IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1826 of 2015
and
MP No.1 of 2015

The Oriental Insurance Co. Ltd.,
No.69, West Mada Church Road,
Appavoo Tower, 1st Floor,
Royapuram, Chennai - 600 013. ...Appellant/Respondent II

vs.

1. Mrs. V.Suriya ...I Respondent/Petitioner I
2. Mrs.P.Premalatha ...II Respondent/Petitioner II
3. Miss.Kanimozhi ...III Respondent/Petitioner III
4. Mr.V.Pradeep ...IV Respondent/Petitioner IV
5. Mrs.Chinnaponnu ...V Respondent/Petitioner V
6. R.Pon Rani ...Respondent/Respondent I

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.5917 of 2012 dated 28.04.2014 on the file of Motor Accidents Claims Tribunal, [II Judge, Small Causes Court], Chennai.

For Appellant : Mr.J.Chandran
For Respondents: Mr.K.Malaikannu

J U D G M E N T

[Order of the Court was made by M.GOVINDARAJ, J.]

Challenging the award of compensation made by the Motor Accidents Claims Tribunal [II Judge, Court of Small Causes], Chennai, in MCOP No.5917 of 2012 dated 28.04.2014, the insurance company preferred this appeal on the grounds of liability and quantum.

2. On 11.03.2012, at 21.45 hours, when the deceased was proceeding in his motorcycle bearing Regn.No.TN04AD3731 with the pillion rider towards Tiruvottiyur at Ennore Express Road,

Kaladipet, Chennai - 79, near Kumaran ITI another motorcycle bearing Regn.No.TN04Q5051, came in a rash and negligent manner in the opposite direction and hit the deceased. For the death of the motorcyclist, his wife, children and mother, made a claim petition for a sum of Rs.50 Lakhs.

3. Insurance company has denied its liability as there were three persons in the motorcycle while the deceased was riding the same and in view of the violation of the policy conditions, the insurance company is not liable to pay any compensation. Further, the children of the deceased/claimants in the claim petition are major and independent and they are not depending upon the deceased and therefore, they are not entitled to compensation.

4. On behalf of the claimants, PW1 has let in evidence and marked Ex.P1, FIR, Ex.P2, copy of the accident register, Ex.P8, copy of Marksheet in Diploma in Civil Engineering, Ex.P9, Cheque Books, Ex.P10, Remittance challans with statement and Ex.P12, driving licence of the deceased. On the side of the Insurance company, an administrative officer of the insurance company was examined as RW1 and Ex.R1, copy of the rough sketch was marked.

5. Based on the materials submitted before the tribunal, the tribunal has held that the motorcyclist bearing Regn.No.TN04Q5051 was rash and negligent and in view of the coverage of insurance policy, held that 2nd respondent insurance company is liable to pay the compensation.

6. Insofar as the quantum of compensation is concerned, the tribunal below has fixed the monthly income of the deceased at Rs.25,000/-, based on Ex.P9, Cheque books and Ex.P10, Remittance Challans with statement. The deceased was aged 46 years at the time of accident. Therefore, following the judgment of the Hon'ble Supreme Court, in Rajesh and others Vs.Rajbir Singh reported in 2013 (2) TNMAC 55 (SC), 30% was awarded towards future prospects. Accordingly, the monthly income was arrived at Rs.32,500/-. Since the deceased was aged 46 years, following the judgment of the Hon'ble Supreme Court in Sarla Verma and Others Vs. Delhi Transport Corporation, reported in 2009 ACJ 1298, the tribunal applied '13' multiplier and after deducting 1/4 of the amount towards personal and living expenses of the deceased, arrived at the loss of dependency as Rs.38,02,500/-.

7. In addition, the tribunal has awarded Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection to claimants 2 to 4. Since the 5th respondent/claimant, mother of the deceased had expired, no compensation was awarded to her. Sum of

Rs.25,000/- towards loss of estate and Rs.50,000/- for loss of expectation of life, was ordered by the tribunal. Thus, compensation of Rs.41,02,500/- was awarded.

8. On appeal the learned counsel appearing for the appellant-insurance company, contended that the deceased has driven the vehicle with two other persons in violation of law and has hit the 1st respondent vehicle in a rash and negligent manner and therefore, the Insurance company is not liable to pay the compensation. Rs.41,02,500/- awarded towards compensation to the legal representatives of the deceased, is highly excessive and exorbitant and unsustainable. According to the learned counsel for the insurance company, there is no proof of income by the claimants and the income tax return was also not filed before the tribunal even though it is mentioned in the claim petition.

