BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.11.2017

CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1118 of 2014

1.B.Sumathi
2.Minor Devi
3.Jothipriya
4.Minor Devan .. Appellants/Claimants

(AA 2 & 4 rep. By their mother A - 1)

(A - 3 declared as major and guardianship discharged vide order, dated 23.09.2016 made in M.P(MD)Nos.1 & 2 of 2015)

Vs.

1.V.Agniveeran

2.The United India Insurance Company Limited,
Rep. Through its Divisional Manager,
No.7A, West Veli Street,
IInd Floor, Madurai - 1. .. Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order, dated 30.06.2014 made in M.C.O.P.No.357 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Court for MCOP cases), Madurai.

For Appellants : Mr.A.Liaketali

For R - 1 : Mr.J.Balamurugan

For R - 2 : Mr.J.S.Murali

JUDGMENT

(Judgment of the Court was made by **V.BHAVANI SUBBAROYAN,J.**)

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the fair and decreetal order, dated 30.06.2014 made in M.C.O.P.No.357 of 2013 on the file of the Motor

Accident Claims Tribunal (Special District Court for MCOP cases), Madurai.

2.It is a claim filed for death of a document writer on being hit by a Toyato qualis car, on 18.11.2008 at about 08.25 p.m., while the deceased was riding his motor-cycle bearing Registration No.TN-59-AH-0019 on Madurai to Melur road by keeping the left side of the road, near Othakadai Thiruvallur Nagar pirivu. The driver of the Toyato qualis car bearing Registration No.TN-58-E-3630, belonging to the first respondent, driven rashly and negligently at a high speed, dashed behind the deceased motor-cycle and thrown up on the road and the deceased also fell down. The said car not only hit the deceased's motor-cycle, but also knocked down a cyclist and then dashed against the TNSTC bus bearing Registration No.TN-58-N-1040 and plunged into a pit on the road side. Due to the fall from the motor-cycle, the deceased sustained head injury and injuries all over the body and was taken to Meenakshi Hospital, Madurai, for treatment and he succumbed to the injuries on 22.11.2008. The post-mortem was done at the Government Rajaji Hospital, Madurai and the report was also furnished. The deceased was working as a registered document writer and he earned a sum of Rs.25,000/- per month and he was the sole breadwinner of the family and he was survived by the appellants herein, who are the wife, daughters and son. The motor-cycle got damaged due to the said accident and they have also claimed an amount of Rs.38,570/- by getting an estimation from a registered automobiles dealer. The entire liability was fastened on the first respondent's driver, who drove the car in a rash and negligent manner and he is vicariously liable for the negligent act and the same has been insured with the second respondent and the policy was in existence at the time of accident. Unable to meet the both the ends, the appellants prayed for a compensation of Rs.32,00,000/- for the loss of the deceased.

3.The second respondent filed a counter-affidavit stating that the claim application is without any sustainable grounds. They also denied the manner of accident and would support the case of the driver of the car that he was driving the vehicle in a moderate speed, since the road has slight curve at that point. They would submit that the deceased was driving the motor-cycle in a rash and negligent manner and caused the accident and also denied the validity of licence possessed by the first respondent and they are not entitled to indemnify the same.

4.Before the Tribunal, on the side of the claimants, six witnesses viz., P.Ws.1 to 6 were examined and 19 documents viz., Ex.P.1-certified copy of FIR, Ex.P.2-certified copy of post mortem certificate, Ex.P.3-certified copy of charge-sheet, Ex.P.4-certified copy of M.V.I Report, Ex.P.5-medical bill report issued by Meenakshi Mission Hospital, Ex.P.6-photostat copy of registration certificate, Ex.P.7-legal heirship certificate, Ex.P.8-document writer's licence, Ex.P.9-photostat copy of family card, Ex.P.11-IP service cash bill issued by Meenakshi Mission Hospital, Ex.P.12-photostat attested copy of provisional certificate of the deceased, Ex.P.13-photostat copy of transfer certificate of the deceased, Ex.P.14-payment receipts, Ex.P.15-driving licence of Sivanandham, Ex.P.16-photostat attested copy of sale deed for Rs.55,570/-, Ex.P.17-cash receipt, Ex.P.18-attested photostat copy of voter identity card of Senthilkumar and Ex.P.19-medical bills issued by Meenakshi Mission Hospital were marked and on the side of the respondents, one witness viz., R.W.1 was examined and 3 documents viz., Ex.R.1-attested photostat copy of Policy No.090200/31/07/01/0003609, Ex.R.2-Notice to produce documents by the second respondent to the first respondent and Ex.R.3-investigation report were marked and Ex.X.1-copy of documents list written by the deceased issued by Registration Department and Ex.X.2-copy of medical history of the deceased were marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the first respondent and directed the appellant/United India Insurance Company to pay a sum of Rs.12,69,500/-, as compensation and further stated that the second respondent-United India Insurance Company is entitled to recover the same from the first respondent.

6.Against the award passed by the Tribunal, the appellants/ claimants have filed the appeal for enhancement of compensation.

