

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/4/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and

The Honourable Mr.JUSTICE M. GOVINDARAJ

Civil Miscellaneous Appeal No. 985 of 2015

Oriental Insurance Company Limited

(CBO 9, Hosur Road)

No.1 & 2, II Floor, I Cross,
Siddapuram

Opp. 9th Cross Wilson Garden

Hosur Road

Bangalore 560 027

Karnataka State.

... Appellant /2nd Respondent

Vs

1. Mangamma

2. Rathnakar

3. Anjala

4. Minor Gowthami

5. Minor Srikanth

... Respondents 1 to 5 /Petitioners

(Minors 4 & 5 are represented by
next friend Mother Mangamma)

6. B. Madesh.

... 6th Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 13/8/2014, made in M.C.O.P.No.969 of 2009, on the file of the Motor Accident Claims Tribunal (Principal District Court), Krishnagiri.

For appellant
For Respondent

... Mr.S.Manohar
... Mr.R.Mukund R.Pandiyan

J U D G M E N T

(Judgment of the Court was delivered by M.Govindaraj,J)

Challenging the liability and quantum, awarded by the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri, in M.C.O.P.No.969 of 2009, dated 13/8/2014, the Oriental Insurance Company Limited, Bangalore/appellant, has preferred the instant Civil Miscellaneous Appeal.

2. The claimants are the legal representatives of the deceased/G.Nagaraju. On 20/7/2008, at about 4.30 p.m., when the deceased was parking his Honda Activa, bearing Registration No.KA01EE-8140, in Jakkari bus stop, a tempo bearing Registration No.KA05-7938, belonging to the sixth respondent herein, and insured with Oriental Insurance Company Limited, Karnataka State, was driven in a rash and negligent manner and dashed against the deceased. Due to the accident, Nagaraju, died on the spot. A case in Crime No.116 of 2008, under Sections 279, 337, 338 and 304 A of the Indian Penal Code, has been registered against the driver of the Tempo.

3. Ex.P.1 Copy of First Information Report, Ex.P.2 Postmortem certificate of Nagaraju, Ex.P.3 Insurance Policy copy of tempo, Exs.P.8 and P.9 salary certificates of Nagaraju have been marked on the side of the claimants.

4. The first claimant/widow examined herself as P.W.1. On the side of the respondents, official of the Insurance Company had let in evidence and marked Ex.R.1 copy of Insurance policy of Tata vehicle.

5. On the basis of the materials available on record, the Tribunal below has considered the aspects of liability and quantum.

6. On the issue of rash and negligent driving, the Tribunal, relying on the evidence of the petitioner's side witnesses and exhibits marked, come to the conclusion that the driver of the tempo van is rash and negligent. In so far as the quantum of compensation is concerned, the Tribunal has relied on Exs.P.8 and P.9, which is supported by the evidence of P.W.5 Assistant Manager in Human Resources Department in M/s. Laguna Clothing Private Limited, Kanagapura in Bangalore, under whom the deceased was working as a Pattern Master from 7/3/2006 to 4/1/2007. He had deposed that the monthly salary was Rs.17,000/-. Apart from that the deceased has received a sum of Rs.780/- for Provident Fund, Rs.409/- for gratuity and Rs.1,416/- for bonus. In total, the deceased had earned a sum of Rs.19,605/- p.m. Though he left the job from the abovesaid

Company, he would have joined in some other Company and earned more. Considering the evidence of P.W.5 and taking into consideration Exs.P.8 and P.9, it was established by the legal representatives that the deceased Nagaraju had earned Rs.17,000/- p.m. After deduction of 1/4, it comes to Rs.1,53,000/-. Since the deceased was aged about 40 years, at the time of accident, the Tribunal applied multiplier 15 and awarded Rs.22,95,000/- towards loss of dependency, Rs.15,000/- for Transport and funeral expenses, Rs.25,000/- for loss of consortium and Rs.20,000/- for loss of love and affection. Altogether, the Tribunal awarded compensation of Rs.23,55,000/-.

7. Learned counsel appearing for the appellant/Insurance Company contended that the Tribunal has failed to appreciate that the driver of the tempo did not have a valid and effective driving license and also failed to appreciate that there was no evidence to prove the avocation of income of the deceased, at the time of accident. This contention cannot be accepted.

8. In so far as the income of the deceased is concerned, they have marked Exs.P.8 and P.9 and had examined the Assistant Manager of the Human Resources Department to corroborate the evidence. During the cross-examination, P.W.5, has clearly deposed that the deceased was working under them during 2006 - 2007. Further there is no proof of income for the period during which the accident had occurred. In our opinion, it is well proved that the deceased was worked as Pattern Master in Laguna Clothing Private Limited, from 7/3/2006 to 4/1/2007. Evidence of P.W.5 and Exs.P.8 and P.9 would clearly show that the deceased was earning Rs.17,000/- p.m., prior to the date of accident. Therefore, it is probable that he might be earning more than that after this period. Deceased was survived with his wife and four children. In the present day price index, a normal family can survive with a reasonable income. On the side of the claimants, it is proved that he was drawing more than Rs.17,000/-. Therefore, on the basis of the cost index, it can be safely presumed that the deceased was earning more than Rs.17,000/-. However, the Tribunal has fixed the monthly income as Rs.17,000/- and deducted ¼ of the income towards the personal and living expenses. Therefore, we find that the finding of the Tribunal does not require any interference and finding in respect of the income of the deceased is upheld. From the above, it could be seen that Rs.15,000/- has been awarded under the head transportation and funeral expenses, which is very less. Towards the loss of consortium, a sum of Rs.25,000/- is awarded, which is also in our opinion very meagre. There are three children. Out of which 2 are minors. Altogether, a sum of Rs.20,000/- was awarded which is very meagre. Moreover, it can be enhanced, but we are not inclined to do so, as there is no appeal from the claimants side.

9. In view of the above discussions, the award of compensation of Rs.23,55,000/- need not be interfered with.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mvs

To

1.The Motor Accident Claims Tribunal
(Principal District Court),
Krishnagiri.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Manohar, Advocate SR.No.21804

C.M.A. No.985 of 2015

NM(CO)
GN(24/07/2017)

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