

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.718 of 2013

and

M.P.No.1 of 2013

The Branch Manager,
United India Insurance Co.Ltd.,
No.28, Meenatchi Complex,
Mailam Road,
Tindivanam.

... Appellant/2nd Respondent

Vs.

1.Gowri
2.Manikandan
3.Suganya
4.A.Suman

... Respondents 1 to 3/Claimants

... 4th Respondent/ 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2012 made in M.C.O.P.No.42 of 2011 on the file of Motor Accident Claims Tribunal, Fast Track Court No-II, Tindivanam.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.T.Dhanyakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award dated 24.01.2012 made in M.C.O.P.No.42 of 2011 on the file of Motor Accident Claims Tribunal, Fast Track Court No-II, Tindivanam.

2. The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.42 of 2011 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No-II, Tindivanam. The respondents 1 to 3 filed the above claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Sarangapani, who died in the accident that took place on 04.04.2008.

3. The case of the claimants is that on 04.04.2008 at about 11.30 hours the deceased Sarangapani was walking from West to East direction at M.G.Road, opposite Arunachalam Hotel, Muthialpet, Puducherry and at that time, the rider of the motor cycle bearing Regn.No.PY-01-AK-9528 came from north to south direction, in a rash and negligent manner and dashed against the deceased Sarangapani. Due to the said impact, the deceased Sarangapani sustained grievous injuries in his head, right leg and other multiple injuries all over the body. Suddenly, the deceased was brought to Government General Hospital, Puducherry for treatment and during the treatment, he died.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the motorcycle belonging to the fourth respondent and directed the appellant/Insurance Company and fourth respondents to pay a sum of Rs.6,59,000/- as compensation to the respondents 1 to 3.

5.Challenging the said award dated 24.01.2012, made in M.C.O.P.No.42 of 2011, granting compensation to the respondents 1 to 3, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

6. The learned counsel appearing for the appellant/Insurance Company contended that the rider of the Two-Wheeler was none other than the son of the owner of the vehicle Ayyanar and he had driven the vehicle without a licence and was prosecuted under Section 3 R/w 181 M.V.Act and as such the appellant is not liable to pay any compensation. Further, he would submit that the deceased was guilty of contributory negligence if not total negligent and without following the traffic rules and traffic emanating from both side, he had suddenly crossed the road which was responsible for the accident. The Tribunal has awarded a huge amount which is excessive and there is no acceptable evidence regarding the occupation and income of the deceased. The Court below has erred to note that the proper multiplier is 11 and not 13 since the victim had completed the age of 50 years. The amounts awarded under various heads are excessive and prayed for setting aside the award of the Tribunal.

7.Per Contra, the learned counsel appearing for the respondents 1 to 4 contended that the respondents 1 and 2 have examined PW1 and PW2 and proved that the deceased crossed the road in a correct manner. The Tribunal appreciating the evidence let in by the respondents 1 to 3 has held that the deceased crossed the road in a correct manner following the traffic rules. The deceased was working as a Head Cook in Arunachalam Hotel and was earning a sum of Rs.10,000/- per month

and the Tribunal has fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal has considered the claim of the respondents 1 to 3 and awarded just compensation under different heads and they are not excessive and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

9. The contention of the learned counsel for the appellant that the deceased crossed the road suddenly without following the traffic emanating from both sides and further he was responsible for the accident and the appellant/Insurance Company is not liable to pay compensation, are contrary to the evidence let in by the respondents 1 to 3. Even from the award of the Tribunal, it is seen that in FIR also, it has been stated that the deceased crossed the road by following the traffic rules. In view of the same, there is no error in the findings of the Tribunal that the deceased crossed the road in a correct manner, warranting interference by this Court.

10. As far as quantum of compensation is concerned, the respondents 1 to 3 claimed that the deceased was a Head Cook in Arunachalam Hotel and was earning a sum of Rs.10,000/- per month. They have not produced any acceptable evidence to substantiate their claim. In the absence of any such evidence, the Tribunal has rightly fixed monthly income of the deceased at Rs.6,000/- per month and the same is reasonable and proper.

11. With the above observations, the Civil Miscellaneous Appeal is dismissed. The compensation of Rs.6,59,000/- awarded by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realisation is hereby confirmed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.42 of 2011 and recover the same from the owner of the vehicle in accordance with law. On such deposit, the claimant is permitted to withdraw the entire amount along with interest, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

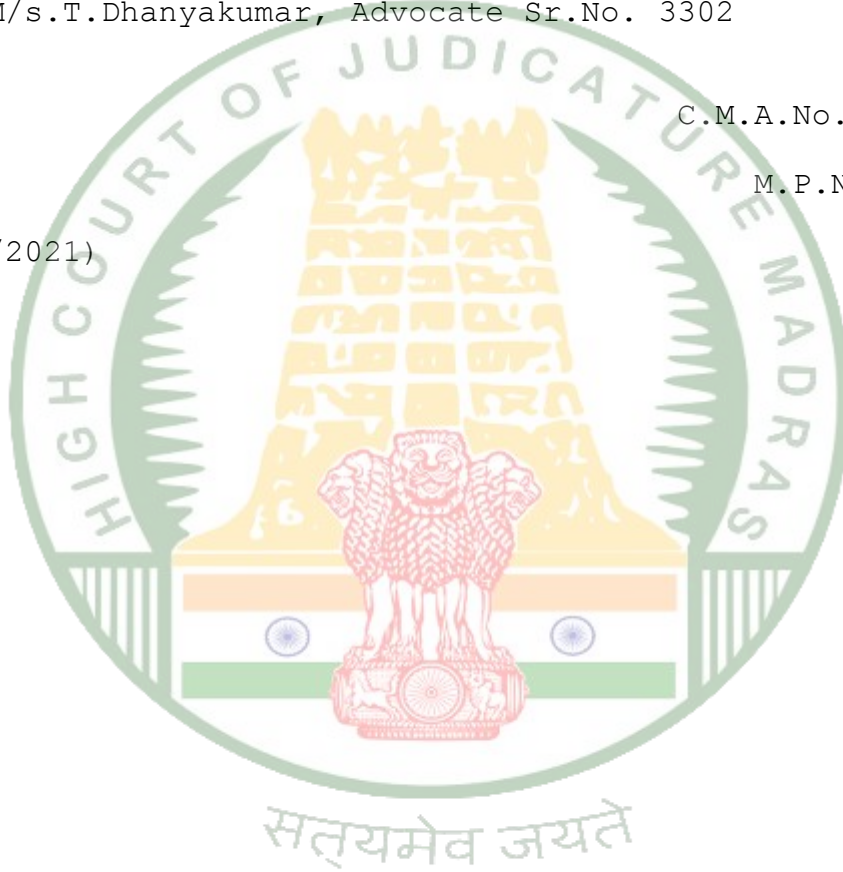
1.Motor Accidents Claims Tribunal,
Fast Track Court-II,
Tindivanam.

+1 cc to M/s.D.Bhaskaran, Advocate Sr.No. 2554

+1 cc to M/s.T.Dhanyakumar, Advocate Sr.No. 3302

C.M.A.No.718 of 2013
and
M.P.No.1 of 2013

VD(CO)
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