



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.M.A(MD) No.245 of 2017

and

C.M.P(MD)No.2872 of 2017

Oriental Insurance Company Limited,
through its Divisional Manager,
Divisional Office, Sheba D.S.M Complex,
Town Railway Station Road,
Palacadu - 678 001.
Kerala.

...Appellant/Respondent No.2

vs.

1. Dhanam
2. Minor.Kanmani
3. Minor.Aravind

...Respondents 1 to 3/
Petitioner Nos.1 to 3

(The Respondents 2 & 3 are minors
represented through their mother
and natural guardian the 1st respondent)

4. Maheswaran
(Respondent No.4 given up)

...4rd Respondent/Respondent No.1

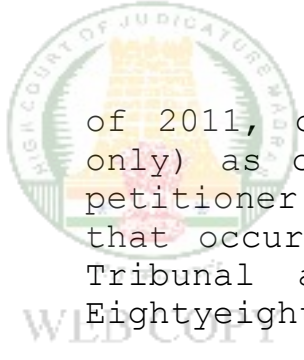
Prayer: The appeal filed under Section 173 of Motor Vehicle Act, 1988, against the Judgment and decree passed in M.C.O.P.No.68 of 2011, dated 22.03.2012 on the file of the Motor Accident Claims Tribunal-cum-Sub Court, Virudhunagar.

For Appellant : Mr.C.Jawahar Ravindaran

JUDGMENT

Being aggrieved over the award passed by the Motor Accident Claims Tribunal-cum-Sub Court, Virudhunagar in M.C.O.P.No.68 of 2011, dated 22.03.2012, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.68 of 2011, dated 22.03.2012, on the file of the Motor Accident Claims Tribunal-Cum-Sub Court, Virudhunagar. The respondents 1 to 3 are the claimants and the fourth respondent is the driver of the Mini Auto bearing Registration No.TN-67-AB-3504. The respondents 1 to 3 filed the claim petition in M.C.O.P.No.68



of 2011, claiming a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation for the death of the husband of the first petitioner and father of the respondents 2 & 3 in the accident that occurred on 23.04.2010. By the award, dated 22.03.2012, the Tribunal awarded a sum of Rs.7,88,800/- (Rupees Seven Lakhs Eighty-eight Thousand Eight Hundred only) as compensation.

3.Facts of the Case:-

According to the respondents 1 to 3, on 23.04.2010 at about 07.45 p.m., when the deceased was standing in Aruppukottai Aathipatti Bus Stop and at that time, the driver of the Van belonging to the first respondent drove the Van in a rash and negligent manner and dashed against the deceased and caused accident. Due to the said impact, the deceased died on the spot. The deceased was aged about 47 years at the time of accident and he was working as Welder and earning a sum of Rs.300/- (Rupees Three Hundred only) per day. FIR was registered against the driver of the first respondent. The accident was occurred only due to the rash and negligent driving of the driver of the Van belonging to the first respondent. The said Van was insured with the appellant Insurance Company. Therefore, they filed the claim petition, claiming a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation.

4.The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the Van. The driver of the Van drove the Van slowly and cautiously and at that time, the deceased suddenly crossed the road and the driver of the Van put sudden brake and hence, the accident occurred. Due to the negligence of the deceased only the accident had occurred and therefore, prayed for dismissal of the claim petition.

5.Before the Tribunal, the first respondent examined herself as P.W.1 and one eye witness Mr.Chockkalingam was examined as P.W.2 and marked 11 documents as Ex.A1 to A.11. The appellant did not let in any oral and documentary evidence.

6.The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants held that the accident occurred only, due to the rash and negligent driving of the driver of the Van and the Tribunal appreciating the evidence of the P.W.2-eye witness held that the accident occurred only due to the rash and negligent driving of the driver of the Van and directed the appellant to pay a sum of Rs.7,88,800/- (Rupees Seven Lakhs Eighty-eight Thousand Eight Hundred only) as compensation.



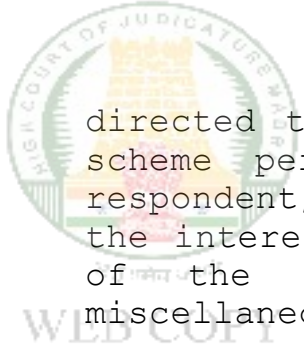
7. Aggrieved against the said award, dated 22.03.2012, the appellant-Insurance Company has filed the present appeal.

8. The learned Counsel for the appellant submitted that P.W.2 has given false evidence as if he is the owner of the welding workshop. In FIR he has stated that he is also one of the employee in the Welding Workshop. The Tribunal failed to see that the deceased was suddenly crossed the road and due to his negligence only, the deceased died. Further, he submitted that the Tribunal erroneously fixed the monthly income of the deceased at Rs.7,200/- (Rupees Seven Thousand Six Hundred only) without any documents being produced by the respondents/claimants to substantiate their claim and therefore, prayed for setting aside the award of the Tribunal.

9. I have heard the learned Counsel appearing for the appellant and also perused all the materials available on record.

10. The contention of the learned counsel for the appellant that the Tribunal ought to have fixed the entire negligence on the deceased for the accident and compensation awarded is excessive. The said contention is untenable. The Tribunal considered the evidence of first respondent as P.W.1 and P.W.2-eye witness and Ex.P.1-FIR. The Tribunal also considered the evidence on record and age, income of the deceased fixed the monthly income at Rs.7,200/- (Rupees Seven Thousand Two Hundred only) and awarded the compensation. In view of these facts, this Court confirms the finding of the Tribunal that the accident occurred only due to the rash and negligent driving of the driver of the Van. The Tribunal awarded the just compensation. The compensation awarded in respect of various heads are not excessive. It is only based on the documents produced by respondents 1 to 3. The appellant has not made out any case in modifying the judgment by reducing the compensation awarded by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P.No.68 of 2011, on the file of the Motor Accident Claims Tribunal-cum-Sub Court, Virudhunagar, less the amount already deposited, if any, along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the award amount to the Personal Savings Bank Account Number of the claimant/first respondent, after getting her Account Details, within a period of two weeks thereafter. Insofar as, the respective shares of the minors/respondents 2 & 3 are concerned, that the Tribunal is



directed to deposit the same in a Fixed Deposit under renewable scheme periodically till they attain majority and the first respondent, the Guardian of the minors, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minors. No costs. Consequently, connected civil miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal cum Sub Court,
Virudhunagar.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.C.Jawahar Ravindran, Advocate, SR.No.17649

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RL/4C/4P/MR/4.5.2017

C.M.A(MD) .No.245 of 2017

22.03.2017