

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2016

CORAM

THE HONOURABLE JUSTICE T.MATHIVANAN

C.M.A.NO.113 OF 2001

Under C.M.A.No.113 of 2001 and Cross Objection No.36 of 2006

The Oriental Insurance Co.Ltd.,
Divisional Office
Katpadi Road, Vellore

: Appellant/4th Respondent

Vs

1. Tamilselvi W/o.Late Murugesan
2. Santhakumar
(2nd respondent is declared as major
And the guardian is
Discharged from guardianship vide
Order of Court dt.21.09.2001
Made in CMP Nos.14622/14623/2001)
3. Minor Sureshkumar ... Respondents 1 to 5/
Petitioners 1 to 5
4. Minor Vadivelu
(Minor respondents 3 &4 rep.by
next friend and their
Mother Tamilselvi
5. Visalakshmi Ammal
(All residing at No.25,Kanni Koil Street,
Kagithapattadai, Vellore).
6. S.P.Moorthy, S/o.Palani
Car Driver, Thiruvalam Road,Katpadi
7. Regional Chief Engineer
Vellore Distribution Circle
Tamilnadu Electricity Board
Gandhi Nagar, Vellore-6.
8. United India Insurance Co.Ltd.,
Thottapalayam Vellore. Respondents 6 to 8/
Respondents 1 to 3

Prayer :

This Memorandum of Civil Miscellaneous Appeal is filed under section 173 of M.V.Act.1988, to set aside the award dt.25.08.2000 and made in M.C.O.P.No.225 of 1995 on the file of the Motor Accidents claims Tribunal (Addl. Dist .Judge), Vellore.

For Appellant : Mr.K.Renganathan
in CMA 113/2001 No appearnce
and
For 1st Respondent
in Cross Objection
No.36/2006

For Respondent Nos.1 to 5 : Mr.S.D.Kamatchi
in CMA.113/2001
For Cross Objection in
Cross Objection No.36/2006

For Respondent No.7 : MR.V.Viswanathan
in CMA.113/2001 No Appearance
and
For Respondent No.13
in Cross Objection No.36/06

For Respondent Nos.6 & 8 : No Appearance
in CMA.113/2001
For Respondent Nos.2 & 4
in Cross Objection No.36/2006

Cross Objection No.36 of 2006

1. Tamilselvi
W/o.Late Murugesan
2. Santhakumar
S/o,Late Murugesan
3. Sureshkumar
S/o.Late Murugesan
4. Vadivelu
S/o.Late Murugsan
(Minor Petitioners 3 to 4
rep.by Next friend and their
Mother Tamilselvi)
5. Visalakshmi Ammal .. Cross Objectors 1 to 5/Petitioners

Vs

1. The Oriental Insurance Company
Divisional Officer,
Katpadi Road, Vellore ..1st Respondent/4th Respondent
2. S.P.Moorthy
S/o.Palani, Thiruvaiaam Road
Respondents/Claimants
Katpadi, Vellore District
3. Regional Chief Engineer
Vellore Distribution Circle
Taminadu Electricity Board
Gandhi Nagar, Vellore-6.
4. United India Insurance o., Ltd
Thottapalayam,
Vellore .. Respondents/Respondents 1 to 3

ORDER

Questioning the liability the appellant insurance Company who is the 4th respondent in the claim petition in M.C.O.P.No.225 of 1995 has filed this Memorandum of Civil Miscellaneous Appeal under section 173 of M.V.Act, 1988.

2. Having not been satisfied with the award of the Tribunal dt.25.08.2000 and made in M.C.O.P.No.225 of 1995, the Claimants there in have filed this cross objection under Order 41 rule 22 C.P.C. seeking enhancement of compensation.

3. The 1st cross objector is the widow of deceased Murugesan, whereas the cross objectors 2 to 4 are their children. The 5th cross objector is the mother of the deceased Murugesan.

4. It is revealed from the records that on 26.06.1989, the deceased Murugesan was driving his scooter from Vellore to Katpadi on Vellore-Chitoor main road. One Suseela who was the claimant in M.C.O.P.No.36 of 2004 was also travelling along with him as a pillion rider. At about 12.30 p.m. near Palar bridge the car bearing registration No.T.C.J.-8733 belonging to the 7th respondent herein, (Regional Chief Engineer, Vellore Dist. Circle, TNEB, Gandhi Nagar, Vellore) was driven by the 6th respondent herein in a rash and negligent manner and allowed the same to hit against the scooter and as a result of which the deceased Murugesan and the pillion rider Suseela were thrown

out. The deceased Murugesan had sustained severe injuries and subsequently died in the Govt. Hospital, Vellore. Suseela also had sustained grievous injuries on all over her body.

