

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3610 of 2011

The Branch Manager,  
New India Assurance Company Ltd.,  
Jerome Building,  
Fort Station Road, Trichy. .... Appellant /2nd respondent

...vs...

1.R.Arikrishna Pillai  
2.A.Rani ..... Respondents/Petitioners  
3.B.Hariharan ....3<sup>rd</sup> Respondent/1<sup>st</sup> Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal order dated 16.12.2008 made in MCOP.No.139 of 2008 on the file of the Motor Accident Claims Tribunal/Fast Track Court No.1, Tindivanam.

For Appellant : Mr.S.S.Manohar  
For Respondents 1 & 2 : Mr.S.Vadivel Murugan

JUDGMENT

Being aggrieved over the award passed by the Tribunal, dated 16.12.2008 made in MCOP.No.139 of 2008 on the file of the Motor Accident Claims Tribunal/Fast Track Court No.1, Tindivanam, the second respondent-Insurane Company has come forward this present appeal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 19.08.2005, at about 7.30 a.m., while the deceased along with his friend proceeding in a two wheeler from Tindivanam to Gingee Road, near Gandhi Nagar, Erikarai, a Lorry bearing Registration No.KA-01-C-4711 came at high speed in the opposite direction dashed against

the two wheeler resulting in the death of the deceased Suresh on the spot. The accident occurred only due to the rash and negligent driving by the first respondent lorry driver. The said lorry was insured with the second respondent Insurance Company. At the time of the accident, the deceased was aged about 24 years and as self employed person earning a sum of Rs.25,000/- per month. The petitioners, who are the parents of the deceased were depending on the income of the deceased. Hence, they seek a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent filed counter contending that the accident does not occur in the manner alleged by the petitioners. The claim of the petitioners about the age, avocation and income of the deceased is denied. The petitioners ought to have impleaded the owner and insurer of the two wheeler in which the deceased travelled at the time of the accident. The claim of the petitioners is exorbitant. Thus, the second respondent sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P8 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of available evidence on record, found the negligence of the first respondent lorry driver alone caused the accident awarded a sum of Rs.7,93,000/- as compensation to the petitioners. Aggrieved over the award passed by the Tribunal, the second respondent-Insurance Company has come forward this present appeal seeking to set aside the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellant Insurance Company and the learned counsel appearing for the respondents 1 and 2 /claimants and perused the materials available on record.

8. The learned counsel appearing for the appellant/second respondent Insurance Company contended that the Tribunal erred in fixing the income of the deceased at Rs.12,000/- p.m., and also wrongly applied multiplier 8, which is on the higher side. The Tribunal fixed the monthly income of the deceased at Rs.12,000/- without any proof for the same. The Tribunal ought to have deducted 50% of the income towards personal expenses of the deceased. The Tribunal also erred in awarding interest at the rate of 9% instead of 7.5%. Thus, the appellant/second respondent Insurance Company sought to set aside the award passed by the Tribunal by allowing the appeal.

9. On the other hand, the learned counsel appearing for the respondents 1 and 2/claimants/petitioners contends that the accident occurred only due to the rash and negligent driving of

the first respondent driver and as such the respondents who are the owner and insurer of the offending vehicle are liable to pay compensation. The award passed by the Tribunal is very nominal. Thus, the respondents/claimants/petitioners sought for dismissal of this appeal.

10. The first petitioner who deposed as P.W.1 stated that his deceased son Suresh was going to Gingee in two wheeler with his friend, at that time, the first respondent lorry bearing Registration No.KA-01-C-4711 came in the opposite direction at high speed dashed against the two wheeler in which the deceased was travelling causing him fatal injuries. Admittedly, P.W.1 is not an eye witness to the occurrence. However, the eye witness to the occurrence who deposed as P.W.2 clearly stated that while he was proceeding in Tindivanam - Gingee Road, near Gandhi Nagar, he saw two persons travelling in a two wheeler in front of him. At that time, the lorry bearing Registration No.KA-01-C-4711 came in the opposite direction at high speed dashed against the said two wheeler resulting in death of deceased Suresh on the spot itself. The police also registered Ex.P1 First Information Report against the driver of the lorry only. It is therefore clear from the evidence of P.W.2 and Ex.P1 First Information Report that the accident occurred only due to the rash and negligent driving of the first respondent lorry driver. It is also clear from Ex.P3 and Ex.P4 Motor Vehicle Inspector's report that there was no mechanical defect in the vehicles involved in the accident. Further, the respondents has not let in any oral or documentary evidence to contradict the evidence of P.W.2 about the manner in which the accident took place. As such, the Tribunal is justified in fixing the negligence on the part of the respondent lorry driver alone caused the accident.

11. The Tribunal on the basis of Ex.P2 Postmortem Certificate as well as other documents fixed the age of the deceased as 24 years. The same is not disputed by the petitioners and respondents. According to P.W.1/the father of the victim, the deceased was employed in a private company earning a sum of Rs.25,000/- per month. The deceased was stated to be M.Sc., Bio-Chemistry Graduate. To prove the same, the petitioners produced the copy of the certificate as well as the identity card of the deceased as Ex.P5 and Ex.P6. According to P.W.1, the deceased was employed in a private company, as production manager earning a monthly salary of Rs.13,650/-. The petitioners produced the appointment letter of the deceased as Ex.P7 and his pay slip for the month of July,2004 as Ex.P8. However, the petitioner failed to examine the employer or any other representatives of the company to prove the genuineness of the said documents Ex.P6, Ex.P7 and Ex.P8. Admittedly, the deceased was a post graduate and has obtained M.Sc., degree in Bio-Chemistry. In such circumstances, the Tribunal is justified in fixing his monthly income of the deceased at Rs.12,000/-. The same needs no interference. The learned counsel appearing

for the appellant /second respondent Insurance Company did not dispute the other findings of the Tribunal and the amount awarded under the different heads. Considering the fact that there is no Cross Objection filed by the petitioner and the fact that the petitioners has not examined any other witness to prove the avocation and income of the deceased, this Court finds nothing wrong in the conclusion arrived at by the Tribunal and the reasoning stated for the same. As such the award passed by the Tribunal granting Rs.7,93,000/- as compensation to the petitioners appears to be just and proper. Thus this Court find no merit in the appeal. However, the Tribunal has awarded interest at the rate of 9% which is not proper. It will be appropriate to grant interest at the rate of 7.5% instead of 9% granted by the Tribunal.

12. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs. The interest awarded by the Tribunal at the rate of 9% is reduced to 7.5%. Except the above modification, the other aspects are confirmed.

Sd/-  
Assistant Registrar (CS III)

//True copy//

Sub Assistant Registrar

rrg

To

The Additional District Judge,  
Fast Track Court No.I,  
Tindivanam.

Copy To

The Section Officer,  
VR Section, High Court,  
Madras.( 2 Copies)

+1cc to Mr.S.Manohar, Advocate SR.No.24816  
+1cc to Mr.S.Vadivel Murugan, Advocate SR.No.24776

C.M.A.No.3610 of 2011

VGI (CO)  
GN(10/05/2018)