

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.903 of 2011
and
M.P.No.1 of 2011

United India Insurance Company Ltd.,
Having Office at No.17,
G.P.M.Street,
Gudiyatham Town,
Vellore District ...Appellant/2nd Respondent

Versus

1.Latha
2.Susila
3.Minor B.Mohanraj
(Minor rep. by mother & guardian
I respondent herein) ...Respondents 1 to 3/Claimants

A.Mani (deceased)
4.J.Kalaimagal
5.Minor M.Jamuna
6.Minor M.Indhu
7.Minor M.Gandhini
(Minors 5 to 7 are rep. by their mother &
Guardian J.Kalaimagal, 4th respondent herein)
...Respondents 4 to 7/Respondents
3 to 6

Prayer: Civil Miscellanies Appeal has been filed under Section 173 of the Motor Vehicles Act of 1988, against the Judgement and decree dated 15.04.2010 passed in M.C.O.P.No.174 of 2008 on the file of the Motor Accidents Claims Tribunal(Subordinate Judge) at Gudiyatham, Vellore District.

For Appellant : Mr.D.Bhaskaran
For RR1 to 3 : Mrs.A.B.Fathima Sulthana
For R4 to R7 : No Appearance

JUDGMENT

Questioning the negligence as well as quantum, the appellant/Insurance Company, who is the second respondent in the Claim petition in MCOP No.174 of 2008 has preferred the present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act of 1988.

2. As it is manifested from the records, the respondents 1 & 2, had moved the Claims Tribunal with a Claim Petition in MCOP No.174 of 2008, claiming a sum of Rs.20,00,000/- towards the compensation for the death of one Balaganesan, who is the husband of the first respondent and father of the third respondent herein.

3. It is brought to the notice of this Court that at the time of filing the Claim Petition, the third respondent/minor B.Mohan Raj, was not born and he was in his mother's womb.

4. It is alleged that on 17.05.2008 at about 3.30 p.m., the said Balaganesan and his friend Karthikeyan were proceeding in a two Wheeler bearing Registration No.AP-07-D-5585 at Gudiyattham to Olakkasi Road from West to East direction. When they were proceeding near 30 Eyes Bridge, a load Auto bearing Registration No.TN 23-M-5610, belonging to the fourth respondent herein, came from the opposite direction and dashed against the motorcycle ridden by the deceased. As a result of which, the said Balaganesan and his friend Karthikeyan had sustained serious injuries and immediately both of them were taken into the hospital, while so Bala Ganesan had succumbed to injuries. At the time of accident, the deceased was working as a Coolie in a Lorry and Bus Body Building Company.

5. The Claim Petition was contested by the appellant/Insurance Company, mainly on two grounds: (i) the accident was not taken place due to the rashness and negligence on the part of the Auto driver (ii) the accident was invited by the rider of the motorcycle and therefore, the Insurance Company cannot be mulcted with the liability.

6. Based on the available materials placed on record and the evidences both oral as well as documentary, the Claims Tribunal had proceeded to award the compensation to the extent of Rs.8,99,000/- along with interest @ 6% p.a., directing the appellant/Insurance Company to pay this amount. Since the contention of the appellant/Insurance Company with reference to negligence was not considered by the Tribunal, present Appeal is preferred.

7. Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant/Insurance Company and Mrs.A.B.Fathima Sulthana, learned counsel appearing for the respondents 1 to 3. Despite service of notice, the respondents 4 to 7 have not chosen to appear either in person or through their counsel.

8. This Court has perused the averments of the award passed in MCOP No.174 of 2008 on the file of the Motor Accidents Claims Tribunal(Subordinate Judge) at Gudiyatham. In paragraph No.6 of the Claim Petition, with regard to Issue No.1, the Tribunal had found that the driver of the load Auto bearing Registration No.TN-23-M-5610, had driven the same in a rash and negligent manner without minding the on coming vehicle and allowed the same to hit against the motorcycle and thereby caused the accident. The Tribunal had proceeded to observe this point, based on the evidences of PW1 to 3.

9. This Court has also perused the testimonials of the above said witnesses. Having regard to the related facts and circumstances, and on considering the evidences, both oral as well as documentary, this Court has endorsed the finding given by the Tribunal with reference to negligence on the part of the driver of the Auto.

10. With regard to quantum, according to the claimants, the deceased Balaganesan was aged about 28 years but the Tribunal had found that the deceased was aged about 30 years. As afore stated, the respondents 1 & 2 had claimed that the deceased Balaganesan was working as a Coolie in the Lorry and Bus Body Building Company.

11. The Tribunal had determined the age of the deceased @ 30 years at the time of accident. PW4 is the employer of the deceased, who had deposed that the deceased was working in their Company for more than 15 years and was getting a sum of Rs.10,000/- towards his monthly salary. However, the Tribunal has determined the monthly salary of the deceased @ Rs.6000/-, after giving $\frac{1}{3}$ rd deduction towards the personal and living expenses of the deceased, the $\frac{2}{3}$ rd remained would be Rs.4,000/-. Accordingly, the Tribunal had calculated the actual pecuniary loss of the family to the extent of Rs.48,000/- per annum. Since, the deceased was aged about 30 years, at the time of accident, the Tribunal had selected 18, as the multiplier for calculating the pecuniary loss of the family. Accordingly, the loss of dependency of the family has been calculated @ Rs.8,64,000/-. Apart from this amount, the Tribunal had awarded compensation under the following heads:

(i)Towards loss of consortium	Rs.10,000/-
(ii)For loss of love and affection	Rs.15,000/-
(iii)Funeral Expenses	Rs.10,000/-

Total	Rs.8,99,000/-
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12. This Court has found that the award passed by the Tribunal does not require any modification or interference of this Court. Hence, the appeal is liable to be dismissed confirming the award. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

13. It is brought to the notice of this Court by Mr.D.Bhaskaran, learned counsel appearing for the appellant/Insurance Company that the entire award amount along with accrued interest @ 6% has already been deposited. Therefore, respondents 1 to 3/claimants are at liberty to withdraw the entire award amount alongwith interest and costs without filing any formal application seeking permission.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
(Subordinate Judge)
Gudiyatham,
Vellore District.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.37237
+1cc to Mrs.A.B.Fathima Sulthana, Advocate, S.R.No.37009

C.M.A.No.903 of 2011
and
M.P.No.1 of 2011

KGK (CO)
CA(06/09/2016)