



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A (MD) No.1476 of 2016

WEB COPY

1.Lalitha,

2.I.Ramesh

3.Minor I.Vignesh

4.Irudhayaraj

(Minor third appellant is represented by his next friend and natural guardian, his mother and first appellant herein Lalitha) ... Appellants/Petitioners

-Vs-

1.Regina

2.The Reliance General Insurance Company Limited,
No.10/4/4, Dhaga Plaza,
Vannarapettai,
Tirunelveli - 627 003. ... Respondents/Respondents

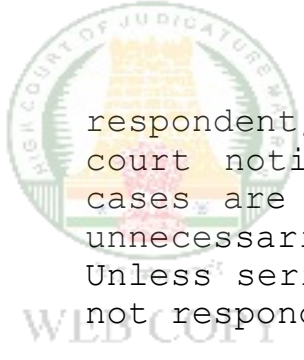
Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award passed in M.C.O.P.No.71 of 2015, dated 30.6.2016, on the file of the Motor Accident Claims Tribunal(I Additional District Judge), Tuticorin insofar as the quantum is concerned.

For Appellants : M/s.S.Subbiah

For Respondents : No appearance

JUDGMENT

It is not necessary that violation of the Court orders/Decrees direction alone should be contempt of Court. Even not responding to the Court notice amounts to violation of Court order. This is a classic case, in which, the second respondent/Insurance Company failed to appear before this Court or respond to the Court notice, especially when the second respondent is discharging public function, that too, indemnifying the insured for any loss or compensation. It ought to have appeared before the Court and contest or defend or to concede the case. Not only the second



respondent, many parties are evading and avoiding receipt of court notices and due to non-service of notices/summons, many cases are pending and pendency is mounting before this Court, unnecessarily causing damage to the reputation of Judiciary. Unless serious view is taken, avoiding receipt of court notice and not responding to court notice cannot be prevented.

2.This Civil Miscellaneous Appeal has been preferred by the appellants/Claimants against the award of Rs.7 lakhs as compensation awarded by the Tribunal, for the death of one Anburaj, aged about 46 years, an agriculturist and Coolie, allegedly earning Rs.15,000/- p.m., in the accident occurred on 3.12.2014 when he was standing in Kurukku Salai Bus-Stop, lorry belonging to the first respondent, insured with the second respondent, driven by its driver rash and negligently and dashed down him.

3.Heard Mr.S.Subbiah, learned counsel for the appellants/Claimants. Even though notice was served upon the respondents 1 and 2 and their names found printed in the cause-list, none appeared on behalf of them and this Court, on available records decided the matter on merits.

4.The Tribunal based on the evidence of P.W.2-eye-witness and filing of Ex.P1-First Information Report as well as Ex.P3-Charge-sheet, against the driver of the lorry, rightly found that the accident had occurred because of the rash and negligent driving of the lorry driver. That apart, the Tribunal also took note of Ex.P7-Sketch which shows that the accident occurred towards eastern side beyond the centre of the road, as the lorry was coming from east to north, which is supposed to move on the western side, whereas, it went into the eastern side and caused the accident. Further, there is no rebuttal evidence on the side of the second respondent to rebut the evidence of P.W.2 and other documents. Therefore the finding reached by the Tribunal that the driver of the lorry alone was responsible for the accident has to be confirmed.

5.The deceased is said to have been working as an agriculturist and coolie worker, earning Rs.15,000/- p.m. However, there is no positive evidence filed before the Court, Hence the Tribunal determined the monthly income at Rs.5,000/- and applying multiplier '13', according to the age of the deceased as 46 and after deducting one-fourth towards his personal expenses, as the size of the family was four, determined the loss of income at Rs.5,85,000/- and including other amounts, awarded a sum of Rs.7 lakhs. Rs.5,000/- fixed by the Tribunal as monthly income of the deceased. However, the accident took place on 03.12.2014. The ~~High Court at Madras~~ <https://hcmcaonline.in/hcmcas> Supreme Court in the case of Syed Sadiq .vs. The Divisional Manager, United India Insurance Company Limited reported in 2014(1) TN MAC 459(SC)determined the monthly income of

