

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2663 of 2010
and M.P.No.1 of 2010

United India Insurance Company Ltd.,
No.38, Anna Salai, IIIrd Floor,
Chennai - 2. ... Appellant/2nd Respondent

Vs.

1.N.Ragini
2.S.Selvi
3.V.Rajathi
4.P.Usha Rani
5.T.Vasantha ... Respondents/Petitioners
and 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.04.2010 made in M.C.O.P.No.2277 of 2005 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.II, Chennai.

For Appellant : Mr.D.Bhaskaran

For R1 to R4 : Mr.A.A.Venkatesan

R5 : Sd-NA

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against award dated 29.04.2010 made in M.C.O.P.No.2277 of 2005 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.II, Chennai.

2.The appellant is the second respondent in M.C.O.P.No.2277 of 2005 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.II, Chennai. The respondents 1 to 4 filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one M.D.Nagarajan, who died in the accident that took place on 10.02.2005.

3. According to the respondents 1 to 4, on 10.02.2005, at about 14.30 hours, while the deceased M.D.Nagarajan was riding his Motorcycle bearing Registration No.TN-07-V-8655, at Mount Road, near Anna Fly over from North to South direction, the driver of the Auto bearing Registration No.TMD-0321 which was coming in the same direction in a rash and negligent manner, dashed against the motorcycle. As a result of which, the deceased sustained fatal injuries and later died at the hospital. Based on the above averments, the respondents 1 to 4 have filed the claim petition claiming compensation against the 5th respondent as well as appellant as owner and insurer of the auto.

4. The 5th respondent remained ex-parte before the Tribunal.

5. The appellant/Insurance Company filed counter statement and denied the averments made in the claim petition. The appellant contended that the respondents 1 to 4 have to prove the age, occupation and income of the deceased and that they are the dependants of the deceased. In any event, the total compensation claimed is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent/wife of the deceased examined herself as P.W.1, one S. Sekar eye-witness to the accident was examined as P.W.2 and marked 6 documents as Exs.P1 to P6. On the side of the appellant, Mr.V.P.Sivaraman, Assistant Sub-Inspector of Police was examined as R.W.1 and three documents were marked as Ex.R1 to Ex.R3.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Auto belonging to the 5th respondent and directed the appellant-Insurance Company to pay a sum of Rs.10,26,000/- as compensation to the respondents 1 to 4.

8. Against the said award dated 29.04.2010 made in M.C.O.P.No.2277 of 2005, the appellant has come out with the present appeal with regard to negligence and quantum of compensation granted to the respondents 1 to 4.

9. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in relying on the FIR when the complainant was not an eye-witness. The Tribunal failed to adjudicate the issue on involvement of Auto in the accident. The Tribunal failed to consider the evidence of R.W.1/Assistant Sub-Inspector of Police and Ex.R1/FIR, Ex.R2/Sketch and Ex.R3/final report wherein it has been stated that unknown car

was responsible for the accident and the said car was not identified. The respondents 1 to 4 have not proved the involvement of the Auto and negligence on the part of the driver of the Auto. The Tribunal ought to have held that it was a Hit and Run case and dismissed the claim petition as against the appellant. In any event, the respondents 1 to 4 failed to prove the income of the deceased by examining the employer of the deceased. As per Ex.P5/driving licence, the date of birth of the deceased is 08.06.1954. The date of accident was 10.02.2005 and the deceased was 51 years at the time of accident. The Tribunal erroneously fixed the age of the deceased as 50 years and applied multiplier '13' instead of '11' and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the respondents 1 to 4 contended that the accident has occurred only due to rash and negligent driving by the driver of the auto belonging to 5th respondent and respondents 1 to 4 proved the same by examining P.W.2/an eye-witness and marked FIR which was registered against the driver of the Auto. R.W.1/Assistant Sub-Inspector of Police examined by the appellant is not an eye-witness and driver of auto was not examined to disprove the evidence of P.W.2. The Tribunal considering oral and documentary evidence let in by the appellant has held that the accident has occurred only due to rash and negligent driving by the driver of the auto. The Tribunal considering the documents filed by the respondents 1 to 4, fixed monthly income of the deceased and granted compensation, which is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and perused the materials available on record.

12.It is the contention of the respondents 1 to 4 that the Auto belonging to 5th respondent was driven by its driver in a rash and negligent manner and dashed against the motorcycle driven by the deceased and caused the accident. Due to the injuries sustained by him in the accident, the appellant died. To substantiate the said contention, the respondents 1 to 4 examined P.W.2/eye witness and marked FIR which was registered against the driver of the Auto. The appellant has not examined any eye witness or the driver of the Auto to disprove the evidence of P.W.2 and the contention of the appellant, that the Auto in question was not involved in the accident. The appellant examined R.W1/the Assistant Sub-Inspector of Police who deposed that the accident has occurred when one unidentified car dashed against the motorcycle and fled away without stopping. On receipt of the complaint from one Mrs. Ragini, FIR was registered and latter it was closed as undetectable and the copy

