

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 677 of 2018

&

C.M.P. No. 5929 of 2018

Bharti Axa General Insurance Company Ltd.,
2nd Floor, Metro Plaza,
No. 162, Anna Salai,
Chennai - 600 002.

..Appellant/R2

Vs.

1. Amudhakani

2. Karthick

...RR 1 & 2/Petitioners

3. M.Elumalai

...R3/R1

(3rd respondent herein remained ex parte.
Hence, notice may be dispensed with)

..Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act as against the judgment and decree dated 10.10.2017 passed in M.C.O.P. No. 824 of 2014 by the Motor Accidents Claims Tribunal cum Chief Judge, Court of Small Causes, Chennai.

For Appellant :: Mr.K. Poomalai

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.12,11,704/- passed by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, on 10.10.2017 in M.C.O.P. No. 824 of 2014 for the death of one Muniyasamy, aged about 48 years, painter by profession, allegedly earning about Rs.15,000/- per month, in the accident, which occurred on 23.11.2013 when the victim Muniyasamy, who was sleeping in front of his house at Door No.50/185, Muthumariamman Koil, Ist Street, Ayanavaram, Chennai - 23, was run over by a Tipper Lorry belonging to the 3rd

respondent and insured with the appellant Insurance Company.

2. Heard Mr.K. Poomalai, learned counsel appearing for the appellant.

3. Eventhough the claimants have been served and their names are printed in the cause list, no one has entered appearance on their behalf. Therefore, this Court proceeds to decide the matter based on the evidence available on record.

4. The issue raised by the appellant is only with regard to the quantum of compensation. Moreover, no other vehicle was involved in the accident as the victim was run over by the Tipper Lorry insured with the appellant. Therefore, there is no question of shifting the liability on any other person.

5. The Tribunal, in the absence of any evidence with regard to the income of the deceased, notionally, fixed the income at Rs.8000/- per month. Taking into consideration, the fact that the accident occurred during the fag end of 2013, ie., in November, 2013, the Tribunal was right in fixing the income of the deceased notionally at Rs.8000/- per month, which is in consonance with the judgment of the Honourable Apex Court rendered in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627.

6. The age of the deceased as per Ex.P2, postmortem certificate is 50 years. Therefore, 30% has to be added towards "Future Prospects" and the "Total Monthly Income" would be Rs.10,400/- (Rs.8000 + Rs.2,400/-). Further, one-third deduction has been rightly made by the Tribunal towards "Personal Expenses" of the deceased and the "Monthly Contribution" would arrive at Rs.6,934/-. The appropriate multiplier, as per Sarla Verma's case, for the age of 50 years, namely, 13, was rightly applied by the Tribunal and adopting the same, "Loss of income" would be Rs. 10,81,704/-. The claimants had already lost their mother and by this accident, they have lost of their father also. Therefore, the sum of Rs.1 lakh awarded by the Tribunal towards "Loss of Love and Affection" is confirmed. The sum of Rs.5000/- awarded towards "Transport Charges" is also confirmed. The amount of Rs.25,000/- awarded towards "Funeral Expenses" is adjusted towards "Funeral Expenses" and "Loss of Estate". Thus, the award of the Tribunal, to the tune of Rs.12,11,704/- is confirmed. The rate of interest @ 7.5% per annum remains intact.

7. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, before

the Tribunal, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the respective bank accounts of the claimants, through RTGS, as per the apportionment of the Tribunal, within a period of one week thereon.

8. In the result, the Civil Miscellaneous Appeal stands dismissed confirming the award passed by the Tribunal. No costs. Connected C.M.P. is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The MACT (Chief Judge, Court of Small Causes), Chennai.

2.The Section Officer,
Vr Section,
High Court, Madras

+lcc to Mr.K.Poomalai, Advocate, S.R.No.37615

C.M.A. No. 677 of 2018

EV(CO)
GSP(02/08/2018)

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