

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.No.1192 of 2013

and

MP.No.1 of 2013

The Oriental Insurance Co. Ltd.,
Motor Third Party Claims Office,
Jawaharlal Nehru Street,
S.B.I. Upstairs, Tiruvallur.Appellant/2nd Respondent

Vs.

1. Aliammal
2. Mydeen Fathima
3. Kather Mideen
4. Heyland Exports (P) Ltd.,
No.8, Periya Colony Extension Road,
Athipattu, Chennai-58.Respondents/Petitioner 1 to
3 / 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in MACTOP No.106 of 2008 on the file of the Motor Accidents Claims Tribunal (Fast Track Court 2) at Poonamallee dated 19.12.2011.

For Appellant : Mr.M.Krishnamoorthy

For R1 to R3 : Mr.A.Abdul Kani
For Mr.S.Vijayakumar

For R4 : Exparte in Tribunal

JUDGMENT

The Insurance Company is the appellant. The 1st respondent before the Tribunal is the owner of the offending vehicle. The Tribunal has awarded a total compensation of Rs.20,45,928/- for the death of Asankani who died in a motor accident on 25.08.2007. Challenging the liability and quantum of compensation, the Insurance company preferred the appeal.

2. The learned counsel for the appellant would contend that the deceased rode his motor cycle in a rash and negligent manner and he died on the spot and in the process of overtaking, he hit against the two wheeler of RW1, lost control, fell down and sustained injuries. RW1 has given evidence in support of the case of the Insurance Company.

3. A perusal of the records would show that a criminal case has been registered in connection with this accident. Ex.P1 is the copy of the First Information Report. Ex.P2 is the Charge Sheet. The driver of the offending vehicle has been shown as accused. The oral evidence adduced on the side of the claimant coupled with the FIR and Charge sheet would establish that the driver of the insured vehicle was responsible for the accident. Therefore, the contention of the appellant that there was no negligence on the part of the driver of the 2nd respondent cannot be countenanced.

4. The accident occurred on 25.08.2007. The deceased was 27 years old at the time of accident. The deceased is said to be an engineer and was earning Rs.15,000/- per month. The claimants are the wife, mother and father respectively of the deceased. The Tribunal fixed the monthly income of the deceased at Rs.14,000/- per month.

5. The learned counsel appearing for the appellant would contend that the monthly income fixed by the Tribunal is on the higher side. The claimants examined PW2, who is said to be the employer of the victim. He has produced Ex.P7 Salary Certificate to show that the deceased was earning Rs.14,515/- p.m. According to the claimants, the victim was an Engineer.

6. However, they have not produced any document to show the educational qualification of the victim. PW2 has not produced any other official record to show the income of the deceased. Bank documents, income tax returns of the deceased were not produced. In the absence of any other dependable evidence, the monthly income can be fixed only at Rs.6,500/-. 1/3rd of the income has to be deducted towards personal expenses of the deceased. The victim is aged 27 at the time of accident. Therefore there must be an addition of 50% to the actual income of the deceased while computing future prospects. The parties have agreed to apply multiplier 17, if calculated the actual loss of income to the family works out to Rs.13,26,000/- (Rs.9,750 x 12 x 17 x 2/3).

7. In Rajesh V. Rajbir Singh [(2013)9 SCC 54] the Hon'ble Supreme Court has awarded Rs.25,000/- for funeral expenses; Rs.1 lakh for loss of Consortium and Rs.1 lakh for loss of care and guidance for minor children. The Tribunal has awarded Rs.10,000/- under the head of Funeral Expenses and Rs.5,000/- under the head of Transportation. It would be reasonable to award a sum of Rs.25,000/- towards funeral and transport expenses.

8. The wife of the victim is aged about 20 years at the time of the accident and she lost her husband. The Tribunal has awarded Rs.15,000/- under the head of Consortium to the 1st petitioner. As per the said decision, a sum of Rs.1 Lakh has to be awarded to her. The parents of the victim has lost their son at the age of 27 years. They are entitled to Rs.25,000/- each under the head of love and affection.

