



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.29 of 2006

United India Insurance Co.Ltd.,
139, Kumaran Road, Tirupur. ..Appellant/2nd Respondent

Versus

1.Maheswari
2.Prakash
3.Sankar

[3rd respondent declared as major and the
1st respondent is discharged from guardianship
of the 3rd respondent vide order dated 16.02.2007
and made in C.M.P.No.379/2007]

4.Nanjammal ..Respondents/Petitioners

5.Kamatchi ..Respondent/1st Respondent
[The 5th respondent herein, the owner
of the vehicle remained ex-parte in the
proceedings before the Tribunal. Notice
to 5th respondent is dispensed with.]

Prayer: Civil Miscellaneous Appeal filed against the judgment
and decree dated 22.09.2004 made in M.A.C.T.O.P.No.991 of 2002
on the file of the Motor Accident Claims Tribunal, Additional
District Judge, Fast Track Court No.5 at Tirupur, Coimbatore.

For Appellant : Mr.K.Suryanarayanan
For Respondents : Mr.S.S.Swaminthan [for R1]
No Appearance [for R2]
Ex-parte [R5]

J U D G M E N T

The appellant/Insurance Company has filed this appeal
against the judgment and decree dated 22.09.2004 made in
M.A.C.T.O.P.No.991 of 2002 on the file of the Motor Accident
Claims Tribunal, Additional District Judge, Fast Track Court
No.5 at Tirupur.

2. For the sake of convenience, the parties are referred to
hereunder according to their litigative status before the
Tribunal.



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3. The case of the petitioners is that on 19.06.2002, at about 7.30 hours, while the deceased was riding his two wheeler bearing Registration No.TN-38-C-3258 near Hatchries Nall Road, Madukarai to Neelampoor by-pass Main road, the tata sumo van bearing Registration No.TN-39-y-5353 came at high speed, in the opposite direction, dashed against the two wheeler, in which the deceased was proceeding resulting in fatal injuries to him. In spite of medical treatment, the deceased passed away in the hospital at Coimbatore. The accident occurred due to rash and negligent driving by the 1st respondent vehicle driver. The deceased was aged 45 years and was employed as a supervisor in a private concern, earning Rs.5,000/- per month. The petitioners who are the wife, children and mother of the deceased were dependent on the income of the deceased. Hence, the petitioners seek a sum of Rs.7,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the 2nd respondent/Insurance Company contends that the accident occurred only due to negligence of the deceased Ambalavanan, who drove his two wheeler in a rash and negligent manner and dashed against the tata sumo car. The driver of the 1st respondent is no way responsible for the accident. The petition ought to have impleaded the insurer of the two wheeler to the proceedings. The age, avocation and income of the deceased as alleged by the petitioners are not true. The learned counsel for the respondent contends that as the insurer they are not liable to pay any compensation, since accident did not occur due to negligence of the 1st respondent van driver. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.9 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record, found negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.6,36,185/- payable by the respondents. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal wrongly fixed the income of the deceased at Rs.4,915/- and awarded a sum of Rs.5,11,160/- which is highly excessive. The amount awarded under different heads by the Tribunal is also highly excessive. The interest awarded at the rate of 9% is also not correct. Thus, the 2nd respondent/Insurance Company sought for set asiding the award



passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioners/claimants contends that the Tribunal, after correctly fixing the negligence on the part of the 1st respondent vehicle driver alone caused the accident, appreciated the evidence on record properly and passed an award which provide for fair and just compensation. There is no ground to interfere with the same. Thus, the petitioners/claimants sought for dismissal of the appeal.