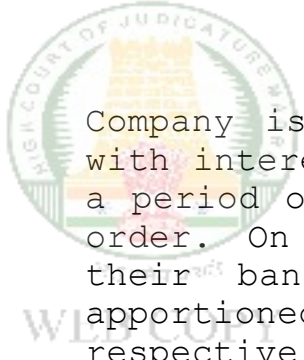


a vegetable vendor who injured in the accident occurred on 14.2.2008, at Rs.6500/- even in the absence of positive proof thereof, whereas, in this case, the accident took place on 31.12.2014, I.e., after six years and therefore this Court determines the monthly income of the deceased at Rs.7500/- in consonance with the Division Bench Judgement of this Court in the case of **HDFC ERGO General Insurance Company Limited, Chennai .vs. Jayanthi and another reported in 2016(2) TN MAC 628(DB)**. In view of the above reason, Rs.7500/- is determined as monthly income of the deceased. Future prospects is required to be added at 30% as the deceased was aged 46 years as per Ex.P2-Post-mortem certificate. Accordingly, monthly income along with future prospects would be Rs.7500 + 30%= Rs.9750/-.

6.Though the learned counsel for the appellants would submit that according to the age of the wife, the multiplier has to be adopted, the said contention is liable to be rejected as the Honourable Supreme Court has already held in **Amit Bhanu Shali .vs. National Insurance Company Limited reported in 2012 ACJ 2002** that the age of the deceased alone should be taken into consideration for determination of multiplier. The age of the deceased as per Ex.P2-Postmortem certificate is 46 and evidently right multiplier was adopted by the Tribunal as 13. Since the size of the family is four, the Tribunal rightly deducted 1/4th towards personal expenses. After deducting 1/4th towards personal expenses, the loss of monthly income would be Rs.9750/- - 1/4 = Rs.7312.50/- and the total loss of income would be Rs.7312.50x12x13= Rs.11,40,500/-.

7.The Tribunal awarded only a sum of Rs.25,000/- towards loss of consortium. The first appellant lost her husband and hence she is entitled to a sum of Rs.1 lakh towards loss of consortium as per the judgement in the case of **Rajesh and others .vs. Rajbir Singh and others reported in 2013(3) CTC 883**. The respondents 2 to 4 were given Rs.1 lakh towards loss of love and affection and the same is conformed. The Tribunal awarded a sum of Rs.10,000/- towards funeral expenses and 5000/- towards transport expenses and same is enhanced to Rs.25,000/- and Rs.15,000/- respectively. No amount was awarded towards loss of estate and a sum of Rs.20,000/- is awarded under the said head. In all, the total compensation awarded is Rs.14,00,500/-.The rate of interest at 7.5% awarded by the Tribunal remains unaltered.

8.Accordingly, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.7,00,000/-(Rupees seven lakhs only) is enhanced to Rs.14,00,500/-(Rupees fourteen lakhs and five hundred only). Out of the said award amount, the first appellant is entitled to a sum of Rs.7,00,500/- lakhs and the second and third appellant each are entitled to a sum of Rs.3 lakhs and the fourth appellant, father of the deceased is entitled to a sum of Rs.1 lakh. The second respondent/Insurance



Company is directed to deposit the entire award amount along with interest and costs, less the amount deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants are directed to submit their bank accounts to the Tribunal and the amounts as apportioned by this Court is directed to be transferred to the respective accounts, along with proportionate accrued interest and costs, within a period of two weeks thereafter. The share of the third appellant/minor claimant shall be deposited in interest bearing Fixed Deposit in any one of the nationalized bank, till the minor attains majority. No costs.

9.The Second Respondent/Insurance Company, though is a private insurance company, is doing public function, that too, insurance business. The claimants are suffering without money because of the untimely loss of the sole bread-winner of the family. Even though the second respondent/Insurance Company contested the claim petition before the Tribunal, the second respondent, though served and their name is printed in the cause-list, they have not appeared before this Court to contest the matter on merits. In view of the above, a sum of Rs.1 lakh is slapped on the second respondent/Insurance Company as cost for not responding to the Court notice. Ordering notice by Court itself is an order of the Court. Non-responding to the Court could also be a violation of Court order. Only to sensitize, the second respondent about the necessity to respond to the court notice and appear before Courts promptly, the aforesaid cost of Rs.1,00,000/-(Rupees one lakh only) has been awarded to be paid to **TAMIL NADU HARIJAN SEVAK SANGH, MADURAI.**

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

- 1.The I Additional District Judge,
The Motor Accident Claims Tribunal
Tuticorin.
 - 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.
 - 3.The Reliance General Insurance Company Limited,
No.10/4/4, Dhaga Plaza,
Vannarapettai, Tirunelveli - 627 003.
 - 4.The TamilNadu Harijan Sevak Sangh, Madurai.
- +1 CC to M/s.S.SUBBIAH, Advocate, SR No.7729.

VSN