



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE:24.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) No.1401 of 2011

and

M.P (MD) No.1 of 2011

The Branch Manager,
The United India Insurance Co.Ltd.,
Palani. ... Appellant/ 2nd Respondent

Vs.

1.K.Elizabeth

2.K.Subash

..1st&2nd Respondents/Petitioners

3.K.Jawahar

...3rd Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.01.2011 passed in M.A.C.O.P.No.389 of 2006, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Palani

For Appellant : Mr.G.Prabhu Rajadurai
For Respondents : Mr.D.Venkatesh
for R.1 & R.3
: Mr.K.Elangovan
for R.2

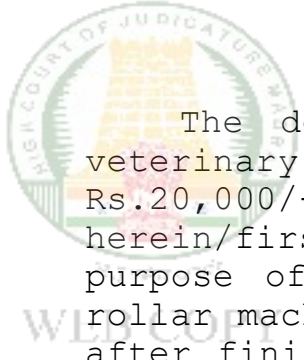
JUDGMENT

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

The second respondent Insurance Company in M.C.O.P.No.389 of 2006 on the file of the Court of Motor Accident Claims Tribunal (Subordinate Court), Palani is the appellant and aggrieved by the award of compensation of Rs.13,12,872/- (Rupees Thirteen Lakhs, Twelve Thousand Eight Hundred and Seventy Two only) in favour of the respondents 1 and 2/claimants along with interest at the rate of 7.5% p.a. with proportionate costs, came forward to file this appeal.

2. The facts, leading to the filing of this appeal briefly

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related are as follows:



The deceased in this case is Dr.Kadarkarai and he was a veterinary surgeon in Government service and earning a sum of Rs.20,000/- p.m. The services of the third respondent herein/first respondent in the claim petition were engaged for the purpose of laying road and he parked the paver machine and the rollar machine on the road for completion of work. The deceased, after finishing his work, was riding his motorcycle on 23.05.2003 at about 07.15 p.m., when he was nearing Chida Trust in Palani-Tharapuram road, he dashed against the paver machine and as consequences, he died on the spot. The jurisdictional police viz., Keeranur Police Station has registered a case in Cr.No.173 of 2005 against the rider of the motorcycle viz., Dr.Kadarkarai for the alleged commission of offence under Section 304(A) I.P.C.. The respondents 1 and 2/claimants are the wife and the son of the deceased. They filed the claim petition in M.C.O.P.No.389 of 2006 claiming compensation under the following heads:

For funeral expenses	: Rs.	5,000.00
For loss of love and affection	: Rs.	50,000.00
For loss of estate	: Rs.	10,00,000.00
For loss of future prospects	: Rs.	24,40,000.00

Total	: Rs.	34,95,000.00

Though the respondents 1 and 2/claimants claimed a sum of Rs.34,95,000/-, they restricted their claim to Rs.15,00,000/-

3. Challenging the finding of the Tribunal on negligence as well as quantum, the Insurance Company had filed this appeal.

4. Mr.G.Prabhu Rajadurai, learned Counsel appearing for the appellant/Insurance Company would contend that admittedly the F.I.R. in Cr.No.173 of 2005 was registered by the Jurisdictional police viz., Keeranur Police Station against the rider of the motorcycle Dr.Kadarkarai (deceased) for the commission of offence under Section 304(A) I.P.C. and as such, the Tribunal, instead of giving a finding on opposite negligence, has fixed the liability on the Insurance Company and the same is unsustainable.

5. It is the further submission of the learned Counsel appearing for the appellant that the Tribunal has not appreciated the oral and documentary evidences in proper perspective and awarded excess compensation and therefore, prays for setting aside the impugned award and the decree passed by the Tribunal and allowing this appeal.

6. Per contra, the learned Counsel appearing for the respondents 1 and 2/claimants would contend that the Tribunal on a de novo consideration and appreciation of oral and documentary evidences and other materials had rightly reached the conclusion that the Insurance Company has to indemnify the insured viz., the



third respondent and the quantum of compensation awarded is just and reasonable one and prays for dismissal of the appeal.

7. This Court has carefully considered the rival submissions made by both sides and also perused the materials available on record.

