



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2017

CORAM:

WEB COPY

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

C.M.A(MD)No.662 of 2015

and

M.P(MD)No.1 of 2015

The Divisional Manager,
The Oriental Insurance Company Limited,
III Floor, Bangoor Dharmalasala Building,
Near Royal Court Hotel,
6-A, Melaveli Street,
Madurai.

: Appellant/2nd Respondent

Vs.

1.Rathinamani
2.Minor Suthesh
[Minor represented by his mother
and next friend 1st respondent]

3.Kannan
4.Amaravathi : R1 to R4/Petitioners
5.Sudhakar
[R5 remained ex-parte before
the lower court) : R5/1st Respondent

6.The Branch Manager,
The United India Insurance Company,
443, Periyakulam Road,
Theni. : R6/3rd Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the award made in MCOP No.146 of 2012, dated 27.11.2014 on the file of the Motor Accident Claims Tribunal-cum-Sub Judge, Uthamapalayam.

For Appellant : Mr.K.Bhaskaran
For R1 and R2 : Mr.G.Vanjinathan
For R3 to R5 : No Appearance
For 6th Respondent : Mr.J.S.Murali

JUDGMENT

[Judgment of the Court was made by K.KALYANASUNDARAM,J.]

Being aggrieved by the award passed by the Motor Accident Claims Tribunal (Sub Judge), Uthamapalayam, in MCOP No.146 of 2012, dated 27.11.2014, the Oriental Insurance Company has preferred this appeal.

2.MCOP No.146 of 2012 was filed by the wife, minor children and parents of the deceased Murugan, who died in a motor vehicle accident, on 27.09.2012, claiming compensation of Rs.24,00,000/-. On the fateful day, when the deceased was riding his two wheeler bearing registration No.TN-60-T-2857 near Surulimuthu Farm Moonkil Bus Stop at Odaipatti to Thenpalani Road, a speedy lorry bearing registration No.TN59-AJ-6134 came from the opposite direction, rammed the two wheeler. In the accident, the deceased got grievous injuries and died on the spot. In this connection, a case in Crime No.123 of 2012 was registered by the Odaipatti Police Station against the driver of the lorry.

3.The appellant Insurance Company resisted the claim petition, by filing a counter, stating that the deceased was riding his two wheeler in a high speed without following the Rules and he only caused the accident. It is also stated that he was speaking in his cell phone at the time of accident and hence, they are not liable to pay any compensation.

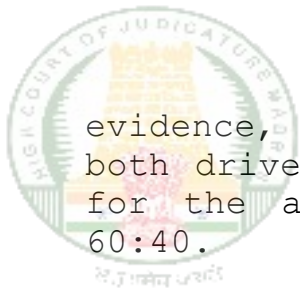
4.The claimants, in order to substantiate their case, examined four witnesses and marked 15 documents. On the side of the respondents, no oral and documentary evidence was adduced.

5.We have heard both sides and perused the materials available on record.

6.The wife of the deceased was examined as PW1 and through her, Ex.P1 First Information Report was marked. Admittedly, PW1 was not an eye witness to the occurrence. PW2 and PW3 are the eye witnesses to the accident. In this case, Ex.P4 Copy of Charge Sheet and Ex.P5 copy of rough sketch were marked.

7.It is seen from Ex.P1, the case was registered based on the complaint given by the brother of the deceased. PW2, in his chief examination, has stated that he saw the occurrence, but in the cross examination, he turned hostile by saying that he came to know about the accident from PW3 (Raja).

8.PW3 has deposed that though he witnessed the occurrence, but he did not prefer any complaint to the police. Perusal of Ex.P5 Rough sketch would show that the accident had taken place in the middle of the road. But the tribunal, without considering the material evidence, decided that the accident was due to the negligence of the driver of the lorry. After analyzing the entire



evidence, especially Ex.P5 site map, we are of the opinion that both driver of the lorry as well as the deceased have contributed for the accident and the negligence is fixed in the ratio of 60:40.

9.As records quantum of compensation, it is not in dispute that the deceased was 27 years at the time of the accident, which is proved through Ex.P2 Postmortem Certificate. The deceased was working as a Mason and was earning Rs.10,000/- per month. The tribunal, by adopting multiplier 18 and after deducting 1/4th towards his personal expenses, awarded Rs.16,20,000/- towards loss of income. In addition to that, the tribunal has awarded Rs.20,000/- towards funeral expenses, Rs.1,00,000/- towards loss of love and affection to the claimants. In total, the tribunal has awarded Rs.17,40,000/-. The quantum awarded by the tribunal is reasonable and the same confirmed. In view of the finding on negligence, the claimants would be entitled to Rs.10,44,000/- along with interest @ 7.5% p.a.

10.In the result, this appeal is partly allowed. The award of the tribunal is modified to Rs.10,44,000/- as against Rs.17,40,000/-. Out of the total award, the first claimant is entitled to Rs.4,44,000/-, the 2nd claimant is entitled to Rs.3,00,000/- and the claimants 3 and 4 are entitled to Rs.1,50,000/- each. The appellant Insurance Company is directed to deposit the modified compensation within a period of eight weeks, less the amount already deposited. On such compliance, the major claimants are permitted to withdraw their shares as indicated above and the share of the minor claimant shall be deposited in a Nationalized Bank, till he attains majority. The interest amount is permitted to be withdrawn by the first claimant once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal(Sub Judge), Uthamapalayam.

Copy to:

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.K.Bhaskaran, Advocate, SR.No. 85739

+1CC to Mr.G.Vanjinathan, Advocate, SR.No. 85928

+1CC to Mr.J.S.Murali, Advocate, SR.No. 85755

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