7.The learned counsel appearing for the appellants/claimants submitted that no proper evaluation of the evidences has been done by the Tribunal and Ex.P.14-receipt copy for the payments, received by the deceased for drafting and presentation of the documents were not taken into account and the same were not considered. He would further submit that the Tribunal has not taken into account Ex.X.1-copy of the document list written by the deceased issued by the Registration Department, which would clearly prove that number of documents drafted and presented for registration by the deceased. Further, the learned counsel for the appellants/claimants submitted that the Tribunal failed to consider the evidence of P.W.5, who has drafted the sale deed, wherein P.W.5 had registered a sale deed with the help of the deceased and receipt Ex.P.17 was not considered. The Tribunal has not taken the evidences produced and failed to calculate the income based on the amount, he would have received for drafting each document and the list appended in Ex.X.1 and non-payment of income tax is not a ground to reject the income earned by the deceased.

8.Heard the learned counsel for the appellants, the learned counsel for the first respondent and the learned counsel for the second respondent/United India Insurance Company.

9.The point to be considered is whether the deceased was earning the alleged income by working as a document writer in the Sub-Registrar Office.

10.The age of the deceased was 42 years at the time of accident and claimed that he was earning a sum of Rs.25,000/- per month and the same was not clearly proved from the said evidence. Ex.P.8-document writer's licence, Ex.P.14-payment receipts, Ex.P.17-cash receipt and Ex.X.1-copy of list of documents written by the deceased issued by the Registration Department were the documents produced by the appellants/claimants at the time of trial and document writer has written a sale deed to P.W.5, which is marked as Ex.P.16 and produced a receipt to show that a sum of Rs.500/- has been paid by P.W.5, which is marked as Ex.P.17 and except this document, no other documents or receipts have been produced for receipt of money. Ex.X.1 is corroborate that the deceased was a document writer and he earned above said sum. Ex.X.1 would show that these are the list of documents registered on the Sub-Registrar office and these were written by the document writer, but nowhere shows that the amount earned by the deceased before his death was not corroborated with any other evidence. For the sake of argument, if we are going to agree with the case of the appellants/claimants that he was earning a sum of Rs.25,000/- per month by doing occupation as a document writer, the entire statistics has not been produced by the Department to show that what was the average number of documents written by the deceased. Registration will not take place in all the months, as they do in certain months and there was no proof to show that the deceased was registering the same in all months and no materials have been produced to that effect. In the absence of any other evidence produced by the appellants/claimants, we find that the amount fixed by the Tribunal is reasonable.

11.Further, it is seen that the deceased has registered 85 documents on that particular period cannot be accepted and taken into account because as Ex.X.1 is not the document to prove the income of the deceased and Ex.P.14 is not the authenticated document to prove the standard income of the deceased per month and it is only a self-serving document, since no authenticated document was filed by the appellants. Neither bank passbook nor Income Tax return of the deceased was filed to prove the income of the deceased and also no document was filed to prove the assets purchased by the deceased during the period through income derived from document writing. The admission of P.W.1 that her husband was earning more money but he was not paying Income Tax would prove that the amount of Income shown as his actual income is only to get more compensation and cannot be accepted and the Tribunal has correctly fixed a sum of Rs.8,000/- per month which was reasonable based on Ex.P.16 and Ex.P.17 and fixed Rs.6,000/- after deducting one-fourth amount towards personal expenses, it comes to Rs.72,000 (Rs.6,000 X 12) and '14' multiplier method was adopted and it comes to Rs.10,08,000/- (Rs.72,000 X 14) and awarded for the loss of income. For the loss of Estate Rs.5,000/- was awarded, for funeral expenses Rs.25,000/- was awarded, for loss of consortium of the first appellant Rs.25,000/- was awarded, for loss of love and affection Rs.40,000/- was awarded, for medical bills under Ex.P.5 Rs.50,000/- was awarded, for medical expenses under Ex.P.19, Rs.77,954/- was awarded and towards damages to the motor-cycle under Ex.P.9 Rs.38570/- was awarded. In total, the Tribunal has awarded a sum of Rs.12,69,524/-, which is rounded of to Rs.12,69,500/-.

12.Further, it is seen from the records that the concerned Othakadai Police has registered a case and charge-sheet was filed under Sections 279, 337, 304(A) IPC and 185 of the Motor Vehicles Act and Sections 3 and 4 read with 181 of the Motor Vehicles Act against the driver of the first respondent for has rash and negligent driving of the vehicle without any licence and that the driver was in an inebriated condition.

13.Further, it is seen from the records that the driver of the first respondent was not having driving licence to drive the vehicle at the time of accident, but the Insurance Policy which was insured with the second respondent stands in the name of the first respondent. Hence, the Tribunal has directed the second respondent/United India Insurance Company to pay the above said compensation to the appellants and further stated that the second respondent is entitled to recover the above said amount from the first respondent under the principle of pay and recovery.

14.We are of the considered opinion that the award passed by the Tribunal is just and reasonable, which does not warrant any interference by this Court.

15.In view of the above findings, the Civil Miscellaneous Appeal fails and the same is dismissed. The second respondent/United India Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the major claimants are permitted to withdraw their entire share amount along with proportionate interests and costs as apportioned by the Tribunal, by filing necessary petition before the Tribunal. Insofar as the share amount of minors are concerned, the same shall be deposited in any one of the Nationalised Bank in renewable scheme till the minors attain majority and the interest amount shall be withdrawn by the guardian of the minors directly from the Bank once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The Special District Judge for MCOP Cases,
Motor Accident Claims Tribunal
(Special District Court for MCOP cases), Madurai.

Copy to:
The Section officer,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.J.S.MURALI,Advocate,SR.84978

C.M.A(MD)No.1118 of 2014
01.11.2017

PS
KK/SV MMS/SAR 1/18.12.2017/ 6P- 4C/