

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.07.2019
CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1474 of 2007

1.Renuammal

2.Minor Jayaprakash

(2nd appellant is declared major and the guardian
1st appellant is discharged vide order dated 28.01.2019
made in CMP Nos.770 and 776 of 2019)

3.Chinnakuzhanthaiammal Appellants/Claimants

Vs.

1.Krishnan

2.The Divisional Manager,

United India Insurance Co. Ltd.,

No.46/51, D.M.K Complex

Kadpadi Road, Vellore. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.09.2006 made in MCOP No.279 of 2000 on the file of the Motor Accident Claims Tribunal-cum-District Court, Tiruvannamalai.

For Appellant	: Mr.R.Thirugnanam
For R-1	: No Appearance
For R-2	: Mrs.R.Sreevidhya

J U D G M E N T

This appeal is directed against the judgment and decree made in MCOP No.279 of 2000, dated 29.09.2006, wherein, the Motor Accident Claims Tribunal-cum-District Court, Tiruvannamalai, awarded a sum of Rs.1,98,000/- as compensation to the appellants for the death of one Karaikandan, who died in a motor accident that had occurred on 23.08.1999.

2.The case of the appellants/claimants is that on the fateful day, i.e., on 23.08.1999 at about 1.30 p.m., the deceased/Karaikandan and 20 others were travelling in the lorry bearing Registration No.TN.45/W.4649, belonging to the first respondent and insured with the second respondent Insurance

Company, at Aadaiyur, Thiruvannamalai Taluk. When the lorry reached near Murugan Temple, due to rash and negligent driving of its driver, the deceased fell down from the lorry and sustained grievous injuries. He was immediately taken to the Government Hospital, Thiruvannamalai. Despite best treatment given for 17 days, he succumbed to the injuries. Hence, the legal representatives, viz., wife, minor son and mother have filed the claim petition, claiming a sum of Rs.3,00,000/- as compensation. The Tribunal, on consideration of the materials placed before it, has awarded a sum of Rs.1,98,000/- with interest at the rate of 7.5% per annum from the date of petition as total compensation. The break up details of the same are as under:-

Loss of Income		
(Rs.1,500x12x1/3=Rs.18,000)	-	Rs.1,92,000/-
Loss of consortium	-	Rs. 5,000/-
Funeral expenses	-	Rs. 1,000/-

Total	-	Rs.1,98,000/-

The said sum of Rs.1,98,000/- has been directed to be paid to the claimants by the owner of the vehicle, the first respondent herein, since the owner has violated the policy conditions by allowing the deceased to be travelled as unauthorised passenger.

3.Challenging the same, the appellants/claimants have filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellants/claimants submitted that the quantum arrived at by the Tribunal under each and every heads needs substantial enhancement. He further submitted that the Tribunal ought to have directed the Insurance Company/second respondent herein to pay the compensation and to recover the same from the owner of the vehicle/1st respondent.

5.Per contra, the learned counsel for the second respondent/Insurance Company submitted that the Tribunal has properly considered the evidence and materials available on record and has arrived at the compensation, which is just, fair and reasonable and hence the same need not be interfered with by this Court.

6.Despite the service of notice, there is no representation for the first respondent/owner of the vehicle.

7.This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for

the second respondent and perused the materials available on record.

8.Before the Tribunal, the first appellant/claimant, who is the wife of the deceased was examined as PW.1, besides examining one Gurunathan/eyewitness to the accident, as PW.2 and documents Exs.P1 and P2 were marked. No witnesses were examined or no documents marked on the side of the Insurance Company.

9.As regards the quantum of compensation awarded by the Tribunal, PW.1/first appellant/first claimant deposed in her evidence that the deceased/Karaikandan, her husband, on 23.08.1999, travelled in the lorry bearing Registration No.TN.45/W.4649 along with 20 others at Aadaiyur, Thiruvannamalai Taluk and when the lorry reached near Murugan Temple, due to the rash driving of the driver, the deceased fell down from the lorry to the road and thereby sustained serious injuries and he was immediately taken to Government Hospital, Thiruvannamalai, where, after taking treatment for 17 days, he succumbed to the injuries. PW.2 /eye-witness asserted that Karaikandan/deceased sustained serious injuries and he took treatment as in-patient in the Government Hospital, Thiruvannamalai for a period of 17 days.

10.The Tribunal by taking note of the above evidence and by considering Ex.P1/First Information Report and Ex.P2/Post-Mortem Certificate, has taken the age of the deceased as 38 years and fixed the annual income at Rs.12,000/- even as a coolie (in the absence of the documentary evidence) after deducting 1/3rd towards the personal expenses and adopted the multiplier of 16 and accordingly determined the compensation under the head "loss of income" at Rs.1,92,000/- (Rs.12,000x16). The loss of income arrived at by the Tribunal cannot be found fault with, since it perfectly matches with the II schedule of the Motor Vehicles Act and evidence and documents on record and hence, the same need not be interfered with by this Court.

11.That apart, the award of Rs.5,000/- towards loss of consortium and Rs.1,000/- towards funeral expenses are just and reasonable and hence, the same are confirmed as such.

12.Further, the Tribunal, placing reliance on the evidence of PW.1 to the effect that the deceased, for filing the nomination papers, had travelled in the lorry along with 60 persons, held that the deceased had not travelled in the lorry as authorised passenger and accordingly fastened the liability on the owner of the vehicle, thus exonerating the Insurance Company to pay compensation to the claimants. The said finding is perfectly justified. That apart, the first respondent herein

has not adduced any evidence or marked any documents before the Tribunal to justify his claim.

13. In view of the above stated circumstances, the Civil Miscellaneous Appeal is dismissed, confirming the impugned judgment and decree passed by the Tribunal. No costs.

14. The first respondent shall deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the appellants / claimants are permitted to withdraw the same as per the ratio of apportionment made by the Tribunal, on making proper application.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal-cum-District Court, Tiruvannamalai.
2. The Section Officer,
V.R. Section, High Court, Madras.

+1 cc to M/s.R.Thirugnanam Advocate sr64091

C.M.A.No.1474 of 2007

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