

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.1763 of 2011
and
M.P.No.1 of 2011

New India Assurance Company Limited,
Rep.by its Divisional Manager,
Motor Third Party Claims Cell,
No.69/70, Sheikpet, Nadu Street,
Kancheepuram. .. Appellant/2nd Respondent

Vs.

1.C.Chinnaponnu
2.N.Chellakutty
3.L.Gracy .. Respondents 1 to 3/ Petitioners
4.R.Murugan .. 4th e/ 1st Respondent
5.Sheebarani ..5th Respondent /3rd Respondent

(The 4th respondent)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 26.11.2010 made in M.C.O.P.No.240 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Chengalpattu.

For Appellant : M/s.Elveera Ravindran
For R1 to R3 : Mr.S.S.Swaminathan

JUDGMENT

The 2nd respondent before the Tribunal, is the appellant herein. This Civil Miscellaneous Appeal has been filed against the order and Decree dated 26.11.2010 made in M.C.O.P.No.240 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Chengalpattu.

2. The legal representatives of the deceased have preferred the Claim Petition alleging that:-

i) on 11.02.2007 at about 4.45 p.m while the deceased was riding motor cycle bearing Registration No.TN 21

J 1407 towards Sunguvar Chattiram along Bangalore High Road near Kalathi Petrol Bunk at Sunguvar Chattiram on the proper side of the road.

ii) At that time, an Ambassador Car bearing Registration No.TN 25 Z 6139 was driven by it's driver in a rash and negligent manner endangering in the public safety came at a dangerous speed on the wrong side of the road from Chennai towards Kancheepuram without observing traffic rules and dashed against the deceased and thus caused fatal injuries to the deceased.

iii) Immediately, after the accident, the deceased was taken to Government Hospital at Sriperumbathur, where he was reported dead by the Doctors. The deceased was aged about 25 years at the time of accident. The deceased was Supervisor in Deva Kirubai Waste Paper Company at Chennai-94 and that he was earning Rs.7,500/- per month as monthly income. The deceased was sole bread winner of the family.

iv) The claimants who are the father, mother and sister of the deceased and surviving legal heirs of the deceased, suffered severe mental shock and agony on account of the death of Amulraj in the accident. They are entitled to claim compensation of Rs.8,00,000/- as against the respondents.

3. Before the Tribunal, the mother of the deceased was examined as P.W.1 and the occurrence witness was examined as P.W.2 and the employer of the deceased was examined as P.W.3 and Exhibits P1 to P11 were marked.

4. Taking into consideration of the oral and documentary evidence of P.W.2 occurrence witness coupled with documentary evidence of Exhibits P1 to P3, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the respondent's Ambassador Car which was insured with the second respondent-Insurance Company before the Tribunal and in the absence of any illegality or irregularity, the same is hereby confirmed.

5. On the point of quantum, both the parties are heard.

6. As per the oral evidence of P.W.3, the employee who had issued Salary Certificate under Exhibit P8 is running the private limited company and necessary documents have been filed under Exhibits P9 and P10 and as per Exhibit P8-Salary Certificate, the deceased was earning a sum of Rs.7,500/- and 1/3rd deduction has been done and Rs.5,000/- per month is arrived at the compensation and multiplier '18' is adopted.

7. The learned counsel for the Insurance Company would submit that the amount so arrived is exorbitant.

8. Per contra, the learned counsel for the claim petitioners/respondents would submit that as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, the age of the parents should not be considered as criteria. The claimants are entitled for future prospectus and also the deduction has to be treated as 1/2 instead of 1/3 and running calculation, it appears that when both the calculation, as done by the Tribunal and the calculation has done as per the present decision, the quantum appears to be in a close margin and taking a lenient view, the quantum of the compensation as such arrived by the Tribunal is held to be just and reasonable compensation.

9. In such view of this matter, this Civil Miscellaneous Appeal is dismissed. The Insurance Company has submitted that the entire amount has already been deposited. It is open to the claimant to file petition before the Tribunal for withdrawal of the compensation amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Chengalpattu.

Copy to

The Section Officer,
VR Section,

High Court, Madras

+lcc to M/s.Elveera Ravindran. , Advocate SR.No. 20873

+lcc to Mr.S.S.Swaminathan , Advocate SR.No. 20746

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A.SK(27/06/2019)