IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.1611 of 2015
and M.P.No.1 of 2015

United India Insurance Co.Ltd.,
8/1, 31A, Salem Main Road
Puduchampalli, Ram Nagar
Mettur Dam-636 401
Salem District ...Appellant/2nd Respondent

vs.

1.Unnamalai @ Ponnayee
2.Kulanthai Gounder
3.Senthil ..Respondents 1 to 3/Petitioners
4.Ganeshkumar ..Respondent No.4/ Respondent 1

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 18.09.2014 made in M.C.O.P.No.276 of 2014 on the file of Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Mr.S.Arunkumar

For Respondents/claimants : Mr.M.Selvam

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

The United India Insurance Company Limited has filed the above appeal challenging the award made in M.C.O.P.No.276 of 2014, dated 18.09.2014 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

2. It is a case of fatal accident. On 09.11.2012 at about 9.00 p.m., while the deceased/Kuppusamy was riding his Motor Cycle bearing Reg.No.TN-29-AW-0500 on Salem – Arur Main Road, a Jeep bearing Reg.No.TN-21-Y-1827 proceeding towards Pudupatty from Arur, which was driven in a rash and negligent manner, tried to overtake the Motor Cycle and in the said process, dashed against the motor cycle, due to which, the deceased was thrown out and sustained

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grievous injuries and inspite of treatment he succumbed to the injuries and died on 10.11.2012. The respondents 1 to 3 herein/claimants, who are the parents and brother of the deceased filed a claim petition for a compensation in a sum of Rs.50,00,000/-.

3. In support of the claim, the mother of the deceased examined herself as P.W.1 and one Ponnusamy and Thangammal were examined as P.Ws.2 and 3 and Exhibits P-1 to P-23 were marked. On behalf of the Insurance Company, neither any witness was examined nor any document was marked.

4. The Tribunal, taking note of the oral evidence of P.W.2, who was an eyewitness to the accident and Exhibit P.1, held that due to the rash and negligent driving by the driver of the 4th respondent herein/Ganesh Kumar, the accident had occurred and consequently, fixed the liability on the Insurance Company to compensate the claimants.

5. Based on the oral and documentary evidence, the Tribunal fixed the age of the deceased at 34 years and while adopting the multiplier of 16, fixing the monthly income of the deceased at Rs.20,000/- and deducting Rs.10,000/- (50%) towards his personal expenses, arrived at the loss of annual income to the family at Rs.1,20,000/- (Rs.10,000/- x 12). Further, by adding 50% towards future prospects, the pecuniary loss to the dependents was arrived at Rs.28,80,000/-. [Rs.15,000/- x 12 x 16=Rs.28,80,000/-] Accordingly, the Tribunal passed the award granting compensation as below with interest at 7.5% per annum:-

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 16 + future prospects	Rs.28,80,000/-
2	Loss of love and affection	Rs. 75,000/-
3	Medical Bills	Rs. 29,400/-
4	Transport expenses	Rs. 10,000/-
5	Funeral expenses	Rs. 25,000/-
	Total	Rs. 30,19,400/-

6. Insofar as the issue regarding negligence is concerned, the learned counsel for the appellant/Insurance Company has no serious objection and hence, the same is confirmed.

7. The learned counsel for the appellant/Insurance Company raised a serious objection with regard to fixing of a sum of Rs.20,000/- as monthly income of the deceased and arriving at

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Rs.28,80,000/- as "compensation towards loss of income to the dependents including future prospects" by the Tribunal on the ground that there was no document filed on behalf of the claimants showing that the deceased was running an Electric Motor Rewinding Works/Lathe Works and also working as Borewell Mechanic and was earning Rs.20,000/- per month.

8. On a perusal of the award, it is seen that even though it was pleaded by the claimants before the Tribunal that the deceased was engaged in motor rewinding works, borewell service etc., there was no documents filed to that effect. In view of the same, we refix the income of the deceased at Rs.9,000/- per month and accordingly, the pecuniary loss is calculated as under:-

Rs.9,000/- x 12 = Rs.1,08,000/-
1/3rd deduction as the deceased family consists of 3 members
Rs.1,08,000 - 1/3 = Rs.36,000/-
Total Annual income = Rs.1,08,000/-
1/3rd deduction = Rs.36,000/-
Net Annual income = Rs.72,000/- x 16 multiplier
=Rs.11,52,000/- + 50% future prospects(Rs.5,76,000/-)
=Rs.17,28,000/-

Accordingly, compensation towards pecuniary loss to the dependents is refixed at Rs.17,28,000/-. As regards the other heads, while confirming the amounts awarded by the Tribunal, we are inclined to reduce the amount of compensation under the head "Transport expenses" and as such, now instead of Rs.10,000/-, the amount is refixed at Rs.5,000/-.

9. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this court
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 16 + 50% future prospects	Rs.28,80,000/-	Rs. 17,28,000/-
2	Loss of love and affection	Rs.75,000/-	Rs. 75,000/-
3	Medical Bills	Rs.29,400/-	Rs.29,400/-
4	Transport Expenses	Rs.10,000/-	Rs. 5,000/-
5	Funeral expenses	Rs.25,000/-	Rs. 25,000/-
	Total	Rs.30,19,400/-	Rs. 18,62,400/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed as follows:-

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(i) The award of the Tribunal is reduced to Rs.18,62,400/- from Rs.30,19,400/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellant/Insurance Company is directed to deposit the entire amount as modified above, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iv) The claimants 1 and 2, being parents of the deceased are entitled to Rs.7,00,000/- each and the 3rd claimant, is entitled to Rs.4,62,400/- and they are permitted to withdraw the same, by filing appropriate application before the Tribunal.

(v) There will be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

nvsri

To

1. The Special District Judge
Motor Accidents Claims Tribunal,
Dharmapuri.

1 cc to Mr.M. Selvam, Advocate, Sr. 26376
1 cc to Mr.S. Arunkumar, Advocate, Sr. 26551

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