

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2019

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.719 of 2018
and
C.M.P.No.6182 of 2018

The Oriental Insurance Company Limited,
No.115/2016, Prakasam Salai,
Broadway, Chennai-108
Claims Office No.216/Old No.15,
Prakasam Salai, II Floor, Chennai-108.

... Appellant/2nd Respondent

vs.

1.T.Sukumaran
2.S.Amsabai

... Respondents/Petitioners 1 & 2

3.The Managing Director,
The Metropolitan Transport Corporation
Limited, Pallavan Salai, Chennai-2.

... 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 08.06.2017 in MCOP No.2755 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court No.2 to deal with M.C.O.P. Cases) of Madras.

For Appellant : Mr.S.Manohar

For Respondents : Mr.F.Terry Chellaraj for R1 & R2
Mr.S.S.Swaminathan for R3

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is preferred by the insurance company, challenging both negligence and quantum.

2. Respondents 1 and 2/claimants are being the parents of the deceased. The deceased was an unmarried son of the respondents 1 and 2. On 11.08.2009 when the deceased was riding his motor cycle, it met with an accident by colluding with a Transport Corporation Bus insured with the appellant. The deceased died. Seeking compensation of Rs.1,00,00,000/-, the respondents 1 and 2 filed a Claim Petition in M.C.O.P.No.2755/2014 before the Motor Accidents Claims Tribunal.

3.The Tribunal, after considering the materials, was pleased to award a sum of Rs.38,87,275.20p along with costs and interest at the rate of 7.5% p.a. from the date of filling of the claim petition till the date of realization. Challenging the same, both on the ground of negligence and quantum, the present Civil Miscellaneous Appeal has been filed.

4. Learned Counsel appearing for the appellant would submit that insofar as the negligence is concerned, the Rough Sketch shows that it is the deceased who was responsible for the occurrence. Though the Tribunal merely placed reliance upon the evidence of P.W.3, there is considerable doubt on the presence of P.W.3. He would not be an eye-witness since he was a resident of Dindigul.

5. On the question of quantum, the learned Counsel for the appellant submitted that though the Tribunal has placed reliance upon Ex.P.16 and Ex.P.28, the deceased would not have been earning a sum of Rs.26,176/- as fixed by the Tribunal. Ex.P.27 has not been taken into consideration in the right perspective. There is yet another mistake in awarding Rs.2,00,000/- towards loss of love and affection. Hence the award requires interference.

6. Learned Counsel appearing for the claimants/respondents 1 and 2 submitted that the evidence of P.W.3 has been rightly taken into consideration by the Tribunal. Though he was a resident of Dindigul, in his cross-examination, he has stated the reason as to why he was present at the place of occurrence. It is his clear evidence that it is the vehicle, which has been insured with the appellant, was responsible for the accident. It is not correct to state that the F.I.R. and Rough Sketch would disclose the complicity of the deceased resulting in the accident. Since the accident was occurred by the vehicle which dashed against the deceased from side, the Tribunal has fixed the compensation correctly. Even assuming that Ex.P.27 is taken into consideration, the monthly income would come to a sum of Rs.26,000/-. The evidence of P.W.3 is also to the effect that the deceased was working abroad and he was earning money in an U.K. Currency, namely, Pounds. The

deceased has obtained a Master Degree in Engineering with the Anna University. He was also an income tax assessee. Thus, there is no interference which is required.

7. Though we have narrated earlier that the vehicle driven by the deceased was dashed against the bus which has been insured with the appellant, it appears on perusal of the records that the accident has happened when the bus hit the deceased from the side. This fact coupled with the evidence of P.W.3 would show that there was no negligence on the part of the deceased. Further, the Tribunal has given a factual finding which in our considered view does not involve any element of perversity.

8. The Tribunal has also fixed the quantum correctly. There is no dispute with respect to the qualification and employment of the deceased. He was gainfully employed in United Kingdom. He was also an income tax assessee. The Tribunal has taken into consideration of Ex.P.1, Ex.P.27 and Ex.P.28 and the compensation amount awarded by the Tribunal are also reasonable except awarding of Rs.2,00,000/- towards love and affection. As per several decisions of the Hon'ble Apex Court, it should be a sum of Rs.80,000/- for both the claimants. In such view of the matter, without disturbing the major part of the award, we are only deducting Rs.1,20,000/- over and above Rs.80,000/- awarded towards loss of love and affection.

9. Accordingly, the award of the Tribunal is modified and the claimants are entitled for a sum of Rs.37,67,275/- which has been rounded off to Rs.37,68,000/- with the same rate of interest as fixed by the Tribunal along with costs.

10. In such view of the matter, the appellant is directed to deposit the amount awarded to the credit of M.C.O.P.No.2755 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge No.2 to deal with MCOP cases), Madras, within a period of twelve weeks from the date of receipt of a copy of the judgment.

11. We also direct the Tribunal to transfer the entire amount awarded along with proportionate interest at 7.5% per annum by way of RTGS to the bank account of the claimants within a period of three weeks from the date of deposit of the award amount. On such deposit, the claimants are entitled to withdraw the same. The appellant is permitted to withdraw the excess amount, if any.

12.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
(Special Sub-Court No.2 to deal with M.C.O.P. Cases) of Madras.

2.The Record Keeper, V.R. Section,
High Court, Madras.

+1cc to Mr.S.Manohar, Advocate SR.No.102753

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.102719

+1cc to Mr.ElVeeraravindran, Advocate SR.No.1025956

C.M.A.No.719 of 2018

RJI (CO)
GMY (17/08/2020)

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