

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :21.07.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.420 of 2011

&

M.P.No.1 of 2011

The New India Assurance Co. Ltd.,
Bye Pass Road, Dharmapuri ... Appellant/2nd Respondent

Vs.

1.Rajathi
2.Minor Seetha
3.Minor Murugan
4.Minor Karthiga
5.Minor Marimuthu
(Minor petitioners 2 to 5 are represented
by their next friend mother 1st petitioner)

6.P.Muthu ... Respondents/Petitioners &
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree of the Motor Accidents Claims Tribunal (Principal District Judge), Dharmapuri and made in M.C.O.P.No.885 of 2008 dated 10.06.2010.

For Appellant : Mr.S.Jayasankar

For Respondents : Mr.V.Kumaravelan
for R1 to R5

Mr.M.D.Thirunavukkarasu for R6

JUDGMENT

The appellant Insurance Company, who is the second respondent in the claim petition, have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988, questioning their liability.

2. It appears from the records that the respondents 1 to 5, being the claimants, had moved the Claims Tribunal viz.,

Principal District Judge, Dharmapuri with a claim petition in M.C.O.P No.885 of 2008 claiming totally a sum of Rs.10 Lakhs for the death of the first respondent's husband and the father of the other minor respondents / claimants.

3. It is manifested from the records that on 20.03.2008, at about 06.15 am, the deceased Velu, who was a load man, travelled in the Tractor bearing Registration No.TN29-AA-4335 driven by the 6th respondent's driver by sitting on the mudguard. While the Tractor was moving, the driver applied sudden break and as a result of which the deceased had lost his holding and fallen underneath the vehicle when back wheels run over him. On account of this unexpected sudden accident the deceased had sustained fatal injuries and died on the way to the hospital.

4. The first respondent/claimant is the wife and the remaining claimants are the minor children. The appellant Insurance Company had contested the claim saying that the Insurance Company was not at all liable because the deceased, being a coolie, will not come under the amplitude of the coverage of insurance policy. However, based on the available evidences on records, both oral and documentary, the Tribunal had observed that the package of the policy was available to the coolie also. The Tribunal had also made reference to Ex.R1 policy and found that the owner of the vehicle had paid premium to the load man also and since the Tractor was insured with the appellant Insurance Company at the crucial period and the deceased being a loan man would definitely come under the purview of the coverage policy and that the appellant Insurance company with whom the Tractor was insured, was vicariously liable to indemnify the loss of the owner of the vehicle.

5. The Tribunal had determined the age of the deceased at 35 years and fixed the monthly income of the deceased at Rs.4000/- per mensem and applying the multiplier 16, the Tribunal awarded a sum of Rs.5,75,000/- under the following head:

Pecunary Loss	:	Rs.5,40,000/-
Loss of Consortium	:	Rs. 5,000/-
Loss of Love and Affection:	Rs. 20,000/-	
(each Rs.5000/- for R2 to R5)		
Funeral Expenses	:	Rs. 10,000/-

		Rs.5,75,000/-

6.Mr.V.Kumaravelan, learned counsel appearing for the respondents/claimants has contended that the compensation awarded by the Tribunal towards loss of consortium for the first respondent/claimant to the extent of Rs.5000/- was very low and therefore, the compensation awarded under this head might be increased to the extent of Rs.50,000/-. Further, towards love and affection, the Tribunal had awarded only Rs.5000/- each to claimants 2 to 5 and the same could at least be increased to Rs.10,000/- each.

7. The submissions made by the learned counsel for the respondents 1 to 5 are considered and accordingly, the award passed by the Tribunal is modified as follows:

Since the first respondent/claimant was aged about 28 years at the time of occurrence, it is appropriate to award a sum of Rs.50,000/- towards the loss of consortium for the first respondent. Therefore, the amount awarded by the Tribunal under the head Loss of Consortium to the extent of Rs.5,000/- is increased to Rs.50,000/-. That apart, the amount awarded by the Tribunal under the head of loss of love and affection to the extent of Rs.5,000/- each to respondents 2 to 5 is also increased to Rs.10,000/- each. With regard to the compensation awarded under the head of funeral expenses, this Court finds that the same is reasonable and does not require any enhancement.

In the result, the Civil Miscellaneous appeal is dismissed and the amount awarded by the Tribunal is enhanced to Rs.6,40,000/- from Rs.5,75,000/-. Out of the award amount of Rs.6,40,000/-, the first respondent/claimant is entitled to get Rs.2,75,000/- with proportionate accrued interest and respondents 2 to 5 are entitled to get Rs.91,250/- each with proportionate accrued interest. It is brought to the notice of this Court that the appellant Insurance Company had already deposited Rs.4,00,000/- to the credit of the M.C.O.P.No.885 of 2008. In view of the enhancement of the award amount, the appellant Insurance company is directed to deposit the remaining amount along with interest at the rate of 7.5% from the date of claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is entitled to withdraw her share with proportionate accrued interest without actually filing an application. The shares of the minors shall be kept in Fixed Deposit in any one of the Nationalized Banks till the minors attain majority and the first respondent is entitled to withdraw the interest accrued on the minors' share once in three months.

No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Principal District Judge
The Motor Accidents Claims Tribunal
Dharmapuri

+1 cc to Mr.V.Kumaravelan Advocate sr 41737
+1 cc to Mr.M.D.Thirunavukkarasu Advocate sr 41638
+1 cc to Mr.S.Jayasankar Advocate sr 41616

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