

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 1333 of 2016

The Oriental Insurance Co., Ltd.,
3607/21, Sathiyamoorthi Road
2nd Floor (Near Team Hospital)
Puthukottai - 622 001 ... Appellant/2nd Respondent

Versus

1. Gomathi ... 1st Respondent/Petitioner
2. K.S. Balaji
3. Muthammal
4. Ramalingam ... Respondents 2 to 4/Respondents 1,3 & 4

Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Judgment and Decree dated 11.11.2014 made in M.C.O.P. No. 358 of 2012 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Ariyalur.

For Appellant : M/s.C.Harini
For Mr. N. Vijayaraghavan
For Respondents : M/s. C.Sangamithirai for R1
Mr. S.P. Yuvaraj for RR3 and 4

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

This appeal is filed by the appellant-Insurance Company challenging the quantum of compensation awarded by the Principal District Judge (Motor Accidents Claims Tribunal, Principal District Judge) Ariyalur on 11.11.2014 in M.C.O.P. No. 358 of 2012.

2. The first respondent in this appeal is the claimant in M.C.O.P. No. 358 of 2012. She is the wife of the deceased Balakrishnan. According to the claimant, on 10.02.2012 at about 4.15 p.m. when the deceased Balakrishnan was riding his two wheeler - Hero Honda Motor Cycle bearing Registration No. TN 61 H-4222 from Thozhuthur to Vridhachalam, near Vagaiyur Panchayat Union Middle School, the driver of the Tanker Lorry bearing Registration No. TN 52 Y 7528, owned by the second respondent in this appeal, drove it in a rash and negligent manner and hit the two wheeler from behind. In the impact, the deceased was thrown out of the vehicle. sustained grievous injuries which resulted in his instantaneous death. In

connection with the death of the deceased, the claimant has filed the M.C.O.P. No. 358 of 2012 against the owner of the vehicle, who is the second respondent in this appeal as well as the appellant insurance company. The respondents 3 and 4 in this appeal are the parents of the deceased Balakrishnan.

3. According to the claimant, the deceased Balakrishnan was aged 27 years at the time of his accident. He was working as an Air Conditioning Mechanic in Singapore and earning a sum of Rs.1,60,000/- per month. Contending that the family of the deceased has lost their only bread-winner, the claim petition was filed by the claimant seeking compensation of Rs.1,00,00,000/-.

4. The claim petition was resisted by the appellant insurance company by contending that at the time when the accident had occurred, there were three persons travelling in the two wheeler bearing Registration No. TN 61 H 4222 and all the three who travelled in the vehicle have died in the accident. Therefore, it was contended that the accident had occurred due to the negligent driving of the driver of the two wheeler and the insurance company cannot be fastened with any liability to pay the compensatino amount.

5. Before the Tribunal, in order to prove that the claimant is entitled to the compensation amount claimed, the claimant examined herself as PW1 and one Kolaji was examined as PW2. Exs. P1 to P12 were marked on the side of the claimant. On behalf of the respondents, one Gowthaman was examined as RW1, Dr. Pariselvi was examined as RW2 and one Karuppiyah was examined as RW3 and Exs. R1 to R4 were marked. The Tribunal, on analysing the oral and documentary evidence, concluded that the driver of the two wheeler, in which the deceased travelled, has contributed to the accident besides that the driver of the lorry insured with the appellant was also responsible for the accident. Thus, the Tribunal has fixed the negligence on the part of the driver of the Lorry bearing Registration No. TN 52 Y 7528, which was insured with the appellant insurance company at 70% and on the part of the deceased at 30%. As regards the compensation amount, the Tribunal awarded a total sum of Rs.61,80,000/- as compensation out of which the appellant insurance company was directed to pay 70% of the compensation amount which worked out to Rs.43,26,000/-. Aggrieved by the same, the appellant has come forward with this appeal.

