

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

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

C.M.A.No.2251 of 2016
&
C.M.P.No.15921 of 2016

The Oriental Insurance Co. Ltd.,
Regional Office, No.8,
Esplanade Road,
Chennai - 108

... Appellant/2nd Respondent

Vs

Charles Vinoth (Deceased)
1.S.Nirmala Stephen
2.V.Selvaraj

..1st Respondent/Petitioner
..2nd Respondent/1st Respondent

Prayer : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 08.04.2014 made in M.C.O.P.No.608 of 2008 on the file of Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	..	Mr.S.Arunkumar
For Respondents	..	Mr.R.Nalliappan for R1
		Mr.P.Vasanthakumar
		Visweswaran for R2

JUDGMENT

(Delivered by M.M.SUNDRESH, J)

This appeal has been preferred by the appellant both on the issue pertaining to liability and quantum.

2.The appellant is the insurer of the vehicle in which the deceased was travelling as pillion rider. The date of accident was 09.08.2007 and a complaint has been given against the unknown vehicle. The claimant sought for a sum of Rs.57,72,000/-. The deceased himself was the original claimant. He was in coma at the relevant point of time. Thereafter, he died. Therefore, his parents were added as claimants. Even,

the father of the deceased is also no more. Therefore, the only claimant left is the mother.

3.The Tribunal fixed the liability on the part of the appellant by taking into consideration the evidence of P.W.2. The claimant has examined herself as P.W.1. As there is no contra evidence let in by the appellant, the liability has been fixed upon it.

4. On the question of quantum, the Tribunal awarded a sum of Rs.30,98,625/- in the following manner:-

1.Pecuniary Loss	
Rs.5,625 x 12 x 18	: Rs.12,15,000/-
2.Funeral Expenses	: Rs. 20,000/-
3.Transportation	: Rs. 25,000/-
4.Love and Affection	: Rs. 1,00,000/-
5.Mental Agony	: Rs. 1,00,000/-
6.Attender Charges	: Rs. 5,00,000/-
7. Loss of Expectation of life	:Rs. 1,00,000/-
8. Pain and suffering	:Rs. 2,00,000/-
9. Medical Expenses	: Rs. 8,38,625/-
Total	: Rs. 30,98,625/-

5.Learned counsel appearing for the appellant submitted that FIR having been lodged against the unknown vehicle, the Tribunal ought not to have fixed the liability upon the appellant. The amount of compensation fixed is very high. The Tribunal has committed an error in fixing 50% towards the future prospects. Similarly, the Tribunal has awarded Rs.5,00,000/- towards the attendant charges. Though the deceased was in coma for three years, such attendant charges cannot be fixed for the future period, as he was no more. Further, the Tribunal ought to have awarded a maximum sum of Rs. 1,00,000/- for the aforesaid period. The amount awarded towards the loss of expectation of life is nothing but a replica of the pecuniary loss arrived at. Therefore, the award of the Tribunal requires interference.

6.Learned counsel appearing for the first respondent submitted that the age of the deceased is not in dispute. The Tribunal has fixed the income at Rs.7,500/-. Though the amount awarded under various heads cannot be in strict compliance of the order passed by the Apex Court, ultimately the compensation fixed is only at Rs. 30,98,625/-, which does not require interference.

7.Insofar as the liability is concerned, we are not inclined to interfere with the finding rendered by the Tribunal. The evidence given by P.W.2 has not been dislodged. There is no contra evidence adduced in favour of the appellant. Merely because, an FIR has been lodged, attributing negligence on the

part of the unknown vehicle, it cannot be stated that the driver of the two-wheeler in which the deceased was travelling as a pillion rider was not responsible, notwithstanding the evidence adduced. In such view of the matter, we accordingly confirm the finding of the Tribunal with respect to negligence.

8. On the question of quantum, we do find some force in the submission made by the learned counsel appearing for the appellant. The Tribunal has added 50% towards future prospects instead of 40%. Thus, the loss of income arrived at is Rs.11,34,000/- (Rs.7,500 + 40% x $\frac{1}{2}$ x 12 x 18). The attendant charges should be Rs.1,00,000/- as against Rs.5,00,000/- awarded by the Tribunal since the deceased was no more after three years. We also grant Rs.1,00,000/- each towards the loss of love and affection and mental agony. The medical expenses awarded by the Tribunal is accordingly confirmed. Towards the other conventional heads such as transportation, loss of estate and funeral expenses, we are awarding Rs.25,000/-, Rs.15,000/- and Rs.15,000/- respectively while not awarding any amount towards the pain and suffering since it is personal to the deceased.

9. Accordingly, a sum of Rs. 23,27,625/- has been arrived at as compensation with interest at 7.5% per annum.

10. The appellant/Insurance Company is directed to deposit the compensation awarded by this Court, less the amount, if any, already deposited to the credit of M.C.O.P.No.608 of 2008 on the file of Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai within a period of six weeks from the date of receipt of a copy of the judgment.

11. We also direct the Tribunal to transfer the share of the award amount by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

12. The Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

mmi

To

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

Copy To

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

+1cc to Mr.R.Nalliappan, Advocate SR.No.16129

+2cc to Mr.S.Arunkumar, Advocate SR.No.16365, 16364

C.M.A.No.2251 of 2016

SSD(CO)
GMY(21/07/2020)