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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.615 of 2015 and
M.P.No.1 of 2015

M/s.Oriental Insurance Co. Ltd.,
No.3L, Sidha Veerappa Chetty Street,
Dharmapuri - 636 701.

.. Appellant

Vs.

1.Dheivanai
2.Dhanajayan
3.Gnnammal
4.Kalaimani
5.Minor.Ramkumar
6.Minor.Enbarasan
7.Minor.Prathiba
8.K.Sugavaneshkumar

.. Respondents

(Minor respondents 5 to 7 are represented by their
next friend/guardian, the fourth respondent herein)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.08.2014 made in M.C.O.P.No.78 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Harur.

For Appellant	:	Mr.S.Manohar
For RR1 to 7	:	Mr.O.R.Mahesvaran
For R8	:	No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against award dated 28.08.2014 made in M.C.O.P.No.78 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Harur.

2.The appellant is the second respondent in M.C.O.P.No.78 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Harur. The respondents 1 to 7 filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for



the death of one Srinivasan, who died in the accident that took place on 11.12.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider of the motorcycle belonging to the eighth respondent and ordered pay and recovery, on the ground that rider of the motorcycle was not possessing driving license at the time of accident and directed the appellant-Insurance Company to pay a sum of Rs.6,48,000/- as compensation to the respondents 1 to 7/claimants at the first instance and recover the same from the eighth respondent.

4.Against the said award dated 28.08.2014 made in M.C.O.P.No.78 of 2011, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal having held that the rider of the motorcycle did not possess a valid driving license, ought to have exonerated the appellant from its liability. The Tribunal erred in ordering pay and recovery. The first respondent/wife of the deceased has stated that she is 65 years old. The Tribunal erred in fixing age of the deceased as 60 years. The respondents have not filed any documents to prove the avocation and income of the deceased and Tribunal has erroneously fixed notional income of the deceased at Rs.6,000/- per month. The amounts awarded by the Tribunal under the head of loss of love and affection, loss of consortium are excessive and prayed for setting aside the award passed by the Tribunal.

6.Per contra, Mr.O.R.Mahesvaran, learned counsel appearing for the respondents 1 to 7 contended that the Tribunal rightly ordered pay and recovery as per the judgment of the Hon'ble Apex Court and this Court, when the driver of the vehicle did not have a valid driving license at the time of accident. The deceased was running petty shop and the Tribunal has rightly fixed a sum of Rs.6,000/- as the notional income of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2018 (2) TNMAC 452 (SC) Supreme Court [Magma General Insurance Company vs. Nanu Ram @ Chuhru Ram], the respondents 1 to 7 are entitled to compensation towards loss of love and affection and the amounts awarded by the Tribunal under different heads are not excessive and and prayed for dismissal of the appeal.



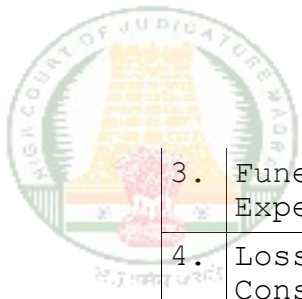
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7.I have heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 7 and perused all the materials available on record.

8.From the materials available on record, it is seen that the rider of the motorcycle did not possess valid driving license at the time of accident. Considering the said fact, the Tribunal has directed the appellant to pay the compensation at the first instance and recover the same from the eighth respondent by filing execution petition. The said order is in consonance with the judgment of the Hon'ble Apex Court and this Court and there is no error in the said reasoning of the Tribunal to interfere with the award.

9.As far as the age of the deceased is concerned, the learned counsel appearing for the appellant contended that the deceased was aged more 65 years and Tribunal erred in fixing age of the deceased at 60 years. The appellant has not produced any document to show that the age of the deceased is more than 65 years. The contention of the learned counsel for the appellant is that the first respondent, the wife of the deceased herself has stated that in the claim petition that she was aged 65 years and therefore deceased should be more than 65 years is only on assumption and surmises. The accident took place on 11.12.2009. The Tribunal fixed a sum of Rs.6,000/- as the notional income of the deceased, which is not excessive. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of consortium, which is excessive and the first respondent is entitled to only a sum of Rs.40,000/- towards loss of consortium. The Tribunal has awarded only a sum of Rs.10,000/- towards funeral expenses and the same is hereby enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is granted by this Court towards loss of estate. As per the judgment of the Hon'ble Apex Court referred to above, a sum of Rs.1,50,000/- awarded by the Tribunal towards loss of love and affection is excessive and the same is set aside. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	3,78,000/-	3,78,000/-	confirmed
2.	Loss of Love and Affection	1,50,000/-	-	set aside



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3.	Funeral Expenses	10,000/-	15,000/-	enhanced
4.	Loss of Consortium to first respondent	1,00,000/-	40,000/-	reduced
5.	Transportation	10,000/-	10,000/-	confirmed
6.	Loss of Estate	-	15,000/-	granted
	Total	Rs.6,48,000/-	Rs.4,58,000/-	reduced by Rs.1,90,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,48,000/- is hereby modified to Rs.4,58,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the owner of the vehicle, the eighth respondent herein by filing execution petition. On such deposit, the respondents 1 to 4 are permitted to withdraw their respective share of the modified award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor respondents 5 to 7 are directed to be deposited in any one of the Nationalized Bank, till the minor respondents attain majority. On such deposit, the fourth respondent, being the mother of the minor respondents 5 to 7 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. The appellant-Insurance Company is permitted to withdraw the excess amount if any lying in the deposit to the credit of M.C.O.P.No.78 of 2011, if the entire amount has already been deposited. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/
Sub Asst. Registrar



To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Harur.

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+1 cc to Mr.S.Manohar Advocate sr10645

+1 cc to Mr.O.R.Maheswaran Advocate sr11138

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aa31/10/2019