of the FIR was marked as Ex.R1. R.W.1 was not an eye witness and he has not furnished the names of the person whom he enquired about the accident. In view of the same, the Tribunal held that the evidence of R.W.1 is not helpful to the case of the appellant and Tribunal considering the evidence of P.W.2, Ex.P4/copy of FIR, Ex.R1/FIR, Ex.R2/Sketch and Ex.R3/final report held that the accident has occurred only due to rash and negligent driving by the driver of the Auto. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, it is the contention of the respondents 1 to 4 that at the time of accident, the deceased was working as a driver and was earning a sum of Rs.10,000/- per month. To prove the same they have filed Ex.P6/salary certificate to prove that the deceased was earning Rs.9,000/- per month. The Tribunal accepted the Ex.P6/salary certificate and fixed a sum of Rs.9,000/- per month as the income of the deceased and deducted 1/3rd towards his personal expenses. The Tribunal fixed the age of the deceased at 50 years and applied multiplier '13' for granting compensation towards loss of dependency. As per Ex.P5/the driving licence of the deceased produced by respondents 1 to 4, the date of birth of the deceased is 08.06.1954. Considering the date of accident, the age of the deceased is fixed as 51 years. The multiplier applicable is '11' and the respondents 1 to 4 are entitled to 10% enhancement towards 'future prospects'. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified as Rs.7,92,000/- (Rs.9,000/- X 12 X 11 X 2/3). The Tribunal has awarded a sum of Rs.20,000/- towards loss of estate which is excessive and hence, the same is reduced to Rs.15,000/-. The respondents 1 to 4 are not entitled compensation for loss of expectation and mental agony and hence, a sum of Rs.20,000/- for loss of expectation and Rs.10,000/- for mental agony are set aside. The amounts granted by the Tribunal for loss of consortium, loss of love & affection and funeral expenses are meagre and the same are enhanced to Rs.40,000/- towards loss of consortium, Rs.10,000/- each to respondents 2 to 4 towards loss of love and affection and Rs.15,000/- towards funeral expenses. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	9,36,000/-	7,92,000/-	Reduced
2.	Loss of estate	20,000/-	15,000/-	Reduced

3.	Loss of expectation	20,000/-	-	Set aside
4.	Loss of consortium to 1 st respondent	20,000/-	40,000/-	Enhanced
5.	Loss of love and affection to respondents 2 to 4	10,000/-	30,000/-	Enhanced
6.	Mental agony	10,000/-	-	Set aside
7.	Funeral expenses	10,000/-	15,000/-	Enhanced
	Total	Rs.10,26,000/-	Rs.8,92,000/-	reduced by Rs.1,34,000/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,26,000/- is hereby modified to Rs.8,92,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court, together 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. On such deposit, the respondents 1 to 4 are permitted to withdraw their respective share of the modified award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount if any lying in the deposit to the credit of M.C.O.P. No. 2277 of 2005, if the entire award amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Judge,
Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.

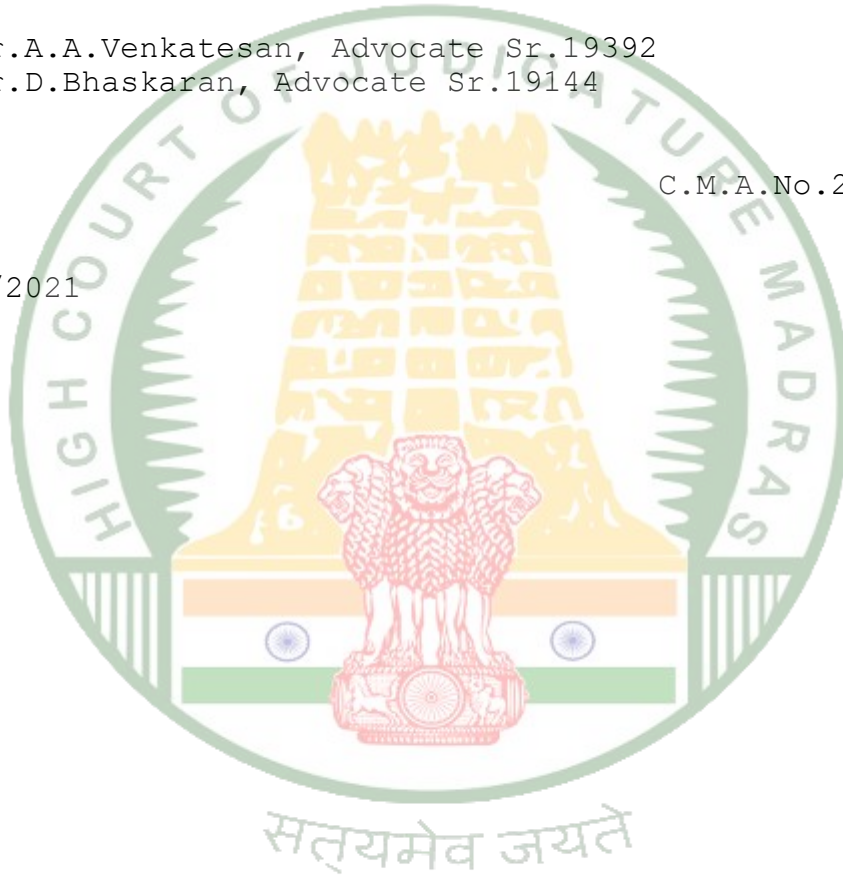
2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.A.A.Venkatesan, Advocate Sr.19392

+1cc to Mr.D.Bhaskaran, Advocate Sr.19144

C.M.A.No.2663 of 2010

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