

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE.R.MAHADEVAN

C.M.A.No.3648 of 2006
and MP No.2 of 2006

The New India Assurance Co.Ltd.
Regina Mansion,
46, Moore Street, Chennai-600001. : Appellant/2nd Respondent

Vs.

1.Devaki / Sd
2.Mani / NA 27/6 : Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgement and Decree of the learned Motor Accidents Claims Tribunal (Additional Sub-Judge), Chengalpet in MACTOP No.385 of 2000 dated 29.07.2003.

For Appellant : Mr.J.Chandran

J U D G M E N T

As against the award passed by the claims Tribunal at Rs.2,44,500/-, fixing the liability only on the appellant, this Civil Miscellaneous Appeal is filed.

2. It is the case of the claimants that one Prabu was a pillion rider in a motor cycle, which was driven by its owner Charles, and when they were approaching near Plaka Company, the driver of the motor cycle lost his balance and dashed against a tree, as a result of which, the driver-cum-owner of the motor cycle died on the spot and the pillion rider, Prabu, sustained grievous injuries, admitted in the Government General Hospital, Chennai, and subsequently succumbed to the injuries, on the same day.

3. The legal representatives of the pillion rider, Prabhu, have filed a petition in MCOP No.385 of 2000 claiming compensation of Rs.3,00,000/-. The Tribunal, on a consideration of the oral and documentary evidence, has fixed the liability on the part of the owner and appellant herein and has awarded a sum

of Rs.2,44,500/- as compensation, to be payable to the claimants equally.

4. Heard the learned counsel for the appellant.

5. The learned counsel appearing for the Appellant / Insurance Company submitted that there is no proof with regard to earnings of the deceased and hence, the Tribunal ought not to have taken the earnings at Rs.3,000/- per month. The alternative submission is that in the absence of proof of earnings, the Tribunal ought to have taken only Rs.15,000/-, as notional income, annually, as per II schedule to Section 163(A) of the Motor Vehicles Act, 1988.

6. This Court has considered the said submissions and perused the materials available on record.

7. So far as negligence aspect is concerned, the Tribunal has taken note of the place of occurrence, through Ex.P1 and P.W.1-eye witness (Devaki) to the accident, who has stated that the accident had occurred only due to the rash and negligent riding of the rider, who drove the Two-Wheeler.

7.1. To controvert the same, no evidence or document is forthcoming on the side of the appellant herein. When the best evidence or document is not available/produced, then the inference drawn is that the statement of the eye-witness has to be taken as true. The Tribunal has rightly taken note of the same and hence, on the negligence aspect, the finding rendered by the Tribunal that the accident had happened due to rash and negligent riding of the rider of the two wheeler, has to be confirmed and it is confirmed as such.

8. As far as the quantum is concerned, the Tribunal has taken note of the fact that no document is available to establish the income of the deceased and it has taken Rs.150/- as daily income and monthly income at Rs.3,000/- and deducting 1/3, has arrived at the loss of income at Rs.2,40,000/- by applying multiplier of 10. Apart from that the Tribunal has awarded compensation under the heads "funeral expenses" and "loss of estate" at Rs.2,000/- and Rs.2,500/- respectively.

9. The said quantum arrived at by the Tribunal is based on probabilities of case, weight of evidence and documents produced. Further, no iota of evidence or documents have been produced by the appellant herein before the Tribunal. When that being so, it cannot be permitted to say now that the monthly income taken by the Tribunal is on the higher side. In such view of the matter, the award passed by the Tribunal on negligence as well as on quantum is confirmed as such.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company 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 Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimants / respondents herein, forthwith, through RTGS. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(AD-I)

// True Copy//

Sub Assistant Registrar

srk / kv

To

1. Motor Accidents Claims Tribunal
(Additional Sub-Judge), Chengalpet.

2.The Section Officer, V.R. Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, SR.No.53948.

C.M.A.No.3648 of 2006
and MP No.2 of 2006

RGN(CO)
CSR: 13.02.2020