

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.07.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1492 of 2015

And

M.P.No.1 of 2015

Untited India Insurance Co. Ltd.,
5-B/11, Upstair, Salem Road,
Rasipuram.

...Appellant/2nd Respondent

Vs.

1. Dhanalakshmi,

2. Rasathi,

3. Subramaniam

...Respondents 1 to 3 /Petitioners

4. Selvaraj

...4th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award made in M.C.O.P.No. 89 of 2011 dated 20.03.2012 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Rasipuram.

For Appellant : Mr.T.Ravichandran

For RR 1 to 3 : Mr.R.Nalliappan

JUDGMENT

(Judgment of the Court was delivered by T.MATHIVANAN, J.)

This Memorandum of Civil Miscellaneous Appeal has been directed against the award dated 20.03.2012 and made in the Claim Petition in M.C.O.P.No.89 of 2011 on the file of the Motor Accidents and Claims Tribunal, Rasipuram.

2. The respondent/Insurance Company in the claim petition is the appellant herein, whereas the claimants 1 to 3 are the respondents.

3. The respondents 1 to 3, being the wife and parents of the deceased Shankar have filed the Claim Petition in M.C.O.P.No.89 of 2011 on the file of the Motor Accidents Claims Tribunal, Rasipuram, claiming a sum of Rs.20,00,000/- for the loss of the death of Shankar in a road traffic accident said to have taken place on 7.1.2011 at 2.00 p.m. near Ayya Kovil bus stop at Rasipuram, involving a mini bus bearing registration No.TN23 W 1177 belonging to the first respondent. In fact, the first respondent has not chosen to contest the claim petition. The appellant/Insurance Company, being the user of the offending vehicle has alone contested the claim petition by filing their counter statement disowning their liability on the ground that the deceased was at fault while driving his two wheeler. The Claims Tribunal on evaluating the evidences, both oral and documentary, has awarded a sum of Rs.15,45,000/- on all heads in favour of the claimants, directing the respondents Insurance Company as wells as the first respondent/owner of the vehicle to pay this amount jointly and severally with interest at the rate of 7.5% per annum within a period of two months.

4. Challenging the correctness of the award, the second respondent/Insurance Company stands before this court with this appeal.

5. Heard Mr.T.Ravichandran, the learned counsel for the appellant and Mr.R.Nalliappan, learned counsel for the respondents/claimants 1 to 3.

6. Mr.T.Ravichandran, the learned counsel appearing for the appellant/Insurance Company has confined his arguments on the ground of negligence and quantum.

7. According to Mr.T.Ravichandran, the death of Shankar was not due to the accident and it was due to some other reason. Secondly, he would contend that the deceased had ridden his motor cycle coupled with rashness and negligence and he had voluntarily hit against the mini bus, which was coming from the opposite direction and thereby invited the accident. It is significant to note here that no evidence, either in the form of oral or in the form of document was produced by the appellant/Insurance Company before the Tribunal to substantiate their contention. P.W.2, one Selvam, claims

to be eye witness for the occurrence. P.W.1 had not witnessed the occurrence directly. He is none other than the father of the deceased. P.W.2, Selvam alone has spoken to about the occurrence. In fact, he has given vivid account in respect of the manner of the accident. According to him, the deceased Shankar was known to him about 20 years prior to the occurrence. The Tribunal has also convinced with his evidence and concluded that the occurrence was taken place due to the rashness and negligence on the part of the driver of the mini bus and not due to the negligent act of the deceased, as argued by Mr.T.Ravichandran.

8. In, so far as, quantum of the award is concerned, the deceased at the time of occurrence was aged about 32 years. There is no dispute with regard to this fact. According to P.W.1, being the father of the deceased, the deceased Shankar was an agriculturist and was also doing tractor brokerage business and thereby earned a sum of Rs.15,000/- per month. But no documentary evidence was adduced on behalf of the claimants to substantiate the monthly income of the deceased and therefore, the Tribunal has determined his monthly income at Rs.7,500/-. Since the deceased was aged about 32 years, at the time of his death, out of Rs.7,500/-, 1/3 was deducted by the Tribunal towards the personal expenses of the deceased and the 2/3 remaining would be Rs.5000/- and this amount was taken in to consideration to arrive at the quantum of the dependency of the family. As per the second schedule to Section 163 (A) of the Motor Vehicles Act, the Tribunal has selected the multiplier of 16, as the deceased was aged about 32 years at the relevant point of time and accordingly arrived at the dependency of the family at Rs.9,60,000/- ($5,000 \times 12 \times 16 = 9,60,000/-$).

9. It is pertinent to note here that the deceased was treated as in patient in Gokulam Hospital at Salem for about 27 days, i.e., from 07.01.2011 to 03.02.2011. The medical bills were marked under Ex.P.3. Based on this, the Tribunal has granted a sum of Rs.3,75,000/- towards medical expenses. Besides this, since the first respondent/claimant being the wife of the deceased was aged about 20 years at the time of occurrence a sum of Rs.1,00,000/- was allowed towards the loss of consortium and apart from this a sum of Rs.50,000/- was allowed towards the loss of love and affection. The Tribunal has also awarded a sum of Rs.5000/- towards transporting expenses and another sum of Rs.5000/- was allowed towards the funeral expenses. The Tribunal has altogether awarded a sum of Rs.15,45,000/- in favour of the claimants to compensate the loss of the family of the deceased.

1. Loss of dependency	:	Rs. 9,60,000/-
2. Medical Expenses	:	Rs. 3,75,000/-
3. Loss of Consortium	:	Rs. 1,00,000/-
4. Loss of Love and affection	:	Rs. 50,000/-
5. Transporting expenses	:	Rs. 5,000/-
6. Funeral expenses	:	Rs. 5,000/-

Total compensation is fixed at Rs. 15,45,000/-

10. The Tribunal has directed the first respondent/Appellant/Insurance Company as well as the owner of the vehicle, who is the first respondent in the Claim Petition to pay this amount jointly and severally with interest at the rate of 7.5% per annum within a period of two months. Since the appellant/Insurance Company was the Insurer of the vehicle belonging to the first respondent, the appellant/Insurance Company shall have to pay this amount with interest at the rate of 7.5% per annum within a period of six weeks from the date of receipt of a copy of this order. The claimants 1 to 3, who are the respondents 1 to 3 herein, are at liberty to withdraw their respective shares without making any formal application, as per the allotment of share made by the Tribunal in the award.

11. With this direction, the appeal itself is disposed of. No order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vrc

To

The Motor Accident Claims Tribunal,
Rasipuram.

1 CC to Mr.T.Ravichandran, Advocate SR.No. 38763

1 CC to Mr.R.Nalliappan, Advocate SR.No. 38801

C.M.A.No.1492 of 2015
And M.P.No.1 of 2015

MG (CO)

PSI (06.10.2015)