5. The Deceased Murugesan was a vegetable vendor and the pillion rider Suseela was also a vegetable vendor. Murugesan was earning a sum of Rs.2,500/- p.m. Whereas Suseela was earning a sum of Rs.500/- p.m. According to the cross objectors/claimants, the 6th respondent/R1 being the car driver alone was responsible for the accident.

6. The 6th respondent/R1 had contended that when the scooter was driven by the deceased from the opposite direction, he had lost his control over the vehicle and as a result of which the scooter was skidded which resulted in the falling down of scooterist and the pillion rider.

7. However this claim petition had been wrongly filed for making money, taking advantage of the death of the deceased.

8. The 7th respondent who is the employer of the 6th respondent had contended that the accident was due to the rash and negligent driving of the scooterist. According to him the car did not come in to contact with the scooter. The 8th respondent/R3 who is the insurer of the car had adopted the contentions made by the respondents 6 & 7. The appellant herein who is the 4th respondent in the claim petition as well as the insurer of the scooter had contended that the accident was caused due to the rash and negligent act of the driver of the car.

9. The Tribunal on appreciation of the evidences had proceeded to grant the compensation under the following heads:

a) For Love and affection Rs.5000/-	
Each to the objectors 1 to 5 (5000 X 5)	- 25,000/-
b) Towards Transportation	- 500/-
c) For Funeral expenses	- 3,000/-
d) For Loss of estates	- 1.62,000/-

Total 1,90,500/-

10. The Tribunal had determined that the deceased Murugesan was earning a sum of Rs.900/- p.m., since he was aged about 38 years the Tribunal had selected '15' as the multiplier. Accordingly the pecuniary loss of the family was calculated at Rs.1,35,000/-. Apart from this as aforesaid, the Tribunal had also awarded a sum of Rs.5,000/- each (Claimants 1 to 5) towards Loss of love and affection. Another sum of Rs.500/- towards

transportation and a sum of Rs.3,000/- towards funeral expenses were also awarded. The Tribunal had directed the appellant insurance Company in the claim petition to pay this amount to the Claimants with interest at the rate of 12% p.a. from the date of petition till the date of deposit.

11. The appellant Insurance Company was directed to deposit this amount within 2 months from the date of the award. On such deposit being made, the Tribunal had directed the 1st respondent and the 5th claimant to withdraw each 25% from the compensation. The minor's share was directed to be deposited in any one of the Nationalized Banks for 3 years until they attain majority. The remaining shares of the 1st and 5th claimants were directed to deposit in a Nationalized Bank for 3 years.

12. When the appeal came up for hearing today i.e.01.08.2016 the appellant Insurance Company was not present. Therefore the appellant was called absent and the appeal in C.M.A.No.113 of 2001 was dismissed for non-prosecution.

13. In so far as the Cross Objection no.36 of 2006 is concerned the cross objectors/claimants have claimed that at least a sum of Rs.2,000/- ought to have been determined by the Tribunal towards the monthly income of the deceased as he was a vegetable vendor. They have also contended that at least a sum of Rs.5,28,000/- ought to have been awarded towards the pecuniary loss of the family.

14. They have further contended that the deceased had not died immediately on the spot, instead he had another one in the hospital, while he was on treatment.

15. Therefore a sum of Rs.10,000/- ought to have been awarded towards pain and suffering. They have also contended that since the 1st claimant was in a tender age at the time of the death of the deceased, a sum of Rs.25,000/- ought to have been granted towards consortium of the 1st claimant, and a sum of Rs.10,000/- towards mental agony and another a sum of Rs.15,000/- towards loss of dependency and another sum of Rs.5000/- towards the damage for the scooter ought to have been awarded. In so far the contention of the cross objectors is concerned, this court finds that a sum of Rs.10,000/- can be awarded towards pain and sufferings and another a sum of Rs.25,000/- can be awarded towards loss of consortium to the 1st cross objectors. In other aspects the contention of the cross objectors is rejected.

16. Accordingly the total award of the Tribunal to the extent of Rs.1,90,000/- is modified and enhanced to Rs.2,35,500/- by adding a sum of Rs.35,000/- under the heads of

consortium to the 1st cross objector and Rs.10,000/- towards the pain and suffering of the deceased.

17. Accordingly the cross objection is partly allowed and the appellant insurance company who is the 4th respondent in the claim petition is directed to pay this amount to the cross objectors/claimants with interest at the rate of 12% p.a. from the date of petition till the date of deposit, if not deposited earlier. On such deposit being made the cross objector/claimants are entitled to withdraw the amount in accordance with the shares allotted by the claims Tribunal. However there shall be no order as to cost.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
(Motor Accident Claims Tribunal)
Vellore.
2. The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mrs.D.Kamatchi, Advocate, S.R.No.43414

C.M.A.No.113 of 2001

CS/28/11/17

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