagar District at Srivilliputtur.

+ 2 CC TO MR.K.BHASKARAN, ADVOCATE IN SR No. 38942
+ 1 CC TO MR.M.KARTHIKEYAN, ADVOCATE IN SR No. 39069

RSB

TE/SK-SKN/SAR-III : 03/08/2016 : 5P/5C

PRE-DELIVERY JUDGMENT MADE IN
C.M.A. (MD) No.1337 of 2011
22.07.2016