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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1326 of 2005

The Manager,
The New India Assurance Co., Ltd.,
MTPCO, No.45, Moore Street,
Regina Mansion,
Chennai - 600 001.

.. Appellant/2nd Respondent

Vs.

1. Malar
2. Minor Malathy
3. Minor Karthick

(Minors 2 & 3 are represented by their guardian
& Mother Malar, first respondent herein)

4. Sundari
- 5.A.Shankar

.. Respondents R5/1 to 4 Petitioner /1st Respondent
(Fifth respondent set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.03.2004 made in M.C.O.P.No.189 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvelllore.

For Appellant : Mr.J.Chandran

J U D G M E N T

This appeal is preferred by the appellant Insurance Company against the Judgment and Decree dated 19.03.2004 passed by the Motor Accident Claims Tribunal, Sub Court, Thiruvelllore (for brevity, "the Tribunal"), in M.C.O.P.No.189 of 2003.

2.The respondents 1 to 4/claimants, who are the legal heirs of one Madhavan, filed a claim petition, seeking a sum



of Rs.6,00,000/- as compensation for the death of the aforesaid Madhavan, in an accident, that took place, on 11.02.2003, on account of the carelessness and negligence on the part of the driver of the lorry bearing Registration No.TN-01-C-6247 belonging to the fifth respondent and insured with the appellant insurance company. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.5,42,000/- with interest at the rate of 9% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has disputed only the quantum of compensation awarded by the Tribunal. He submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Even though this appeal was admitted way back in the year 2005, no proper steps have been taken on the side of the appellant/Insurance Company to serve papers to the other side.

6.Since the appellant/Insurance Company has not disputed the manner in which the accident took place, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, need not be interfered with by this Court.

7.Before the Tribunal, on the side of the respondents/claimants, the wife of the deceased was examined as P.W.1, besides examining the eye witnesses to the accident as P.W.2 and P.W.3 and marking Exs.P1 to Ex.P4 documents. On the side of the appellant/insurance company, no oral and documentary evidence were adduced. P.W.1 in her evidence, deposed that the deceased was aged about 26 years and was earning a sum of Rs.130/- per day as a Cleaner. However, no proof was produced to substantiate the same. In the absence of any evidence, the Tribunal has taken the monthly income of the deceased as Rs.3,000/- (Rs.100/- per day), deducted 1/3rd towards personal expenses, arrived at the annual income at Rs.24,000/-, adopted the multiplier of 18 and quantified Rs.4,32,000/- towards loss of income. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and awarded Rs.4,32,000/- towards the contribution of the deceased to the family and hence, the same is hereby confirmed.



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8. That apart, the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.25,000/- towards loss of consortium to the wife of the deceased, Rs.20,000/- towards loss of dependency, Rs.10,000/- towards pain and suffering, Rs.10,000/- towards mental agony, Rs.20,000/- towards loss of happiness and Rs.20,000/- towards loss love and affection, totally a sum of Rs.5,42,000/- (which has been wrongly mentioned as Rs.5,32,000/- by the Tribunal) as compensation to the respondents 1 to 4/claimants. The Tribunal has properly analysed the materials and evidence available on record and has awarded reasonable compensation on those heads and therefore, the same need not be interfered with by this Court.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant-Insurance Company is directed to deposit the total compensation of Rs.5,42,000/- with interest and costs, 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 Tribunal shall transfer the respective shares of the award amount to the savings bank account of the first respondent (Rs.2,76,000/-) and fourth respondent (Rs.53,200/-) through RTGS within a period of one week thereafter. In respect of the minor respondents 2 and 3, the Tribunal shall invest their respective shares i.e., Rs.1,06,400/- each in a Nationalized Bank and the interest accrued thereon shall be withdrawn once in three months by the first respondent/ guardian of the minors, till they attain majority.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Sub Court, Thiruvellore.

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

+1cc to Mr.J.Chandran , Advocate SR.No. 52773
C.M.A.No.1326 of 2005
A.SK(13/11/2019)