9. The compensation amount awarded by the Tribunal :

Loss of Earning	Rs.20,15,928
Funeral Expenses	Rs.10,000
Transport Expenses	Rs.5,000
Consortium to the 1st petitioner	Rs.15,000
Total	20,45,928/-

is re-assessed as follows:

Loss of Earning	Rs.13,26,000
Funeral & Transport Expenses	Rs.25,000
Consortium to the 1st petitioner	Rs.1,00,000
Love and Affection to the 2nd & 3rd petitioner (Each 25,000/-)	Rs.50,000
Total	Rs.15,01,000

10. This Court directs the appellant / Oriental Insurance Company Limited to deposit the compensation amount of Rs.15,01,000/- with interest @ 7.5% p.a. from 20.02.2008 till the date of realization, after deducting earlier deposits made if any, within a period of six weeks from the date of receipt of a copy of this order. After such deposit is being made, it is open to the claimants, to withdraw the compensation amount with interest, as fixed by this Court, after filing a Memo, along with a copy of this order.

11. In the result, the above appeal is partly allowed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Motor Accidents Claims Tribunal,
Fast Track Court No.2, Poonamallee.

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

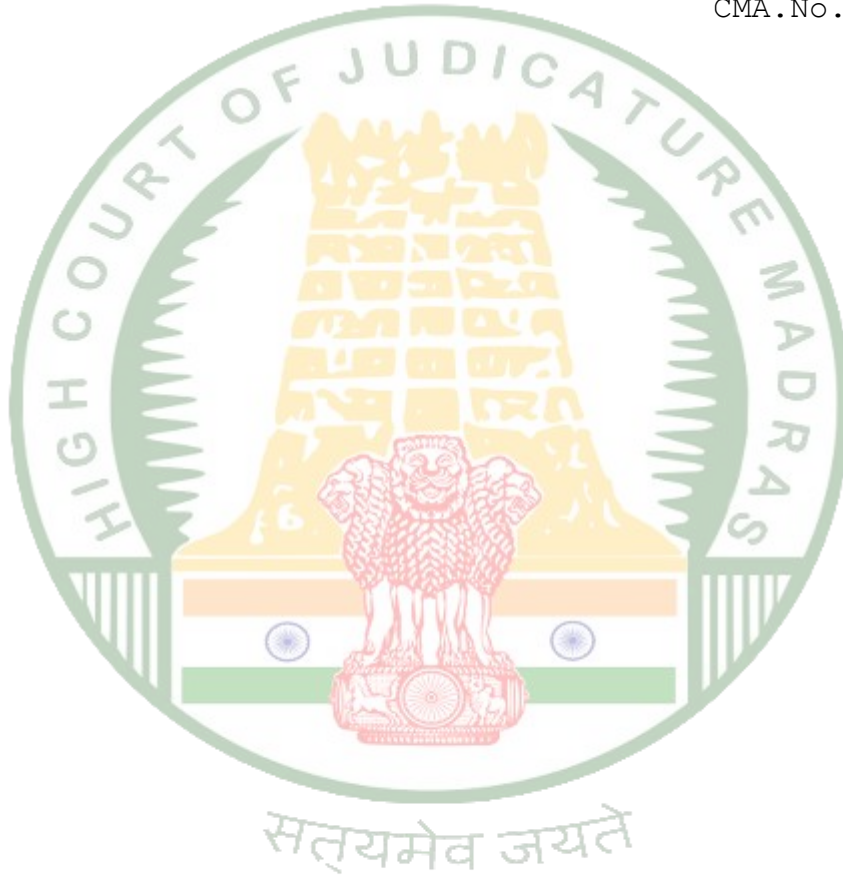
+1 cc to Mr.M.Krishnamoorthy,advocate,sr.9280

+1 cc to M/s.Vijayakumar,advocate,sr.9358

+2 cc's to Mr.S.Vijayakumar,advocate,sr.9389.

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krd 22/3

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