

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.190 of 2007
and M.P.No.1 of 2007

United India Insurance Co.Ltd.
Rep.by its Branch Manager,
Pondicherry. ...Appellant/2nd Respondent

Vs

1.Mary Sasikala ..Respondent 1 to 4/Petitioner 1 to 4

2.Minor Ranjith Kumar

3.Antione

4.Bernadette Mary

5.Selvendiran
(5th respondent ex-parte before Lower Court
and hence notice may be dispensed with.
...5th Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 30.06.2006 made in MCOP No.121 of
2005 on the file of the Motor Accidents Claims Tribunal,
Karaikal.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : No appearance for R3 and R4

JUDGMENT

This appeal is preferred by the Insurance Company against
the award of a sum of Rs.3,38,900/- towards compensation to the
respondents 1 to 4 / claimants, due to the death of the husband
of the first respondent in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 07.10.2004, the deceased Arulmozhineyan was driving the Hero Honda motorcycle bearing Reg.No.PY-02-C-3667 from West to East direction from Ambagarathur to Muppaithangudi, Karaikal. One James and Victor John Paul were pillion riders. When the two-wheeler was nearing Nallambal bridge, a cyclist suddenly crossed the road. The motorcycle, after hitting the cyclist, hit against a granule heap on the side of the road. Due to the said impact, the deceased sustained grievous injuries and died on the spot. The pillion riders also sustained grievous injuries. The legal heirs of the deceased filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,38,900/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that only the deceased was responsible for the accident. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

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

6.The respondents have not been properly served. The appellant Insurance Company has not taken steps to serve papers to the respondents, even at this length of time.

7.P.W.2-Victor John Paul, one of the pillion riders, deposed before the Tribunal that the motorcycle was in good condition and because of the sudden cross of the cyclist in the road, the deceased applied brake, but due to the failure of the brake, he was not able to control, due to which he fell down, sustained injuries and died on the spot. Since there was no evidence about the occurrence other than P.W.2, the Tribunal accepted the evidence of P.W.2, which does not require any interference in the hands of this Court.

8.With regard to the compensation, the Tribunal fixed a sum of Rs.2,000/- as the notional income of the deceased per month, in the absence of any evidence regarding the income of the deceased. Thereafter, adopting the multiplier of 17, arrived at the sum of Rs.4,08,000/- and after deducting $1/5^{\text{th}}$ of the amount, ie., Rs.81,600/- towards personal expenses of the deceased, awarded a sum of Rs.3,26,400/- towards loss of income, to the claimants. The Tribunal has correctly assessed the income of the injured, adopted the correct multiplier and arrived at

Rs.3,26,400/- towards loss of income. Hence this Court is not inclined to interfere with the same. The Tribunal has also awarded a sum of Rs.2,500/- towards loss of estate, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of love and affection. The amounts awarded by the Tribunal under the above heads are very reasonable and hence the same are confirmed.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the major claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. The share of the second respondent minor shall continue to be in the Fixed Deposit, as ordered by this Court by order dated 02.02.2007, till the minor attains majority. Till such time, the interest accrued in the Deposit shall be withdrawn by the first respondent, once in three months, which shall be used for the welfare and the benefit of the minor.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal
Karaikal.

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

+1cc to Mr.M.B.Gopalan, Advocate SR.No.49079

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NRL (CO)
GMY (23/10/2019)