

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.No. 2163 of 2016

Branch Manager
The Oriental Insurance Co. Ltd.,
First Floor, Arunagiri Complex
Bye-Pass Road, Hosur ..Appellant/2nd Respondent
Vs.

1.Rani
2.S.Arun Kumar
3.S.Sasikumar
4.R.Krishnamurthy ...Respondents/Petitioner/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.116 of 2009, dated 03.09.2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Hosur.

For Petitioner : Mr.N.Vijayaraghavan

For Respondents : M/s.Mukund R. Pandiyan
R1 to 3

ORDER

[Order of the Court was made by T.MATHIVANAN, J.]

Questioning the quantum of compensation awarded by the Tribunal, the appellant Insurance Company, who is the second respondent in the claim petition stands before this Court with this appeal.

2.The first respondent herein is the wife of the deceased Sivam whereas the respondents 2 and 3 are his sons. The fourth respondent herein is the owner of the offending vehicle.

3. From the perusal of the records it is revealed that on

29.12.2007, at about 09.45 am, when the deceased was travelling as a pillion rider in a TVS moped bearing Registration No.TN-24-X-4709, an Ashok Leyland Tipper Lorry bearing Registration No.KA-01-B-4640 driven by its driver in a rash and negligent manner had hit against the rear side of the moped and as a result of which the deceased had sustained the following injuries:

Injuries as per the A.R.Entry of Hosur, Government Hospital:

1. Contusion left parietal region - 4 x 3cm
2. Contusion right parietal region - 3 x 2cm
3. Contusion left Zygoma 2 x 1 cm
4. Abrasion left foot 2 x 1 cm
5. Abrasion right foot 2 x 1 cm

Head injury referred to Higher Institution for further treatment and for further management.

Injuries as per Abhaya Hospital, Bangalore:

Multiple abrasions over left supra orbital, infra orbital, parietal and right hand, back of abdomen.

1.CT-Brain revealed - Right Thalamic speck of contusion and bilateral post parietal traumatic subarachnoid haemorrhage and bilateral frontal subdural hygroma with diffuse cortical trophy.

2.MRI Cervical spine - Mild Posterior bulge of C5-6 indenting the duval sac.

Opinion : Injuries 1 and 2 are grievous in nature.

Despite prolonged treatment, the injured did not recover from the said injuries and died on

08.12.2008 at his residence in Hosur."

4. It is to be noted that at the relevant point of time, the third respondent herein, who is none other than the son of the deceased, had ridden the moped. Soon after the occurrence, the deceased was removed to NIMHANS Hospital, Bangalore and thereafter shifted to Abhaya Hospital for better treatment. Despite best treatment was given, the deceased had succumbed to injuries on 08.12.2008 at his residence at Hosur. According to the claimants, prior to the occurrence, the deceased was hale and healthy and was a PWD contractor by profession and thereby

earned a sum of Rs.25,000/- per mensem.

5. Claiming totally a sum of Rs.25 lakhs, the respondents 1 to 3, being the claimants, had moved the Motor Accidents Claims Tribunal (Subordinate Judge), Hosur with a claim petition in M.C.O.P.No.116 of 2009. The fourth respondent herein, being the first respondent in the claim petition, had not chosen to contest the claim as he remained ex parte. The appellant Insurance Company had contested the claim petition on the following grounds:

i) The accident was not taken place due to rash and negligent driving of the driver of the Tipper lorry, but it was taken place on account of the rashness and negligence on the part of the rider of the motorcycle i.e., the son of the deceased, namely Sasikumar (3rd respondent herein)

ii) the owner and insurer of TVS Moped bearing Registration No. TN-24-X-4709 are the proper and necessary parties to the claim proceedings and since they have not been impleaded as parties, the claim petition itself is bad for non-joinder of necessary parties;

iii) The accident was taken place on 29.12.2007. The deceased was admitted in Abhaya Hospital at Bangalore on 30.12.2007 and he had died on 08.12.2008. According to the appellant Insurance company, no postmortem examination was conducted on the deadbody of the deceased. No recorded medical evidence is produced on the part of the claimants to show that the death was due to the injuries sustained by him in the Road Traffic Accident involving the motor vehicle. The claims Tribunal, on appreciation of the evidences, both oral and documentary, had proceeded to pass an award of Rs.23,81,000/- as detailed hereunder:

