

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.773 of 2009  
and M.P.No.1 of 2009

M/s. United India Insurance Company,  
Tiruverumbur,  
Tiruchy. ....Appellant / II Respondent

Vs

1. Vaithiyanathasamy
2. Kalyani
3. Siyamaladevi ..Respondents 1 to 3/Claimants 1 to 3
4. M.Y.Abdul Jaleel ...4<sup>th</sup> Respondent/1<sup>st</sup> Respondent

(R4 was Ex-parte in the Lower Court)

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 23.01.2007 passed in M.C.O.P.No.9 of 2006 on the file of the Motor Accident Claims Tribunal (Sub Judge) at Chidambaram.

For Appellant :Mrs.R.Sree Vidhya

For Respondents:Mr.Gopinath  
for M/s.Royan Associates for R1 to R3  
R4 - Ex parte

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J U D G M E N T

The case in brief, is as follows:

On 31.05.2005 at about 07.15 a.m., the deceased Rajendran was proceeding in the Chidambaram - Sirkali Main Road in Sabanayagar Street from South to North direction, pushing his bicycle along with his relative one Kaliamoorthy. At that time, the tanker truck bearing Reg.No. TN-45-AA-1605, belonging to the third respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent

manner and dashed against the deceased and his bicycle. Due to the said impact, the deceased was thrown out and had fallen down and sustained fatal injuries. Thereafter, he became unconscious. He was taken to the Government Hospital, Chidambaram for treatment. After 7 days of treatment, he died in the hospital. The respondents 1 to 3/claimants have filed a claim petition before the Tribunal claiming a sum of Rs.8,00,000/-. Considering the materials and evidence available on record, the Tribunal has awarded a sum of Rs.5,60,000/- with interest at the rate of 8.5% per annum from the date of petition, as total compensation payable to the legal representatives/respondents 1 to 3 herein.

2.Challenging the findings on negligence as well as the quantum of compensation, this appeal is preferred by the appellant / Insurance Company.

3.The learned counsel for the appellant has submitted that the Tribunal has erred in granting a disproportionate and excessive compensation without following the guidelines of the Apex Court; that the Tribunal has erred in holding that the deceased would have earned Rs.5,000/- without any acceptable evidence. He further submitted that the award of the Tribunal including the rate of interest is liable to be scaled down. But, she has not disputed the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the tanker truck.

4.Per contra, learned counsel for respondents 1 to 3 herein/claimants has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

5.Heard both sides and perused the records.

6.Since the learned counsel for the appellant 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 tanker truck, does not require any interference.

7.With regard to the quantum of compensation, the Tribunal has awarded a sum of Rs.5,12,000/- towards loss of dependency. The said sum has been arrived by fixing the monthly income of the deceased at Rs.4,000/- as mason

(in the absence of any documentary proof thereof), deducting  $\frac{1}{3}^{\text{rd}}$  of the amount towards personal expenses and adopting the multiplier of 16. The Tribunal has also awarded a sum of Rs.10,000/- towards transport and medical expenses, Rs.15,000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection. The Tribunal has correctly fixed the monthly income of the deceased, adopted the correct multiplier and arrived at the compensation towards loss of dependency and hence the same does not require any interference by this Court. The amounts awarded towards other heads are also very reasonable and hence the same are confirmed.

8. Even though the total compensation works out to Rs.5,57,000/-, the Tribunal has awarded a sum of Rs.5,60,000/-, which is a clerical error. Hence, the appellant Insurance Company is directed to deposit a sum of Rs.5,57,000/- with interest at the rate of 8.5% per annum from the date of petition, 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 respondents 1 to 3 / claimants are permitted to withdraw the same as per the ratio of apportionment made by the Tribunal, on making proper application.

9. The Civil Miscellaneous Appeal is disposed of accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

srk / mp

To

1. Motor Accident Claims Tribunal (Sub Judge)  
Chidambaram.

2. The Section Officer  
V.R. Section  
Madras High Court  
Chennai 104

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+1cc to M/s.Royan Law Associates, Advocate, S.R.No.61452

C.M.A.No.773 of 2009  
and M.P.No.1 of 2009

VBA (CO)  
CB (27/07/2020)



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