



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2018

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

C.M.A. (MD) No. 772 of 2018 and
CMP (MD) .No.8714 of 2018

United India Insurance Company Limited,
rep. by its Divisional Manager,
Nagercoil.

... Appellant/3rd respondent

Vs.

1.Vijayakumari

2.Nisha

3.Asha

4.Abhisha

5.Anisha

6.Rukmani

7.Srikumar

... Respondents 1 to 5/ Claimants

... Respondents 6 & 7/Respondents 1&2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree, dated 13.11.2006 made in MCOP.No.53 of 2000 on the file of the Motor Accidents claims Tribunal, Padmanabapuram.

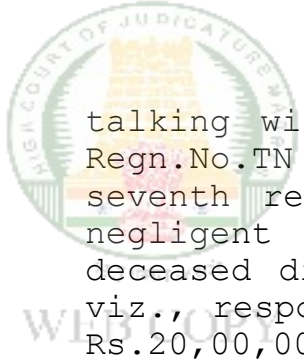
For Appellant : Mr. R. Srinivasan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree, dated 13.11.2006, made in MCOP.No.53 of 2000 on the file of the Motor Accidents claims Tribunal, Padmanabapuram.

2. It is a case of fatal accident. The appellant / Insurance Company is the third respondent in MCOP.No.53 of 2000, on the file of the Motor Accidents claims Tribunal, Padmanabapuram. The respondents 1 to 5, who are the claimants, have filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Raja @ Rajendran.

3. According to the respondents 1 to 5, on 03.07.1999 at 3.30 p.m, while the deceased was travelling as a pillion rider in motorcycle bearing Regn. No.TN 74A 1461, from Nagercoil to Thuckalay, they have stopped the motorcycle and sitting on the same



talking with his friends. At that time, the Ambassador Car bearing Regn.No.TN 74 D 3720 belonging to the sixth respondent driven by the seventh respondent came in the opposite direction in a rash and negligent manner dashed against the deceased, due to which, the deceased died on the spot. Hence, the dependants of the deceased viz., respondents 1 to 5 filed the claim petition claiming a sum of Rs.20,00,000/- as compensation against the appellant / Insurance Company and the respondents 6 and 7.

4. Before the Tribunal, the appellant filed counter statement denying the age, occupation and income of the deceased and prayed for dismissal of the claim petition against the appellant.

5. The Tribunal considering the pleadings let in held that the accident occurred only due to rash and negligent driving by the driver of the sixth respondent and directed the appellant to pay a sum of Rs.7,79,000/- as compensation together with interest from the date of petition till the date realisation.

6. Against the said Award, the appellant has filed the present appeal.

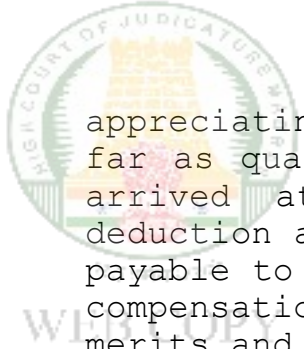
7. The learned counsel appearing for the appellant contended that the Tribunal erred in applying multiplier 15 and fixing notional income at Rs.5,000/- per month. He further contended that the amount awarded by the Tribunal towards loss of love and affection, loss of consortium are excessive and the interest at 12% per annum, is also very high and excessive. The Tribunal erred in fixing the negligence on the driver of the Ambassador Car belonging to sixth respondent without properly appreciating the materials on record.

8. Though notice was served on the respondents 1, 3 , 4 and 5 and their names are also printed in the cause list, there is no representation on behalf of the respondents 1, 3, 4 and 5.

9. I have heard the learned counsel appearing for the appellant and perused the materials available on record.

10. The respondents 1 to 5 claimed compensation for the death of one Rajesh alias Rajendran. According to them, the accident occurred only due to rash and negligent driving by the driver of the Ambassador Car belonging to the sixth respondent. Before the Tribunal the first respondent examined herself as PW.1 and marked five documents as Exs.P1 to P5 to substantiate their contention. The appellant / Insurance Company did not let in any oral and documentary evidence.

11. In the circumstances, the conclusion of the learned Judge that the accident occurred only due to rash and negligent act of the driver of the sixth respondent, cannot be find fault with. The learned Judge has rightly come to the said conclusion after



appreciating all the materials on record in proper perspective. As far as quantum of compensation is concerned, the learned Judge has arrived at reasonable income of deceased and made necessary deduction and applied correct multiplier in arriving at compensation payable to the respondents 1 to 5. The compensation awarded is just compensation and not excessive or meagre. This appeal is devoid of merits and therefore, liable to be dismissed.

12. Accordingly, the award dated 13.11.2006 made in MCOP.No.53 of 2000, on the file of the Motor Accidents claims Tribunal, Padmanabapuram hereby confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.The appellant / Insurance Company is directed to deposit the entire award amount together with interest, within a period six weeks from the date of receipt of a copy of this Judgment, after deducting the amount already deposited if any. On such deposit, the respondents 1 to 5 / claimants are permitted to withdraw their share as per the apportionment fixed by the Tribunal, on filing necessary application before the Tribunal concerned.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Principal Subordinate Judge,
(Principal Subordinate Court),
Motor Accidents claims Tribunal,
Padmanabapuram.

TRP
TE/PM/SAR-3 : 28/12/2018 : 3P/2C

C.M.A.(MD) No. 772 of 2018 and
CMP(MD) .No.8714 of 2018
06.09.2018