9. Per contra, the learned counsel appearing for the respondents/claimants would submit that Exs.P9 and P10 are the cheque books and the remittance challans, relevant to the civil construction works conducted by the deceased. At the time of death, the deceased was running a firm called Appoorva Builders. In support of the same, remittances were made into the bank account belonging to the firm and the deceased was shown as the Proprietor in the transactions, payments were made by issuing cheques. The tribunal, based on Exs.P9 and P10, had observed that the deceased was earning between Rs.4,000/- to Rs.40,000/- per month, depending upon the entries made in the remittance challans. The income was fixed at Rs.25,000/-. However, we find that there is no positive evidence to show that the deceased was earning Rs.50,000/- as claimed in the claim petition. In the absence of any proof of income, the tribunal ought not to have fixed Rs.25,000/- without valid material to arrive at the finding.

10. It is seen that the deceased is survived by the claimants viz., 1st respondent/wife, respondents 2 to 4/children and 5th respondent/mother (who is no more). For maintaining a family of five persons, as per present consumer price index, normally a person should earn, not less than Rs.750/- per day. Considering the contention of the learned counsel for the respondents/claimants that he had employed masons for conducting civil construction work and he used to pay Rs.700/- and the salary of the mason in the present day market value is between Rs.500/- and Rs.700/- and therefore, a reasonable sum shall be fixed as monthly income. We deem it fit to fix Rs.17,000/- towards monthly income and following the judgment of the Hon'ble Supreme Court in Rajesh's case [cited supra], 30% is awarded towards future prospects as the deceased was aged about 46

years. Accordingly, a sum of Rs.22,100/- is fixed as monthly income. After deducting 1/4th towards the living and personal expenses, monthly income is arrived at Rs.16,575/- and the annual income is Rs.1,98,900/-. Applying the multiplier '13' as per the decision of the Hon'ble Supreme Court in Smt.Sarla Varma's case [cited supra], the total loss of contribution to the family is arrived at Rs.25,85,700/-.

11. The tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium to the 1st respondent/wife and the same is confirmed. Tribunal has awarded Rs.1,00,000/- towards loss of love and affection to respondents/claimants 2 to 4. We consider that a sum of Rs.50,000/- to each of the claimants 2 to 4 of the deceased, is reasonable and accordingly, the amount is enhanced to Rs.1,50,000/-. The tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and the same is confirmed.

12. In so far as sum of Rs.25,000/- awarded towards loss of estate, we reduce Rs.10,000/- and award Rs.15,000/- under the said head. Question of awarding compensation under the head loss of expectation of life, does not arise at all and hence, sum of Rs.50,000/- awarded under the said head is omitted. There is no award under the heads transportation and conventional damages. Hence, sum of Rs.10,000/- is awarded towards transportation and Rs.2,000/-, is awarded towards conventional damages. Thus, compensation of Rs.28,87,700/- is awarded to the claimants. The tribunal has awarded a sum of Rs.41,02,500/-. Now the award is reduced by Rs.12,14,800/-.

13. Record of proceedings shows that the appellant Insurance Company has deposited 50% of the award amount and respondents/claimants were permitted to withdraw Rs.15,00,000/- from the same. However, learned counsel for the respondents/claimants submitted that they have not withdrawn any money.

14. In view of the modification of the award amount and the statement made, appellant-Insurance company is directed to deposit the award amount of Rs.28,87,700/-, now determined by this Court, with proportionate interest at the rate of 7.5% per annum from the date of claim till deposit and cost awarded by the tribunal, less the amount already deposited, to the credit of said MCOP No.5917 of 2012 dated 28.04.2014 on the file of Motor Accidents Claims Tribunal, [II Judge, Small Causes Court], Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are entitled to seek for withdrawal of the compensation awarded by this Court. The compensation is apportioned as under, in view of reduction of quantum.

1st respondent/ Wife of the deceased	- Rs.	18,27,700/-
2nd respondent/ Married Daughter	- Rs.	2,10,000/-
3rd respondent/ Unmarried Daughter	- Rs.	4,25,000/-
4th respondent / Unmarried Son	- Rs.	4,25,000/-
Total	- Rs.	28,87,700/-

15. The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
[II Judge, Court of Small Causes], Chennai.

+1cc to Mr.J.Chandru, Advocate, S.R.No.36366
+1cc to Mr.K.Malaikkannu, Advocate, S.R.No.25719

C.M.A.No. 1826 of 2015
and MP No.1 of 2015

SKS(CO)
RS(05/06/2017)