

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.09.2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN
C.M.A. No. 2290 of 2016
and C.M.P.No.16186 of 2016

The Divisional Manager,
National Insurance Company Ltd.,
Divisional Office-1,
LRN Building II Floor,
Saradha College Road,
Salem - 636 007.

.. Appellant

Vs.

1. Kalpana
2. Minor Suresh
3. Minor Vijay
4. Suseela
5. Chinnadurai (died)
6. Sundaresan

.. Respondents

[Minors/respondents 2 and 3, rep. by their next friend mother Kalpana, the 1st respondent.
R6 was set exparte.]

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri in MCOP No.638 of 2013 dated 29.10.2014.

For Appellant : Mr.K.Padmanabhan

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

We have heard Mr.K.Padmanabhan, learned counsel for the appellant on the merits of the appeal. Quantum of compensation of Rs.14,41,000/- with interest, at the rate of 7.5% per annum awarded to the wife, two minor children and parents of the deceased, is challenged in this appeal. Award of penal interest, at the rate of 9% per annum is also questioned.

2. At the outset, learned counsel for the National Insurance Company Limited, the appellant herein submitted that the entire award amount with proportionate interest and costs, less the statutory amount, has been made to the credit of MCOP No.638 of 2013, on the file of the Motor Accidents Claims Tribunal, (Special District Court), Krishnagiri.

3. Tribunal has quantified the compensation of Rs.14,41,000/- and apportioned the same, as hereunder

Loss of contribution to the family	: Rs.12,96,000/-
Funeral expenses	: Rs. 25,000/-
Loss of consortium to the wife	: Rs. 50,000/-
Loss of love and affection to the minor children each Rs.25,000/- each.	: Rs. 50,000/-
Loss of love and affection to mother	: Rs. 10,000/-
Transportation	: Rs. 10,000/-

4. According to the learned counsel for the appellant Insurance company, the accident has occurred in the year 2011 and having regard to the avocation claimed, the tribunal ought to have applied the provisions of the Minimum Wages Act and thus erred in fixing the monthly income of the deceased as Rs.9,000/-. It is also his contention that in the absence of production of birth certificate, tribunal ought not to have taken the entry in Ex.P2, Post mortem certificate for determining the age of the deceased. The appellant has also challenged, the quantum of compensation awarded under other heads.

5. According to the respondents/claimants, at the time of accident the deceased was aged 35 years and by engaging himself in agriculture and seasonal business, earned Rs.10,000/- per month. Admittedly, no document was produced to prove income. The deceased is survived by wife, two minor children and parents. During the course of hearing of the claim petition, father died. Material on record discloses that the tribunal has not considered addition of any income, under the head future prospects.

6. At the time of accident, wife, was aged about 32 years. compensation of Rs.50,000/- awarded under the head loss of consortium is

less. Minor children were aged 14 and 13 years respectively. Compensation of Rs.25,000/- each, to the children, under the head loss of love and affection is less. Compensation of Rs.10,000/- awarded to the mother under the said head is also less. There is no award under the head conventional damages and loss of estate. On the whole, the quantum of compensation awarded to the legal representatives of the deceased cannot be said to be excessive warranting any interference. There is no merit in the Civil Miscellaneous Appeal.

7. In the absence of production of birth certificate, entry in the post mortem certificate can be taken into consideration for the purpose of determining the age of the deceased and our view is fortified by this Court decision in **The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515]**.

8. Now, the only question that requires to be considered is whether the tribunal is right in awarding penal interest, in the event of default, in depositing the amount, within the said period.

9. In ***Shanmugasundaram & Another v. Jothi & Others*** reported in **2005-1-L.W.-566**, this court has held that while passing award, there is no

statutory backing for addition of a default clause and accordingly, deleted the same.

10. Going through the material on record, we are of the view that appellant/insurance company, has not substantiated any of the grounds raised, except penal interest. We are not inclined to interfere with the impugned judgment, except only to the limited extent of deleting the portion, relating to penal interest.

11. In the result, the Civil Miscellaneous Appeal is allowed in part, to the extent of deleting the penal interest awarded by the Tribunal. In all respects, the impugned judgment is confirmed. No Costs.

12. As stated supra, the award amount has already been deposited by the appellant-Insurance Company to the credit of MCOP No.638 of 2013, on the file of the Motor Accidents Claims Tribunal, (Special District Court), Krishnagiri. Therefore, except the minors, the respondents/claimants are permitted to withdraw the award amount as apportioned by the tribunal, with proportionate accrued interest, at the rate of 7.5% per annum, by making necessary applications.

13. The share of the minors/respondents 2 and 3, shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the 1st respondent/mother of the minors once in three months, till they attain majority. After satisfaction of the award, tribunal is directed to refund, any excess amount, lying in the credit of the said MCOP to the appellant-insurance company. Consequently, connected Miscellaneous Petition is closed.

[S.M.K., J.] [N.A.N., J.]
30.09.2016

Index: Yes/No
Internet: Yes/No
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To

1. Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.
2. The Section Officer,
VR Section, High Court, Madras.

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