6. The learned counsel for the appellant submitted that even though it was claimed by the claimant in the claim petition that the deceased was drawing a sum of Rs.1,60,000/- per month, in order to prove the income of the deceased, on behalf of the claimant, the passport of the deceased was marked as Ex.P5. The claimant also marked Ex.P7, Cash Voucher. Except the above two documents, no other documentary evidence was marked to prove that the deceased was earning a sum of Rs.1,60,000/- per month. However, the Tribunal erroneously given a finding that on behalf of the claimants, Ex.P4 to P9 were marked to prove the income of the deceased. Ex.P4 is only

a Visit pass issued to the deceased. Ex.P5 and P6 are passport of the deceased and the claimant. Ex.P7 is the cash voucher and Ex.P8 is the dependant's pass issued to the claimant. Ex.P9 is a cheque for a sum of Rs.Singapore Dollar 3537.50 drawn in the name of Ramalingam, father of the deceased. Based on these documents, the Tribunal has rendered an erroneous finding that the deceased was working in Singapore as a Project Manager in a company and he could have definitely earned a sum of Rs.45,000/- per month. On the basis of the above presumption, the Tribunal fixed the monthly salary of the deceased at Rs.45,000/- per month. After giving 1/3 deduction towards his personal expenses and by applying multiplier 17, the loss of income of the deceased was arrived at Rs.61,20,000/-. According to the learned counsel for the appellant, the Tribunal, without any concrete proof of income of the deceased, has erred in taking his monthly income as Rs.45,000/- per month to award a huge compensation amount. Therefore, the learned counsel for the appellant prayed for setting aside the award passed by the Tribunal.

7. On the other hand, the learned counsel for the first respondent would contend that it was established before the Tribunal that the deceased was working in Singapore. It was also established before the Tribunal that the deceased was earning not less than Rs.45,000/- per month. Therefore, the Tribunal is right in arriving at the sum of Rs.61,20,000/- as compensation and therefore, he prayed for dismissal of the appeal. Further, the learned counsel for the first respondent/claimant, relying on the typed set of papers filed before this Court, would contend that there are documents such as bank statement available to prove the income of the documents but they were not marked before the Tribunal.

8. We have heard the counsel for both sides and perused the materials placed on record. It is the vehement contention of the counsel for the appellant that in order to prove the income of the deceased, document such as salary certificate or statement obtained from the bank account have not been marked before the Tribunal and in the absence of the same, the Tribunal ought not to have fixed the monthly income of the deceased at Rs.45,000/- per month.

9. We find force in the submission of the counsel for the appellant. On perusal of the award passed by the Tribunal, we are of the view that the Tribunal, in the absence of concrete proof of income of the deceased, ought not to have arrived at a sum of Rs.45,000/- per month. Further, on perusal of the award passed by the Tribunal, we find that the Tribunal has notionally fixed the sum of Rs.45,000/- per month with an observation in para No.8 - Point No.4 that ".....Hence, even though the petitioner (deceased) is hale and healthy, he will definitely earned Rs.45,000/- per month." This is evident that the Tribunal, on the basis of surmises, has arrived at the sum of Rs.45,000/- per month as the monthly income of the deceased. In such view of the matter, we are of the view that the award of the Tribunal has to be set aside and the matter has to be

remanded back to the Tribunal for considering the claim petition afresh.

10. As regards the findings rendered by the Tribunal with regard to liability of the Insurance Company and on the part of the deceased, we are of the view that the Insurance Company has not questioned the liability fastned on them in this appeal. Further, we are of the view that the Tribunal, taking into consideration the evidence made available, has rightly fixed the liability on the part of the Insurance Company and the deceased at 70 : 30 and therefore, the award passed by the Tribunal in so far as it relates to liability is hereby confirmed.

11. In the result, the Judgment and Decree dated 11.11.2014 made in M.C.O.P. No. 358 of 2012 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Ariyalur is set aside. No costs. The matter is remanded back to the Tribunal for considering only the claim with regard to quantum of compensation payable to the claimant. It is open to the claimant/first respondent in this appeal to file necessary documentary evidence to substantiate the income of the deceased Balakrishnan. The Tribunal is also directed to permit the claimants to adduce oral and documentary evidence with regard to the claim of quantum of compensation alone and by affording an opportunity of cross-examination to the counsel appearing for the Insurance Company. The Tribunal is directed to complete the aforesaid exercise within a period of four months from the date of receipt of a copy of this Judgment. The appellant and the respondents are also directed to extend their cooperation for expeditious disposal of the Claim Petition by the Tribunal.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1.The Principal District Judge
(Motor Accident Claims Tribunal)
Ariyalur.

2.The Section Officer/Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.N.Vijaya Raghavan, Advocate, S.R.No.51643

+1cc to Mr.C.Sangamithirai, Advocate, S.R.No.52380

+1cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.51842

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CMA No. 1333 of 2016

NRJK (CO)

GN (21/11/2017)