

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE Mrs.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No.2700 of 2014
and M.P.No.1 of 2014

The Branch Manager,
Oriental Insurance Co. Ltd.,
The Mall, near SBI, Solan,
Himachal Pradesh .. Appellant/2nd Respondent

Vs.

1. Munirathinamma @ Munemma
2. Narayanappa
3.S.H.Surjan Singh .. Respondents/Petitioners 1 & 2/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.09.2013 made in M.C.O.P.No.3 of 2013 on the file of Motor Accident Claims Tribunal / Special District Court for Motor Accident Claims Cases, Krishnagiri.

For Appellant : Mrs.Elveera Ravindran

For R1 and R2 : Mr.Mukunth R.Pandian

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award, dated 30.09.2013 made in M.C.O.P.No.3 of 2013 on the file of Motor Accident Claims Tribunal/ Special District Court for Motor Accident Claims Cases, Krishnagiri.

2.The appellant is the second respondent in M.C.O.P.No.3 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri. The respondents 1 and 2 filed the above said claim petition claiming

a sum of Rs.30,00,000/- as compensation for the death of their son, due to the motor vehicle accident took place on 07.12.2009.

3. The case of the claimants is that on a fateful day i.e., on 07.1.2009 noon, the deceased Shiva @ Shivappa who is the son of the claimants proceeding to Nadimur from Kuppam to attend his personal work in the Hero Honda motor Cycle bearing registration No.TN 24-4522. While he was nearing Veerappanayani tank bund on kuppam- Krishnagiri road, a lorry bearing registration No.Hp-12--B7217, belonging to R3 and insured with the appellant, came in rash and negligent manner and hit behind the motor cycle of the deceased. Immediately, he was taken to PES Hospital, Kuppam and he was admitted as inpatient. Thereafter, he was shifted to Mallaya Hospital, Bangalore for better treatment. He was suffered with Scalp wound right frontal temporal with brain matter extruding. Thereafter, the deceased had gone to coma stage and died at his house on 09.06.2010. Hence, the parents of the deceased filed a claim petition before the Special District Court for Motor Accident Claims Cases, Krishnagiri, claiming a compensation of Rs.30,00,000/- for the death of their son.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving of the Lorry driver, the 3rd respondent herein and directed the appellant-Insurance Company and the 3rd respondent jointly and severally to pay a sum of Rs.16,73,000/- as compensation to the claimants/legal heirs of the deceased.

5.Challenging the said award dated 30.09.2013 made in M.C.O.P.No.3 of 2013, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing negligence on the part of the appellant, without properly appreciating the materials on record. The learned counsel also contended that the Tribunal went wrong in holding the appellant liable and went wrong in awarding a huge compensation. He further contended that the Tribunal erred in fixing the age of the deceased at 19 years and failed to appreciate that the claimants are the parents and therefore went wrong in applying the multiplier as per the age of the deceased, instead of the age of the parents. He also contended that the Tribunal ought to have taken the notional income of the deceased at Rs.5,000/- per month and ought to have fixed the pecuniary loss at Rs.4,80,000/- and adding medical expenses and conventional compensation, ought to have fixed the total compensation at Rs.10,00,000/- and not

more. Hence, he prayed for dismissal of the award passed by the Tribunal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel for the respondents and perused entire materials on record.

8. On a perusal of the award passed by the Tribunal, it is seen that as per the claim of the claimants, the deceased was studying M.Com in Dravidian University. The deceased was studying M.Com., and wanted to continue to study and become a Chartered Accountant, if he had not died in the unfortunate accident, he would have earned well and settled in life and supported his family. For a graduate either as an auditor or as a staff in the private sector or in Government Sector, he would earn atleast Rs.15,000/- per month. For the purpose of calculation only Rs.10,000/- is taken as nominal income for the present. The Court below relied upon the Judgment reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), thereby the Tribunal calculated an amount of Rs.10,000/- as monthly salary, out of which Rs.5,000/- has been deducted for personal expenses, Rs.5,000/- will be the monthly contribution for the deceased to the family. A sum of Rs.60,000/- has been awarded towards the loss of income to the family of the petitioners for a year. The age of the deceased was 19 years and multiplier 18 is adopted and awarded a sum of Rs.10,80,000/- towards loss of income to the family and accordingly, the Court below has rightly fixed a sum of Rs.1,00,000/- for loss of love and affection for the parents, Rs.4,53,767/- for medical bills, Rs.20,000/- for Funeral expenses and another Rs.20,000/- for Transport to hospital.

9. As far as quantum of compensation of a sum of Rs.16,73,767/- granted by the Tribunal for the deceased is concerned, there is no error in the total compensation awarded by the Tribunal and it is not excessive. This Court is of the view that the total amount awarded by the Tribunal is just and proper, which does not warrant any interference by this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed. The Appellant-Insurance Company and the 3rd respondent herein are jointly and severally directed to deposit the award amount 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. On such deposit, the claimants / respondents 1 and 2 are permitted to withdraw the award amount along with interest

and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

The Special District Judge for
Motor Accident Claims Tribunal,
Krishnagiri.

Copy to: The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mrs.Elveera Ravindran, Advocate, SR.No.10-3588.
+1cc to Mr.Mukund R.Pandian, Advocate, SR.No.103727.

C.M.A.No.2700 of 2014
and M.P.No.1 of 2014

NMI (CO)
CSR: 07.02.2020

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