IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2016

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THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1426 of 2016
&
C.M.P.No.10906 of 2016

M/s.New India Assurance Co.
No.45, 2nd Line Beach
Moore Street
Chennai - 600 001 ... Petitioner/Respondent II

Vs.

Tmt.M.Nagajothi (died)
1.Thiru.V.Mahalingam
2.Minor. Veeraragavan
3.Minor Kasthuribai
4.Thiru.Nirmal Kumar ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.4305 of 2006 on 12.08.2013 on the file of the learned Motor Accident Claims Tribunal (VI Small Causes Court), Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mr.T.G.Balachandran

JUDGMENT

Questioning the quantum of award, the appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act,1988.

2.Originally the deceased first claimant Mrs.M.Nagajothi had moved the Motor Accident Claims Tribunal with a claim petition in M.C.O.P.No.4305 of 2006 claiming a sum of Rs.2,00,000/- for the injuries sustained by her in a road traffic accident said to have been taken place on 19.10.2006 at 06.00pm near Tambaram GST Road involving a Yamaha Motorcycle bearing Registration No.TN22-C-4926. According to the claimants, when she along with one Sivagami was crossing the GST Road at Tambaram, a motorcycle bearing Registration No.TN22-C-4926 driven by its rider in a hectic speed, without minding the people crossing the road, had hit against her and caused severe injuries over her head.

3. The claim was contested by the appellant Insurance Company. During the pendency of the claim petition, the first claimant had succumbed to injuries while she was undergoing treatment in the hospital. It is relevant to note here that at the initial period, she was treated from 19.10.2006 to 24.10.2006 and again she was treated at the Government Hospital from 06.11.2006 to 07.11.2006 and thereafter she had succumbed to injuries on 25.02.2007. Therefore, the original claim petition was amended and the claim amount was enhanced to Rs.6,00,000/- due to the death of the first claimant.

4. The Motor Accident Claims Tribunal, based on the evidences, both oral and documentary, had proceeded to award a total sum of Rs.7,33,000/- under the following heads:

Fixing the monthly income of the deceased at Rs.3000/- and selecting the multiplier of 16, the Tribunal had calculated the pecuniary loss of the family consisting of the appellants as the legal heirs of the deceased first claimant at Rs.5,76,000/-. The Tribunal has also awarded a sum of Rs.10,000/- towards funeral expenses, a sum of Rs.1,00,000/- towards loss of companionship to the husband of the deceased, a sum of Rs.25,000/- towards loss of love and affection to 3rd and 4th respondent and a sum of Rs.5000/- towards loss of estate. Totally, a sum of Rs.7,33,000/- was awarded as compensation and directed the appellant Insurance Company to pay the award amount with 7.5% interest per annum within a period of two months.

5. Mr.J.Chandran, learned counsel appearing for the appellant has submitted that the Tribunal had gone wrong in calculating the pecuniary loss of the family at Rs.7,33,000/- as against the claim of Rs.6,00,000/-. He has also contended that the accident was taken place on 19.10.2006, but the death was occurred on 25.02.2007 i.e., after 120 days. He has also submitted that the death was not due to the involvement of the motor vehicle and it might have occurred due to various reasons including the medical negligence and therefore she has contended that the award itself seems to be on the higher side when comparing with the original claim of the respondents. He has urged this Court to set aside the award and dismiss the claim petition.

6. On the other hand, Mr.T.G.Balachandran, learned counsel appearing for the respondents / claimants had contended that as per Ex.P1-FIR as well as the Ex.P2-Rough Sketch, there are sufficient documentary evidences to prove the nature of the accident in which the deceased first claimant had sustained severe injuries. He has also contended that the deceased M.Nagajothi had sustained injuries on her right temporal bone with lying fracture of haemotoma and intra cranial air pocket

and on account of this reason, she had been treated as in-patient from 19.10.2006 to 24.10.2006 and thereafter, she was once against treated between 06.11.2006 to 07.11.2006 and the Death Certificate under Ex.P5 would substantiate this fact. He has also submitted that though the death was occurred 120 days after the accident, there is no contra evidence to tilt the facts in other way, and it is to be presumed that the accident is having proximity with the accident, which took place on 19.10.2006. The learned counsel has also drawn the attention of this Court to Ex.P7-Medical Opinion issued by PW2-Dr.M.Saravanabhavanandham, wherein he has opined that the death was occurred due to the head injury.

7. On perusal of the award it is revealed that after fixing the age of the deceased at 32 and the monthly income at Rs.3000/-, the Tribunal had calculated the pecuniary loss of the family at Rs.5,76,000/-. The Tribunal had reasonably awarded the compensation under other heads. This Court, after giving careful consideration to the nature of accident and the number of claimants, is of the considered view that the award of the Tribunal is fair and in consonance with the financial loss of the family, which according to this Court does not require any interference and the appeal itself is liable to be dismissed.

Accordingly, the Civil Miscellaneous Appeal is dismissed. Out of 7,33,000/-, the first respondent is entitled 50% of the award amount and respondents 2 and 3 are entitled to 25% each. The appellant insurance company is directed to deposit the award amount with 7.5% interest, less the amount already deposited, from the date of petition till the date of realization within a period of six weeks. On such deposit being made, the first respondent is entitled to withdraw 50% of the award amount along with proportionate accrued interest without actually filing any formal application. The remaining 50% of the amount shall be kept in Fixed Deposit Scheme in any one of the nationalized banks till the minor petitioners attain majority and the father of the minor petitioners is entitled to withdraw the accrued interest once in three months for the welfare of the minors. There shall be no order as to costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Motor Accident Claims Tribunal
(VI Small Causes Court), Chennai

2.The New India Assurance Co.
No.45, 2nd Line Beach
Moore Street
Chennai - 600 001

Copy to:
The Section Officer,
VR.Section,High Court, Madras.

+1 cc to Mr.J.Chandran,advocate,sr.44719

+1 cc to Mr.T.G.balachandran,advocate,sr.44685.

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