

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.4035 of 2005

and

C.M.P.No.19776 of 2005

The Oriental Insurance Co. Ltd.,
Coimbatore. ... Appellant

Vs.

1. Thulasiammal
2. Thirumoorthis
3. Uma Maheswari
4. Poovathal
5. Dhandapani
6. Selvaraj ... Respondents
(Respondents 5 & 6 are 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 08.12.2004 made in M.A.C.T.O.P.No.162 of 2003 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Udumalpet.

For Appellant : Mr.M.Krishnamoorthy

J U D G M E N T

This appeal is preferred by the appellant Insurance Company against the Judgment and Decree dated 08.12.2004 passed by the Motor Accident Claims Tribunal, Subordinate Judge at Udumalpet (for brevity, "the Tribunal"), in M.A.C.T.O.P.No.162 of 2003.

2.The facts of the case are that on 25.03.2003, at about 8.15 P.M. one Palanisamy was riding a bicycle in Pollachi to Coimbatore Main Road and while he was nearing Arasampalayam Pirivu, a Minidor Auto bearing Registration Number TN.38-S-6589 came from the same direction in a rash and negligent manner and hit the bicycle on backside, due to which, the cyclist was

thrown out and he died on the spot. Hence, the respondents 1 to 4, who are the legal heirs of the deceased, filed a claim petition, seeking a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.7,62,400/- 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. It is seen that the respondents are not ready in notice. Even though this appeal was admitted and a conditional order of stay was granted way back in the year 2005, the appellant Insurance Company has not taken proper steps to serve papers to the respondents/claimants, even at this length of time.

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 auto, need not be interfered with by this Court.

7. On the side of the respondents/claimants, the wife of the deceased was examined as P.W.1, besides examining the eye witness to the accident and co-employer as P.W.2 and P.W.3 and Exs.P1 to Ex.P10 were marked. On the side of the appellant Insurance company, no oral and documentary evidence were adduced. P.W.1 in her evidence, asserted that the deceased was aged 57 years and he was earning a sum of Rs.15,500/- per month by working as an Head master in Government Primary School, Solavampalayam, in addition to Rs.1,500/- per month by taking tuition. As per Ex.P9 -salary certificate, the deceased earned Rs.11,453/- per month, after deducting Rs.5,185/- from Rs.16,638/-. Hence, the Tribunal has taken the monthly income of the deceased at Rs.11,100/-; after deducting 1/3th towards personal expenses, arrived at the annual income at Rs.88,800/-; adopted the multiplier of 8; and quantified the compensation towards loss of income at Rs.7,10,400/-. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and awarded the said sum towards the contribution of the deceased to the family and hence, the same is hereby confirmed.

8.That apart, the Tribunal has awarded Rs.2,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium to the wife of the deceased, Rs.10,000/- each i.e., Rs.40,000/- towards loss of love and affection to the claimants, which are fair, just and reasonable and the same do not call for any interference at the hands of this Court.

9.In the result, this Civil Miscellaneous Appeal is dismissed by confirming the award passed by the Tribunal. No costs. The appellant Insurance Company is directed to deposit the entire award amount 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 same to the savings bank account of the respective claimants, as apportioned by the Tribunal, through RTGS within a period of one week thereafter. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. Motor Accident Claims Tribunal,
Subordinate Judge, Udumalpet.

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

+1 cc to M/s.M.Krishnamoorthy Advocate sr53968

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