Pecuniary loss of the Family	- Rs.20,16,000/-
Loss of consortium to	
the first claimant	- Rs. 10,000/-
Loss of love and affection	
to Claimants 2 and 3	- Rs. 15,000/-
Funeral Expenses	- Rs. 10,000/-
Medical Expenses	- Rs. 3,30,000/-

Total	Rs.23,81,000/-

6. We have heard Mr.N.Vijayaraghavan, learned counsel for the appellant Insurance Company and Mr.Mukund R.Pandian, learned counsel for respondents 1 to 3. We have also perused the grounds of appeal along with the impugned award dated 03.09.2012 passed by the Tribunal.

7. At the time of hearing of the appeal, Mr.N.Vijayaraghavan, learned counsel for the appellant has submitted that the Tribunal, without appreciating the evidences available on record and without considering the nature of occupation of the deceased, had arbitrarily fixed the monthly income of the deceased at Rs.18,000/-, which is absolutely without any basis and supportive evidences. He has also submitted that based on the above said monthly income, the pecuniary loss of the family of the deceased was wrongly calculated at Rs.20,16,000/-, which is absolutely exorbitant and usurious. Therefore, Mr.Vijayaraghavan has submitted a revised calculation, which is accepted by Mr.Mukund R.Pandian, learned counsel for the respondents 1 to 3.

8. As per the revised calculation, a sum of Rs.10,000/- was fixed as the monthly income of the deceased. After adding 30% of the income towards future prospectus and giving 1/3rd deduction towards personal and living expenses of the deceased, the pecuniary loss of the family was arrived at as Rs.14,56,000/-. The amount of Rs.10,000/- awarded by the tribunal towards consortium to the first respondent is enhanced to Rs.1,00,000/- and the award of Rs.15,000/- granted by the Tribunal towards loss of love and affection to respondents 2 and 3 is enhanced to Rs.1,00,000/- (Rs.50,000 each to respondents 2 and 3). Apart from this, the award of Rs.10,000/- granted by the Tribunal towards funeral expenses is enhanced to Rs.25,000/-. The compensation towards the medical expenses to the extent of Rs.3,30,000/- awarded by the Tribunal remains unaltered. Therefore, the award of Rs.23,81,000/- granted by the Tribunal is hereby reduced to Rs.20,11,000/-. The break-up details are given as under:

Loss of Income	:	Rs.14,56,000.00
(13,000/- x 12 x 14 x 1/3)		
Funeral Expenses	:	Rs. 25,000.00
Consortium	:	Rs. 1,00,000.00
Love and Affection	:	Rs. 1,00,000.00
(Respondents 2 and 3)		
Medical Bills	:	Rs. 3,30,000.00

		Rs.20,11,000.00

Out of 20,11,000/-, the first respondent is entitled to get Rs.8,11,000/- with proportionate interest and cost and the respondents 2 and 3 are each entitled to get Rs.6,00,000/- with proportionate interest and cost.

In the result, this Civil Miscellaneous Appeal is partly allowed and the award of Rs.23,81,000/- granted by the Tribunal is reduced to Rs.20,11,000/-. The appellant Insurance Company is directed to deposit this award amount with interest at 7.5%, if not already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents are permitted to withdraw their respective shares along with the accrued interest and cost without filing any formal application.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

The Motor Accidents Claims Tribunal,
Subordinate Judge, Hosur

+1cc to MR.Mukund R.Pandiyar, Advocate Sr.No.2805 (28/03/2017)

C.M.A.No.2163 of 2016

RJ(CO)
RS(27/03/2017)

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