8. The following questions arise for consideration:

(1) Whether the deceased had contributed to the accident?

(2) Whether the compensation awarded by the Tribunal is just and fair and reasonable one?

Question No.1:

9. The deceased, after finishing his work, was riding his motorcycle bearing registration No.TN-Z-8226 and about 07.15 p.m. on 23.05.2003, when he was nearing Chida Trust in Palani-Tharapuram main road, he hit against the paver machine which was halt on the road and the said machinery as well as other machineries were used by the third respondent for the purpose of laying road. The Sub-Inspector of Police attached to Keeranur Police station was examined as R.W.1 and in the cross-examination, he would submit that he is not the Investigating Officer and based on the information diary, he has given his evidence and in the complaint, it has not been stated that the deceased was negligent in driving the vehicle and thereby the accident was caused. R.W.1 would admit that the width of the road is 21 feet and the breadth of the paver machine is 12 feet and both sides of the road, there was a mud road measuring 5 feet each and as per sketch also, it was noted that the paver machine was parked at the main side of the road and therefore, the factum is that the paver machine was parked on the road itself. It is the specific case of the respondents 1 and 2 / claimants that there was no light or any reflectors and as such, the two wheeler driven by the deceased was hit against the paver machine and caused the accident.

10. In the considered opinion of this Court, in the light of the evidence of R.W.1, it cannot be stated that the deceased had contributed to the accident and the third respondent while parking the paver machine did not choose to take any normal care and diligence to indicate that the vehicle was parked on the road and therefore, the Tribunal was right in concluding that the Insurance Company has to indemnify the insured. Accordingly, the question No.1 is answered negatively as against the appellant/Insurance Company.

Question No.2:

11. The deceased was in Government service and as per the postmortem certificate which was marked as Ex.P.2, he was aged about 54 years and as per the evidence of P.W.2, the deceased was earning Rs.19,810/- p.m. and the salary certificate which was marked as Ex.P.6 and Exs.P.10 and P.11 are also evidenced that he was earning the said salary. The Tribunal, after deducting



1/3rd for his personal expenses, has arrived at a sum of Rs.13,207/- for contribution of income to his family. By adopting multiplier of "8", it has arrived at a sum of Rs.12,67,872/- towards loss of income.

12. This Court is of the view that the income of the deceased was substantiated through to the testimony of P.W.2 coupled with Exs.P.6, P.10 and P.11 and there is no dispute regarding the occupation of the deceased also and therefore, a sum of Rs.12,67,872/- fixed by the Tribunal towards the loss of income is a correct one. The Tribunal, that apart, awarded a sum of Rs.25,000/- towards loss of love and affection and consortium. At the time of accident, the first respondent was aged about 50 years and the second respondent was major and on account of the sudden and tragic demise of the deceased and ultimately his life came to an end and a sum of Rs.25,000/- awarded by the Tribunal towards loss of love and affection and consortium is a reasonable one. The Tribunal has also awarded a sum of Rs.10,000/- towards funeral expenses and another sum of Rs.10,000/- towards transportation charges, which in the facts and circumstances, are also reasonable one. In the considered opinion of this Court, the quantum of compensation awarded by the Tribunal is just, fair and reasonable compensation. Accordingly, the question No.2 is answered negatively as against the appellant/Insurance Company.

13. This Court on an independent application of mind to the entire materials placed before this Court, is of the view that there is no error or infirmity in the reasons assigned by the Tribunal in awarding compensation. Hence, there is no merit in this appeal.

14. This Court while entertaining the appeal granted interim stay subject to the condition that the appellant had to deposit the entire award amount with accrued interest and out of which, the claimants were directed to withdraw 50% of the compensation and it was also withdrawn.

15. In the result, this Civil Miscellaneous Appeal is dismissed confirming the award and decree dated 05.01.2011 made in M.C.O.P.No.389 of 2006, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Palani. However considering the facts of case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed. The respondents/claimants 1 and 2 are permitted to withdraw the balance amount lying to the credit of M.C.O.P.No.389 of 2006 by filing appropriate application before the Tribunal.

Sd/-

Assistant Registrar(CSII)



To

The Motor Accident Claims Tribunal,
Subordinate Court, Palani.

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