

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.264 of 2015

The Branch Manager,

M/s. Oriental Insurance Company Limited

Vellore

Appellant/ 2nd respondent

Vs

1.Mari

2.Ellammal

3.S.Kamatchi

Respondents/ claimants 1 & 2
/1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.65 of 2011 dated 11.07.2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Cheyyar.

For Appellant : Mr. J.Chandran

For Respondents: Mr.S.Makesh for R1 & R2
No Appearance for R3

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Oriental Insurance Company aggrieved against the judgment and decree made in M.C.O.P.No.65 of 2011 dated 11.07.2014, on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Cheyyar.

2. The brief case leading to the claim petition is that on 17.02.2011, when the deceased Velu was riding the motor cycle bearing Registration No.PY 01 BD 3303 in Cheyyar to Arcor road, Moranam Village main road, at that time, the tractor trailer bearing Registration No. TN 25 U 2761, driven by its driver in a rash and negligent manner, hit against the deceased Velu. As a

result of which, the deceased sustained severe injuries and died on the spot. The accident occurred only due to the rash and negligent driving of the driver of the tractor trailer and claimed a sum of Rs.9,65,000/- as compensation as against the owner of the vehicle/third respondent herein as well as the insurer of the offending vehicle, viz., the present appellant.

3. The learned counsel for the appellant submitted that the compensation of Rs.46,000/- awarded by the Tribunal is highly excessive and exorbitant. Further, the learned counsel submitted that the Tribunal ought to have held that the accident occurred solely due to the rash and negligent act of the deceased. He submitted that the claimants have impleaded the first respondent as owner of the Tractor TN 25 U 2891, however, failed to implead the owner of the Tractor TN 25 U 2761 and hence, the claim application ought to have been dismissed by the Tribunal. It is further submitted that in the absence of any eyewitness the Tribunal erroneously held the accident had happened due to reckless driving of the driver of the Tractor. Hence, the award passed by the Tribunal warrants interference by this Court.

4. Even though the learned counsel for the first and second respondents herein/ claimants appeared before this Court, no arguments have been placed. Hence, this appeal is taken up for disposal on merits.

5. On a perusal of the award passed by the Tribunal it is evident that the Tribunal has taken note of the contents of Ex.P1/ First Information Report, Ex.P3/ RC book of the offending vehicle, Ex.P4/ Insurance Policy and Ex.P5/ Driving license and the evidence of PW.1, has come to the conclusion that due to the rash and negligent driving of the driver of the Tractor, the accident had happened. Though, on the side of the respondents it is stated that the rash and negligent act of the deceased only caused the accident, in order to substantiate the same, no oral or documentary evidence has been placed by them before the Tribunal. It is not in dispute that due to the accident only, the deceased Velu died on the spot. Further, it is observed that the driver of the Tractor has also not been examined as a witness before the Tribunal. On combined reading of the evidence of PW.1, the negligence aspect was fixed on the part of the driver of the Tractor only responsible for the accident. Hence, the liability fixed on the Insurance Company is reasonable and proper.

6. While perusing the sum awarded by the Tribunal, it is seen that the Tribunal has taken the age of the deceased as 25 years at the time of the accident and the said fact was also very much discussed in the Post Mortem Certificate (Ex.P2). Though the claimants have stated that the deceased was doing

contract business in Civil Engineering and was earning a sum of Rs.10,000/- per month. To prove the fact that the deceased was doing contract business in Civil Engineering, the relevant document which was issued on the side of the claimants as Ex.P7 to Ex.P9 and the Tribunal has taken the monthly income of the deceased at Rs.8,000/- based on the evidence and the above said documents. The Tribunal has taken the annual income at Rs.96,000/-, by deducting 1/2nd towards the personal expenses of the deceased and applied proper multiplier for age group of 25, the future loss of income has been arrived at Rs.8,16,000/-. The sum awarded under the head of Love and affection is very much reasonable by awarding Rs.20,000/-. The other aspect such as funeral expenses was also properly considered by the Tribunal. In total, the award passed by the Tribunal under various heads are just and reasonable and hence, this court is not inclined to interfere with the award of the Tribunal, the same is confirmed.

7. In the result, the award passed by the Tribunal in M.C.O.P.No. 65 of 2011 dated 11.07.2014 is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs.

8.The appellant/ Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are at liberty to withdraw the entire amount as per the apportionment made by the Tribunal and the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant, forthwith, through RTGS.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

vkr

To

1.The Subordinate Court,
Motor Accident Claims Tribunal
Cheyyar

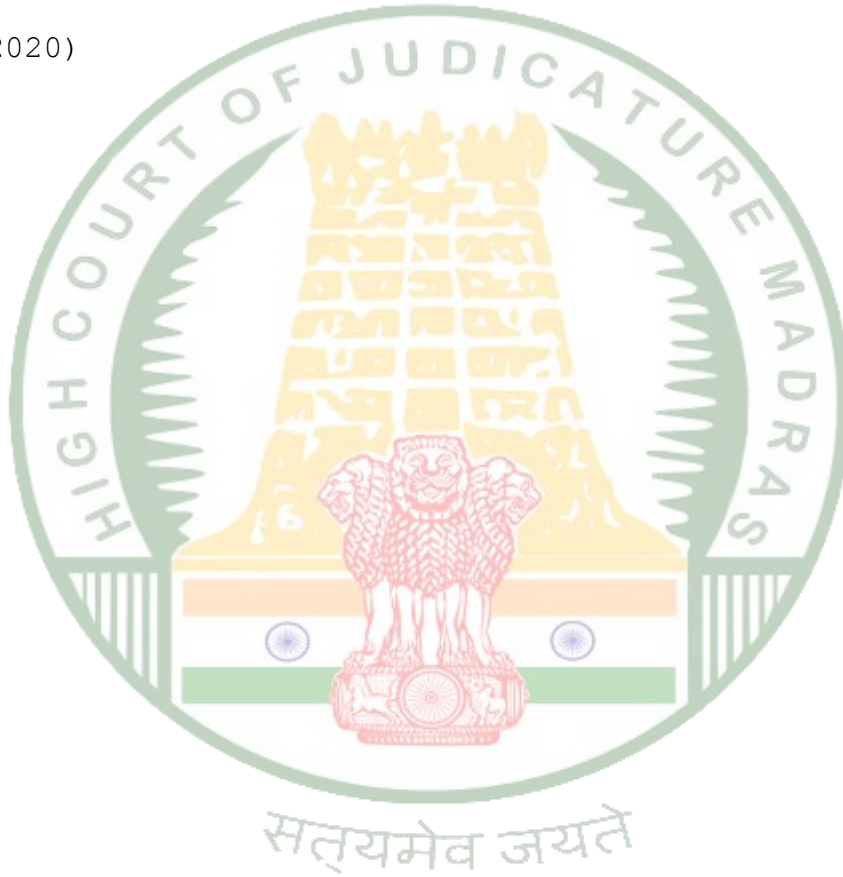
WEB COPY

Copy to
The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Makesh, Advocate sr 59276.

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PM(CO)
SP(12/02/2020)



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