



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.08.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) .No.692 of 2011

Royal Sundaram Alliance,
Insurance Company Ltd,
through its Branch Manager,
No.46, Whites Road,
Chennai- 600 014.

.. Appellant/Respondent - 2

Vs.

1.Arul Michaelammal
2.Packiarose
3.Peter Alexander
4.Selva Antony
5.Loordhuraj
6.V.Ramakrishnan

.. Respondents/Petitioners
.. Respondent/Respondent- 1

Prayer:- Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 04.01.2011 and made in MCOP.No.5 of 2008, on the file of Motor Accident Claims Tribunal (Sub Judge), Ambasamudram and allow this appeal.

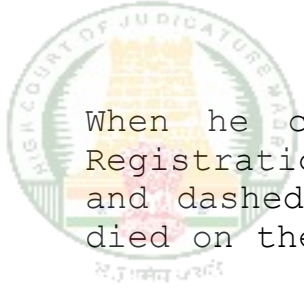
For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award made in MCOP.No.5 of 2008, on the file of Motor Accident Claims Tribunal (Sub Judge), Ambasamudram.

2. It is a case of fatal accident, which took place on 19.09.2007 at about 1.00 p.m., at Tenkasi Main Road.

3. It is the case of the claimants before the Tribunal that one Maria Adaikalam, the husband of the first petitioner drove his Hero Honda Motor Cycle bearing Registration No.TN-72-T-0286.



When he came near Mannarkoil Vilakku, the Maruti Car bearing Registration No.TN-76-B-0979 came in a rash and negligent manner and dashed against the two-wheeler and the said Maria Adaikkalam died on the spot.

4. The claimants filed an application in MCOP.No.5 of 2008, on the file of Motor Accident Claims (Sub Judge), Ambasamudram, claiming compensation.

5. Before the Tribunal, on side of the claimants two witnesses were examined as P.Ws.1 and 2 and fifteen documents were marked as Ex.P1 to Ex.P.15. On the side of the Insurance Company, one witness was examined as R.W.1 and five documents were marked as Ex.R.1 to Ex.R.5.

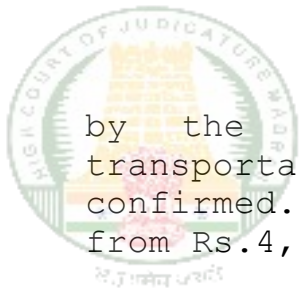
6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the Maruthi Car, which is insured with the Insurance Company and directed the Insurance Company to pay a sum of Rs.4,57,000/- as compensation.

7. Heard the learned counsel appearing for the appellant Insurance Company and there is no representation for the respondents. This Court has perused the materials available on record.

8. The learned counsel for the appellant Insurance Company submitted that P.W.1 the sone of the deceased has deposed in his cross examination that her father was 68 years old at the time of accident and in Ex.P.15-Driving license also the date of birth of the deceased is mentioned as 13.05.1939. But the Tribunal wrongly taken the age of the deceased as 60 based on the post-mortem report, which is marked as Ex.P.12 and if the age of the deceased is taken as 68, the correct multiplier should be '5',

9. I find force in the submission of the learned counsel for the appellant. On perusing Ex.P.15-Driving License, it is seen that the deceased was 68 years old at the time of accident. Therefore, the Tribunal ought to have considered the evidence of the son of the deceased and ought to have taken the age of the deceased as 68.

10. However, there is no error in fixing notional income at Rs.6,000/- and multiplier '5' should be taken into account for arriving at the compensation. If multiplier '5' is adopted, the amount towards loss of income would come to Rs.2,70,000/- (6000 X 5 = Rs.30,000/-). The Tribunal has granted Rs.5,000/- towards loss of consortium. This Court enhances the amount towards loss of consotium to Rs.50,000/- In all other heads, the amounts awarded



by the Tribunal shall stand unaltered. Rs.5000/- towards transportation and Rs.15,000/- towards funeral expenses is confirmed. Hence, total compensation is reduced to Rs.3,40,000/- from Rs.4,57,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from **Rs.4,57,000/-** to a sum of **Rs.3,80,000/-** along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs. The second respondent/Transport Corporation is directed to deposit the entire award amount of **Rs.3,80,000/-** (Rupees three lakhs and eighty thousand only) with accrued interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Ambasamudram.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 70291

CM

TE/KK/SAR-II : 20/10/2017 : 3P/4C

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