



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2021
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A. No.746 of 2021
and C.M.P.No.6767 of 2021

1. N.Velraj
2. V.Mani

...Appellants/Petitioners

Vs.

1. M.Vijay
2. O.Palaniammal
3. M/s United India Insurance Company Limited,
Ooty Main Road,
Mettupalayam

Having regional office at
HUB, 3rd Party Claim,
3rd Floor, No.361, Dr.Nanjappa Road,
Coimbatore

- 4.K.Lakshmi

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act seeking to modify the Decree and Judgment dated 30.01.2020 passed in M.C.O.P.No.1632 of 2016 on the file of Motor Accident Claims Tribunal / learned 3rd Additional District and Sessions Judge, Coimbatore.

For Appellants : Mr.K.Myilsamy

For Respondents : Mr.C.Paranthaman for R3

No Such person - R1

Not Known - R2

Notice Served - R4 - No appearance



J U D G M E N T

(Judgment of the Court was made by K.KALYANASUNDARAM, J.,)

WEB COPY The appellants are the claimants in M.C.O.P.No.1632 of 2016 on the file of the Motor Accident Claims Tribunal / III Additional District Court, Coimbatore.

2. The case of the appellants is that on 24.06.2015, their son, namely, Manoj Kumar met with an accident and died instantaneously. It is the further case of the appellants that the deceased was 24 years old at the relevant point of time and he was working at Singapore and earning 2,400 Dollars per month, equivalent to Rs.1,24,000/- . Though the appellants have proved that the driver of the Mini Door Auto bearing registration No.TN 40 X 3229 was responsible for the accident, however, they were not able to produce any substantial material to establish that the deceased was earning 2,400 Singapore Dollars. Hence the Tribunal had fixed the notional income at Rs.15,000/- per month to determine the loss of dependency.

3. The learned counsel appearing for the appellants would state that the deceased was sending his salary every month to his father through Western Union Global Network, Kerbau Road, Singapore 218017, those documents could not be produced before the Tribunal. If those documents are taken into account, the appellants will get more compensation.

4. Per contra, Mr.C.Paranthaman, learned counsel appearing for the 3rd respondent would argue that the documents which were not produced by the appellants before the Tribunal cannot be looked into for the reason, that had the documents produced before the trial court, the Insurance Company would have had an opportunity to cross-examine the witness on the acceptability and genuineness of the documents. It is also contended that the appellants have not filed any application to receive as additional documents at the appellate stage.

5. We find force in the submissions of the learned counsel appearing for the 3rd respondent. As rightly pointed out by the learned counsel for the 3rd respondent, no application under Order 41 Rule 27 CPC has been filed to receive these documents, as additional evidence. The genuineness and acceptability of the documents can be decided only after providing ample opportunity to the necessary parties.



6. In that view of the matter, we are of the considered opinion that the matter has to be remanded back to the Tribunal to provide an opportunity to the petitioner to file additional evidence in this case. While confirming the finding on negligence, the order in M.C.O.P.No.1632 of 2016 is remanded back to the Motor Accident Claims Tribunal / III Additional District Court, Coimbatore to decide the quantum.

7. Accordingly, the Civil Miscellaneous Appeal is disposed of. The Motor Accident Claims Tribunal / learned III Additional District Judge, Coimbatore shall permit the parties to adduce additional evidence and dispose of the M.C.O.P.No.1632 of 2016 within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accident Claims Tribunal
III Additional District and Sessions Judge
Coimbatore
2. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K.Myilsamy, Advocate sr 62365
+2 Ccs to Mr.C.Paranthaman, Advocate sr 61795.

C.M.A. No.746 of 2021
and C.M.P.No.6767 of 2021

RR(CO)
SP(07/01/2022)