8. The 1st petitioner/wife who deposed as P.W.1 stated that on 19.06.2002 at about 7.30 a.m., the accident occurred in Madukarai to Neelampoor by-pass main road, due to rash and negligent driving of the 1st respondent tata sumo car driver. The police also registered Ex.P.1 - F.I.R against the driver of the 1st respondent vehicle only. The wife of the deceased who deposed as P.W.1 is not an eye-witness to the occurrence. However, the petitioners examined one Vijayakumar as P.W.2, who has witnessed the accident. According to him, while he was going in the two wheeler, saw the deceased Ambalavanan proceeding from South-North in his two wheeler on the left side of the road and at that time, a tata sumo vehicle bearing Registration No.TN-39-Y-5353 came at high speed in the opposite direction and dashed against the two wheeler, resulting in the death of the said Ambalavanan. Nothing was elicited during his cross examination to discredit the evidence of P.W.2. Further, the said P.W.2-Vijaykumar, alone lodged the complaint to the police. As such, it is clear from the evidence of P.W.2 and contents of Ex.P.1 - F.I.R that the negligence of the 1st respondent vehicle driver alone caused the accident. To contradict the evidence of the petitioners, the respondents have not examined either the driver of the 1st respondent vehicle or another eye-witness to the accident. As such, the finding of the Tribunal that the negligence of the 1st respondent driver alone caused the accident is just and proper.

9. The petitioners contended that the deceased was employed as supervisor and shift in charge in a private concern, earning Rs.5,000/- per month. P.W.1, in his oral evidence, stated the same thing as pleaded in the petition, regarding the avocation and income of the deceased. The petitioners also examined the manager of the concern wherein the deceased was employed as P.W.2. According to him, the deceased was working as supervisor - shift incharge in their company. P.W.2 stated that the monthly salary of the deceased is Rs.3,800/- and a sum of Rs.5,925/- was paid as bonus. The salary certificate of the deceased is filed as Ex.P.6 and copy of the salary register is filed as Ex.P.7. The bonus receipt copy is filed as Ex.P.9 and the extract of the attendance register as Ex.P.8. It is clear from the documents



produced by the petitioners that the deceased was employed as supervisor - shift incharge in the private concern named Romantic Garments. Considering the evidence of P.W.2 and also the documents produced by the petitioners as Ex.P.6 - Ex.P.9, the Tribunal fixed the monthly salary of the deceased as Rs.3,800/-. The Tribunal, on the basis of P.W.2 evidence and Ex.P.2 - Post mortem report, Ex.P.3 - Death certificate of Ambalavanan, fixed his age as 45 years and applied the multiplier '13' to calculate the loss of income. Thus, the Tribunal taking the monthly income of the deceased at Rs.3,800/- awarded a sum of Rs.5,11,160/- as loss of income to the petitioners. The Tribunal also awarded other amounts under conventional heads to the petitioners. Thus, on the basis of available evidence on record, the Tribunal awarded a sum of Rs.6,36,185/- as compensation to the petitioners, which appears to be just and proper. In the light of the materials available on record, the respondents have not put forward any acceptable contention to reduce the award amount under different heads. As rightly pointed out by the learned counsel for the petitioners, the accident occurred in 2002 and considering the circumstances at that point of time, the Tribunal has correctly calculated the quantum of compensation payable to the petitioners. In the light of the above said discussion, this Court finds no merit in the appeal and the same is liable to be dismissed.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal on 22.09.2004 made in M.A.C.T.O.P.No.991 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.5 at Tirupur, is confirmed. Consequently, connected miscellaneous petitions are closed. No costs. It is stated that the appellant/Insurance Company has already deposited a sum of Rs.4,30,000/- before the Tribunal. Hence, the balance amount shall be deposited by the appellant/Insurance Company within a period of 4 weeks from the date of receipt of a copy of this order. On such deposit being made the claimants are entitled to withdraw their respective shares as per the ratio fixed by the Tribunal by filing necessary application.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Additional District Judge,
Fast Track Court No.5, Tirupur.

2.The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+lcc to Mr.K.Suryanarayanan, Advocate SR.No.21243

SKV(CO)
sm:10.5.2018

C.M.A.No.29 of 2006