

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.793 of 2011 and
M.P.No.1 of 2011

The New India Assurance Co. Ltd.,
Rep. by its Branch Manager, Branch Office,
Old No. 114, New No. 204, Kutchery Road,
Mylapore, Chennai - 600 004.Appellant/2nd Respondent

..Vs..

1.Kala
2.Munusamy1st & 2nd Respondent/Petitioner
3.Karnan3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment in M.C.O.P.No.768 of 2008, dated 26.10.2010, on the file of the Motor Accident Claims Tribunal, (Principal District Judge) at Dharmapuri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents
1 and 2 : Mr.M.Selvam

For Respondent
No.3 : No appearance

JUDGMENT

The New India Assurance Company Limited, the second respondent in M.C.O.P.No.768 of 2008 is the appellant herein. They filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 questioning the quantum of compensation awarded by the tribunal vide its order dated 26.10.2010 in M.C.O.P.No.768 of 2008.

2.The brief case of the respondents 1 and 2/claimants is as follows:

On 02.08.2006, the deceased Kumaresan, the son of the claimants was travelling as a pillion rider in a two wheeler Bajaj pulsar bearing Registration No. TN 22 AZ 9897. He was proceeding towards Mount Road from Chrompet and when he was nearing MIT Bridge, a speeding lorry bearing Registration No. TNP 9797 belonging to the third respondent and insured with the present appellant hit the two wheeler, as a result of which, the deceased Kumaresan died on the spot.

3.According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration No. TNP 9797 belonging to the third respondent was the cause of the accident and that since the said lorry was insured with the present appellant, both of them are jointly and severally liable to pay compensation to the respondents 1 and 2/ claimants.

4.The learned Principal District Judge, Dharmapuri after analysing the evidence of record, awarded a compensation of Rs.6,92,000/- together with interest at the rate of 7.5% per annum to the respondents 1 and 2 / claimants. Aggrieved over the quantum of compensation, the New India Assurance Company Limited has filed the present appeal.

5.Mr.M.Krishnamoorthy, learned counsel appearing for the appellant would contend that though the claimants did not adduce any acceptable evidence to show that the deceased Kumaresan was earning a sum of Rs.6,000/- per month, the tribunal has fixed the income of the deceased as Rs.6,000/- per month.

6.A perusal of the records shows that the deceased was running a travel agency. A person running a travel agency could easily earn a sum of Rs.6,000/- per month and therefore, I do not see any reason to hold that the deceased Kumaresan was not earning a sum of Rs.6,000/- per month. Infact, the tribunal has also given cogent reasons for concluding that the deceased was earning a sum of Rs.6,000/- per month. All the observations made by the tribunal in this regard are perfectly in order. The deceased was aged about 22 years on the date of the accident and therefore, the tribunal has awarded a sum of Rs.6,92,000/- and by no stretch of imagination, the award passed by the tribunal can be said to be on the higher side.

7.In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

(ii) The Decree and Judgment passed in M.C.O.P.No.768 of

2008, dated 26.10.2010, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri is upheld.

(iii) The appellant insurance company is directed to deposit the entire award amount together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.768 of 2008, dated 26.10.2010, on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Dharmapuri less the amount already deposited by them within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1 and 2/claimants are at liberty to withdraw their respective shares as apportioned by the tribunal after following due procedure of law.

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Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Principal District Judge,
Dharmapuri.

+1cc to Mr.M.Krishnamoorthy, Advocate, SR.No.3852/19
+1cc to Mr.M.Selvam, Advocate, SR.No.3785/19

सत्यमेव जयते

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Kak (02/05/2019)

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