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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.04.2019
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD) .No.861 of 2017

and

C.M.P. (MD) .No.9197 of 2017

The Division Manager,
The Oriental Insurance Company Limited,
1st Floor, D.D.J. Centre,
Opposite to Vadaseri Bus Stand,
Nagercoil.

... Appellant/2nd Respondent

Vs.

1.Saraswathy

2.Anand

3.Gopalakrishnan

4.Nambi

.. 1 & 2 Respondents/1 & 2 Petitioners

.. 3rd Respondent/1st Respondent

.. 4th Respondent/3rd Respondent

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 27.03.2017 made in M.C.O.P.No.11 of 2013 on the file of Motor Accidents Claims Tribunal / Sub Judge, Valliyoor.

For Appellant : Mr.K.Bhaskaran

For Respondents : Mr.S.Palani Velayutham for R1 & R2
No Appearance for R3 & R4

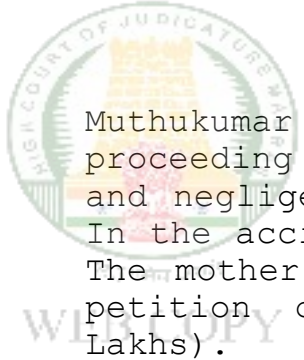
J U D G M E N T

(Judgment of the Court was delivered by **K.KALYANASUNDARAM, J.**)

Heard Mr.K.Bhaskaran, learned counsel for the appellant / Insurance Company and Mr.S.Palani Velayutham, learned counsel for the first and second respondents and perused the materials available on record.

2.The appellant has come forward with this appeal challenging the award of the Tribunal passed in M.C.O.P.No.11 of 2013, dated 27.03.2017.

3.The case of the claimants before the Tribunal was that on 27.10.2012 at about 8.00 hours one Raja Ganesh was riding a motorcycle on Panagudi-Cheranmahadevi Road, in which the deceased



Muthukumar travelled as a pillion rider. When the motorcycle was proceeding near Kanganankulam, the rider drove the vehicle in rash and negligence manner and hit against stones heaped near the road. In the accident, both the rider and pillion rider died on the spot. The mother and brother of the deceased Muthukumar filed the claim petition claiming compensation of Rs.50,00,000/- (Rupees Fifty Lakhs).

4.The Tribunal, after analyzing the evidence, has awarded Rs.25,08,250/- together with interest at the rate of 7.5% per annum. Challenging the same, this appeal has been filed by the Insurance Company.

5.Mr.K.Bhaskaran, learned counsel for the appellant / Insurance Company would state that the Insurance Company has proved that the deceased Muthukumar was drunk at the time of accident, but the Tribunal failed to take note of the said fact at the time of awarding compensation. He would further add that the deceased was working in a private company, but while fixing income 50% has been added towards future prospects. According to the learned counsel, the Insurance company is not liable to pay the compensation and the award is also exorbitant.

6.Per contra, the learned counsel for the first and second respondents / claimants would submit that though the Insurance Company has proved the fact that the deceased rider was in drunken mood at the time of accident, no proof has been produced by the Insurance Company before the Tribunal to establish that the pillion rider of the motorcycle was in an ebriated condition during the relevant time and that the eyewitness has categorically deposed before the Tribunal that the pillion rider was not responsible for the accident and hence, the award is to be confirmed.

7.In the case on hand, the claimants have examined one Palpandian as P.W.2, eye witness and in his evidence stated that the rider of the motorcycle caused the accident, for which the pillion rider was not responsible. On the side of the Insurance Company, one Dr.Sudalaimuthu has given evidence to the effect that alcohol detected in the body of the deceased. As rightly pointed out by the learned counsel for the respondent, it is not proved that the pillion rider of the vehicle also was in drunken state and he contributed to the accident. Hence, the finding on negligence by the Tribunal does not warrant interference and the same is confirmed.

8.With regard to the quantum, it is the case of the claimants that the deceased was working in Walter Engineering Private Limited, Chennai and was drawing a monthly salary of Rs.19,280/-. The evidence of PW4, the Senior Manager of the Walter Engineering Private Limited, corroborates the case of the claimants. Ex.P19 to Ex.P21 are the salary certificates of the deceased Muthukumar. Based on the evidence of PW4 and Exs.P19 to P21, the Tribunal has



taken the income of the deceased as Rs.15,250/- and added 50% for future prospects.

9.It is not in dispute that the deceased was working in a private concern. As per the decision of the Hon'ble Supreme Court, in the case of **National Insurance Company Limited vs. Pranay Sethi and others** reported in (2017) 16 SCC 680, the Tribunal ought to have added 40% of income as future prospects. If 40% of the income is added the monthly income of the deceased would be Rs.21350/- ($15250 \times 40/100 = 6100 + 15250 = 21350$). Since the deceased is a bachelor, 50% of the income is deducted towards his personal expenses and the contribution to the family comes to Rs.10,675/- p.m.

10.Taking into consideration the age of the mother of the deceased, 13 multiplier is adopted to determine loss of dependency and this Court awards Rs.16,65,300/- towards loss of income ($10,675 \times 12 \times 13 = 1665300$). The amount awarded by the Tribunal towards loss of love and affection is deleted. The amount awarded by the Tribunal towards funeral expenses is reduced to Rs.15,000/-. Rs.15,000/- is awarded towards loss of estate. In total, the claimants are entitled to Rs.16,95,300/- along with interest at 7.5 % per annum. In other respects, the award passed by the Tribunal is confirmed.

11.The Insurance company is directed to deposit the entire amount now awarded with accrued interest and costs, less the amount already deposited within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit the claimants shall withdraw the award amount as apportioned by the Tribunal.

12.This Civil Miscellaneous Appeal is accordingly partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Valliyoer.

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V.R.Section,
<https://hcservices.ecourts.gov.in/hcservices/>
Madurai Bench of Madras High Court, Madurai.



+1 CC to Mr.S.PALANI VELAYUTHAM, Advocate (SR-58567[F] dated 03/04/2019)

+1 CC to Mr.K.BHASKARAN, Advocate (SR-58528[F] dated 03/04/2019)

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