



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

AND

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A (MD) NO. 407 of 2018

and

C.M.P (MD) No. 5142 of 2018

The United India Insurance Company Limited,
through its Divisional Manager,
Office at Number 2/60/1,
P.P.K. Building, Trivandrum Main Road,
Marthandam : Appellant/Second Respondent

.vs.

1. Divya @ Divya Thomas
2. Minor Jerush S. Vishal
3. Minor Jershi S. Varsha
4. Chellammal
5. Mathyas

(Respondents 2 and 3, minors represented by their mother and next guardian, the first respondent herein Divya @ Divya Thomas)
: Respondents 1 to 5/Petitioners
1 to 5.

6. Ganesan : 6th respondent/Ist Respondent.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the fair and decretal order made in M.C.O.P.No.1132 of 2014, dated 20.4.2017, on the file of the Motor Accident Claims Tribunal/Special Sub-Court, Tirunelveli.

For Appellant : Mr. N. Dilip Kumar

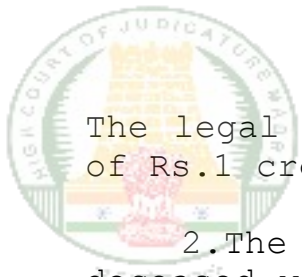
For Respondents : Mr. V. Sasikumar
4 and 5

For Respondent-6 : Mr. N. S. Ramakrishna Dass

JUDGMENT

[Judgment of the Court was made by **K. KALYANASUNDARAM, J.**]

The appellant/Insurance Company has preferred this appeal challenging the award of the Motor Accident Claims Tribunal, Special Sub-Judge, Tirunelveli passed in M.C.O.P.No.1132 of 2014.



The legal heirs of the deceased Stephen filed the claim petition of Rs.1 crore.

2.The case of the claimants is that on 8.7.2014, the deceased was returning from James Engineering College, Navalkadu, Kanyakumari District in a motor-cycle. At that time, the Cheverlot Car coming from the opposite direction in a high speed, hit against his motor-cycle. As a result of which, both the deceased as well as the pillion rider were thrown away and sustained grievous injuries. Despite treatment at Nagercoil Muthu Neuro Centre, he succumbed to injuries on 9.7.2014.

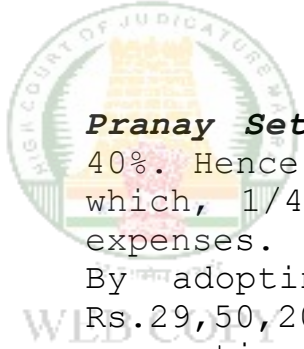
3.The claim petition was resisted by the appellant by filing an detailed counter, disputing the age, income and avocation of the deceased. It is the specific case of the appellant that the deceased was negligent at the time of accident and hence, they are not liable to pay any compensation.

4.Before the Tribunal, on the side of the claimants, three witnesses were examined and Ex.P1 to Ex.P15 were marked. The appellant examined R.W.1 and R.W.2 and marked Ex. R1 to Ex.R5. The Tribunal, after considering the oral and documentary evidence, held that the driver of the car was responsible for the accident and awarded compensation of Rs.37,00,025/- rounded off to Rs.37,00,000/-. Challenging the same, the present appeal.

5.Heard Mr.N.Dilip Kumar, learned counsel for the appellant, Mr.V.Sasikumar, learned counsel appearing for the respondents 4 and 5 and Mr.N.S.Ramakrishnadass, learned counsel for the sixth respondent and perused the materials placed before this Court.

6.This appeal has been filed disputing the findings on both negligence and quantum. In so far as negligence, P.W.3 is the eye-witness to the occurrence and he deposed that the driver of the car was coming at a high speed on the wrong side of the road and caused the accident. Perusal of the sketch, which was marked as Ex.P5, would reveal that the car which was proceeding from north to south direction, came in the wrong side, rammed against the motor-cycle. Hence, the finding of the Tribunal on negligence, is confirmed.

7.With regard to quantum, P.W.1 has stated that her deceased husband was 36 years at the time of accident. Ex.P7 is the driving licence of the deceased. Based on Ex.P7, the Tribunal has fixed the age at 37 years. P.W.1 has further stated that her husband was earning Rs.60,000/-p.m,. Ex.P12 to Ex.P15 are the documents to show that the deceased was working in James Engineering College, Navalkadu, Kanyakumari District and was earning monthly salary of Rs.15,610/-. The Tribunal has added 50% towards future prospects. In the light of the decision in



Pranay Sethi's case, the claimants are entitled for addition of 40%. Hence the salary of the deceased is fixed at Rs.21,854/- from which, 1/4th is to be deducted towards his personal and living expenses. Hence contribution to the family comes to Rs.16,390/-. By adopting multiplier '15', loss of income is arrived at Rs.29,50,200/-. The Tribunal has awarded Rs. 1,00,000/- as loss of consortium to the first claimant and Rs.4 lakhs towards loss of love and affection. Following the decisions referred above Rs.70,000/- is awarded towards conventional damages. In total, this Court, awards Rs.30,20,200/-. The interest rate awarded by the Tribunal at 9% p.a is reduced to 7.5% p.a.

8. In fine, the Civil Miscellaneous Appeal is partly allowed reducing the award from Rs.37,00,000/- to Rs.30,20,200/- rounded off to Rs.30,20,000/- with interest at 7.5% p.a. Out of which, the first claimant is entitled to Rs.10,00,000/- and second and third minor claimants each are entitled to Rs.7,50,000/- and fourth claimant/mother is entitled to Rs.3 lakhs and fifth claimant father is entitled to Rs.2,20,000/-, with their proportionate accrued interest and costs.

9. The appellant/Insurance Company is directed to deposit the modified award amount with proportionate interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants 1,4 and 5 are permitted to withdraw their award amount with proportionate accrued interest and costs by filing necessary application. The Tribunal is directed to deposit the share of the minor claimants 2 and 3 in fixed deposit, Indian Bank, High Court Branch, Madurai, initially for a period of three years, renewable thereafter, till they attain majority. The first claimant/mother is permitted to withdraw interest from the said deposits, once in three months, directly from the Bank and utilize the same for the welfare of the minor children. Excess award amount, if any, shall be refunded to the appellant/Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

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(Special Sub-Court),
Tirunelveli.



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16/04/2019)

vsn

JUDGMENT MADE IN
C.M.A(MD)NO.407 of 2018
and
C.M.P(MD)No.5142 of 2018
12.04.2019

KM/(30.05.2019) 4P 7C