

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24.08.2015

CORAM :

THE HON'BLE MR. JUSTICE R. SUDHAKAR

Civil Miscellaneous Appeal
No.479 of 2006

The Oriental Insurance Company Ltd.,
Branch Office
No: 18 Salam Road
Coonoor - 1.

...Appellant/3rd Respondent

-vs-

1. Tmt. Kanchana
W/o. Late Selvaraj

2. Mr. S. Suresh Kumar
S/o. late Selvaraj

3. Mr. Sudhagar
S/o. late Selvaraj

...Respondents/Petitioners 1to3

all are residing at
Sabok Estate, O-vally
Newhope Post
Gudalur Taluk
Nilgiris District.

4. Mr. V. Selvakumar
S/o. Veeramuthu
Moolakadu, O'Velly
Newhope Post
Gudalur Taluk
Nilgiris District.

..Respondent/1st Respondent

5. Mr. A. Myilsamy
S/o. Arumugam
No: 13/41 Moolakadu
O'Velly, Gudalur Taluk
Nilgiris District.

..Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 24.08.2005 passed in M.C.O.P. No.6 of 2005 on the file of the Motor Accidents Claims Tribunal (District Judge), Ooty.

For appellant : Mr.J. Chandran
For respts. 1 to 3 : Mr. B. Ramamoorthy

J U D G E M E N T

The Oriental Insurance Company Ltd. is the appellant in the above appeal challenging the award and decree dated 24.08.2005 passed in M.C.O.P. No.6 of 2005 on the file of the Motor Accidents Claims Tribunal (District Judge), Ooty.

2. It is a case of fatal accident. The accident in this case happened on 26.4.2004. According to the claimants, on 26.04.2004, at about 08.30 a.m., one Selvaraj, to go to Gudalur from Balwadi, boarded the Jeep bearing Registration No: TN 43 7429 owned by the 5th respondent herein and being driven by the 4th respondent herein. When the jeep was nearing Seveipar Estate High School, a Government bus came in the opposite direction. With an intention to pave way for the bus, the driver of the jeep, without observing any traffic norms, turned the jeep rightside. Due to such negligent driving, the jeep over turned and resulted in the accident. Several persons including Selvaraj sustained injuries. Selvaraj was taken to the Government Hospital, Gudalur and then taken to Government Head Quarters Hospital, Ootacamund. Thereafre, he was shifted to Coimbatore Medical College Hospital, Coimbatore, for treatment. However, Selvaraj died on 29.04.2004. According to the claimants, the accident had occurred due to the rash and negligent driving of the jeep by its driver and therefore, claiming a sum of Rs. 5,89,000/- as compensation from the 4th respondent, being the driver and owner of the jeep and the appellant, being the insurer of the said vehicle.

3. In support of the claim, the 1st claimant had examined herself as P.W.1 and marked Exs.P-1 to P-7, the details of which are as follows:-

Ex.P-1 is the copy of FIR
Ex.P-2 is the copy of the investigation report submitted by the Motor Vehicle Inspector.

Ex.P-3 is the copy of the Post mortem report

Ex.P-4 is the copy of the legal heir certificate

Ex.P-5 is the voter ID.

Ex.P-6 is the salary certificate

Ex.P-7 is the sworn statement towards proof of date of birth

On the side of the appellant one witness was examined as R.W.1 and Exs.R.1 and R.2 were marked.

4. Before the Tribunal, the appellant insurance company neither disputes the accident nor its liability to pay compensation as the insured. It only contended that the

accident did not happen due to the negligent driving of the jeep by its driver but due to the fact that seven persons had travelled in the vehicle when the sitting capacity of the vehicle is only six including the driver and that the quantum of compensation claimed is on the higher side.

5. After discussing the oral and documentary evidence on record, the Tribunal, relying on Ex.P.6 - salary certificate, had fixed the monthly income of the deceased at Rs. 1,200/-. After deducting one third towards his personal expenses, a sum of Rs. 9,600/- per annum was taken as his contribution to the family and by adopting 13 as multiplier, a sum of Rs.1,15,200/- [Rs. 9,600/- x 13 = Rs.1,15,200/-] is granted towards loss of income. The Tribunal had also granted a sum of Rs.5,000/- towards transportation; towards shock and mental agony a sum of Rs.50,000/- and another sum of Rs.50,000/- was granted towards loss of love and affection and a sum of Rs. 5,000/- towards funeral expenses. In all, the Tribunal granted the following amounts as compensation with 7.5% interest from the date of petition till the date of payment, as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Towards loss of income	Rs. 1,15,200/-
2	Towards transportation	Rs. 5,000/-
3	Towards shock and mental agony	Rs. 50,000/-
4	Towards loss of love and affection	Rs. 50,000/-
5	Towards funeral expenses	Rs. 5,000/-
	Total	Rs.2,25,200/-

6. In appeal, the appellant contends that the breach of conditions of insurance policy towards carrying 7 passengers against the permitted capacity, was not considered by the Tribunal and that the compensation awarded under the various heads is on the higher side.

7. Though the appellant disputes the breach of conditions of the insurance policy by stating that seven persons travelled in the jeep, before the Tribunal it had not chosen to examine any witness to prove such a contention. In other words, the appellant ought to have examined atleast one person to speak about the fact that more persons than the approved capacity were travelling in the vehicle and that was the cause of the accident. In the absence of any material to come to a different conclusion, the contention of the appellant that there was breach of conditions of insurance policy and on that ground they are not liable to compensate the claimants cannot be accepted.

8. Now coming to the amount of compensation awarded, the claimants are the wife and two sons of the deceased Selvaraj. From the claim petition filed, it is seen that he was aged 50 years at the time of accident and that he was in the occupation of brokerage business of houses, lands and also green tea leaves and earning a sum of Rs. 4,000/- per month. However, the Tribunal, by considering the salary certificate marked in this case as Ex.P.6, had fixed a sum of Rs.1,200/- as the monthly income of the deceased. This meagre sum of Rs.1,200/-, fixed by the Tribunal as monthly salary, cannot be said to be exorbitant. After deducting one third towards personal expenses, the Tribunal fixed the loss of income in a sum of Rs.1,15,200/-. Thereafter, the Tribunal had granted a sum of Rs.50,000/- each towards shock and mental agony and loss of love and affection to the claimants is quite reasonable. Further, the Tribunal had granted a sum of Rs. 5,000/- each towards transportation and funeral expenses with which there cannot be any dispute.

9. Considering all the aforesaid factors, I am of the view that the award passed by the Tribunal is just compensation and does not require any reduction or modification and accordingly, it is confirmed. There is no dispute with regard to interest granted by the Tribunal at 7.5% and the same is confirmed.

10. Finding no merits, this Civil Miscellaneous Appeal is dismissed. There shall be no orders as to the costs. The appellant is directed to deposit the entire award amount less the amount already deposited in three months. On such deposit the claimants are permitted to withdraw the award amount as apportioned by the Tribunal.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
The District Judge
Ootacamund.

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

+ 1 cc to Mr.J. Chandran, Advocate Sr.45640

C.M.A. No: 479 of 2006

GGK(CO)
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