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C.M.A.(MD) No.691 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.11.2020
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.691 of 2008

and

M.P. (MD) No.1 of 2008

M/s.Oriental Insurance Company Limited
Nagercoil Branch

... Appellant/3rd Respondent

-vs-

1.Palammal

Johnson (died)
L.Rs. of the deceased Johnson
Respondent Nos.4 to 7

2.Joseph

3.Puththangam @ Mariathangam

4.Kaliya

5.Kala

6.Merlin

[R3 to R6 L.Rs. of deceased R2 as
per order in I.A.No.90 of 2007,
dated 18.07.2007]

: Respondents 1 to 6/Petitioners 1,3 to 7

7.Herbert

: 7th Respondent/1st Respondent

8.Jeyakumar

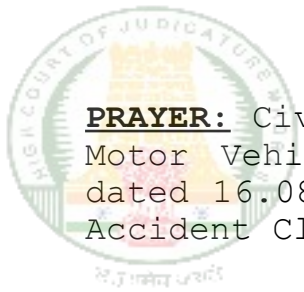
9.Sekar

10.John Sundarsingh

11.Sathiyaraj

: Respondents 8 to 11/Respondents 2,4 to 6

[R9 to R11 impleaded as a party
as per order in I.A.No.44 of 2005
dated 18.01.2006]



PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 16.08.2007 in M.C.O.P.No.72 of 2002, on the file of the Motor Accident Claims Tribunal / Sub Court, Kuzhithurai.

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For Appellant : Mr.C.Ramachandran

For Respondents : No appearance

J U D G M E N T

This civil miscellaneous appeal is directed against the Judgment and Decree, dated 16.08.2007 in M.C.O.P.No.72 of 2002, on the file of the Motor Accident Claims Tribunal / Sub Court, Kuzhithurai.

2. It is seen that the claimants are the wife and sons of deceased Monickam. Further it is seen that during the pendency of claim petition, one of the claimants, namely, Johnson died and his legal representatives / respondents 4 to 7 herein were impleaded as claimants in the claim petition. Subsequently, the other sons of the deceased were also impleaded as party respondents in the claim petition.

3. According to the claimants, on 23.04.2000, at about 06.30 p.m., when the deceased Monickam was proceeding on Nagercoil - Thiruvananthapuram Main Road by walk in the mud portion of the road, near State Bank of India, Kuzhithurai Branch Building, a Tempo Van bearing registration No.TN74 24840, belonged to the eighth respondent and insured with the appellant - Insurance Company, came in the opposite direction in a rash and negligent manner and dashed against the deceased, due to which, he sustained grievous injuries. Immediately, he was taken to Kesava Hospital at Marthandam, for treatment. However, despite treatment, on 06.05.2000, he succumbed to the injuries. Alleging that the accident had taken place only due to the rash and negligent driving of the eighth respondent's vehicle, the claimants filed claim petition for a compensation of Rs.1,00,000/-.

4. Resisting the claim, the appellant - Insurance Company filed counter affidavit disputing the manner of accident, age, avocation and income of the deceased and their liability to pay the compensation.

5. In order to substantiate the case, on the side of the claimants P.Ws.1 and 2 were examined and Exs.P1 to P8 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Exs.R1 to R3 were marked.



6. Upon consideration of the oral and documentary evidence adduced by the parties, the Tribunal found that the driver of the offending vehicle was responsible for the accident and awarded a sum of Rs.1,00,000/- towards compensation along with interest at the rate of 7.5% per annum and directed the appellant - Insurance Company to pay compensation to the claimants. Challenging the same, the present civil miscellaneous appeal has been filed.

7. Though notice has been served on the respondents and their names have been printed in the cause list, none appeared on their behalf.

8. Heard the learned counsel for the appellant and perused the materials available on record.

9. The appellant - Insurance Company has filed this appeal primarily challenging the quantum of compensation. A perusal of the impugned Judgment would show that the Tribunal having found that though P.W.1 has deposed that the deceased was running Stationery and Spare Parts Shop and earning Rs.10,000/- per month, however, inasmuch as no material was placed to substantiate the same and the respondents had also not disputed the avocation of the deceased, fixed a notional income at Rs.3,000/- per month and after deducting 1/3rd towards family expenses, fixed Rs.24,000/- as the annual contribution of the deceased. Since the deceased was aged 85 years at the time of accident, the Tribunal adopted "5" as multiplier and awarded Rs.1,20,000/- towards loss of income. Further, the Tribunal awarded Rs.6,744/- towards medical expenses; Rs.1,000/- towards transport expenses; Rs.500/- towards damage to cloths; Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. Totally, the Tribunal awarded a sum of Rs.1,43,244/- as compensation to the claimants. However, since the claimants have claimed only a sum of Rs.1,00,000/- as compensation, the Tribunal held that the claimants are entitled for a compensation of Rs.1,00,000/-.

10. It is settled law that the Court has to pass just compensation and the award cannot be a bonanza or extravaganza to the claimants. In the case on hand, in the considered opinion of this Court, the award of the Tribunal is reasonable and therefore, it is liable to be confirmed.

11. In that view, the civil miscellaneous appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant - Insurance Company is directed to deposit the entire award amount with accrued 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 are permitted to withdraw their share in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

Motor Accident Claims Tribunal,
The Sub Judge,
Kuzhithurai.

Copy to: The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2)

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KG (CO)

CS (31.12.2020) 4P 4C