

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.514 of 2013

and

M.P. No.1 of 2013

M/s. United India Insurance Co. Ltd.,
Cherry Road
Divisional Office No.III
No.137-D, Salem. ...Appellant/ 2nd Respondent

Vs.

1. Mrs. Santha
2. Mrs. Namagirilakshmi
3. Mrs. Uma
4. Mr. Manikandan ... Respondents 1 to 4/
Petitioners
5. Mr. I. Settu ... Respondent No.5/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.07.2012 made in M.C.O.P No.1691 of 2008 on the file of the Motor Accident Claims Tribunal, (First Additional District Court) Salem.

For Appellant : Mr. K. Vijayaraghavan

For Respondents : Mr. D. Shivakumaran for R1 to 4
R5 - ex-parte

J U D G M E N T

The Insurance Company has come up with this appeal challenging the liability and quantum of compensation awarded by the Tribunal.

2. On 06.02.2008, when the deceased Krishnamoorthy, was walking on the left side of the road, near Indian Oil Petrol Bunk at R.C. Settipatty on the Omalur to Dharmapuri Road, he was hit by a motor cycle, bearing Registration No. TN 30 AA 5078, driven by the first respondent in a rash and negligent manner. Due to the said accident, the said Krishnamoorthy sustained grievous injuries and a major fracture in the left

femur and was admitted in Gokulam Hospital, Salem. Subsequently, he was shifted to Salem Medical Care, Hasthampatty and undertook treatment for one month, as inpatient, for his fracture. Later, on 17.08.2009 he died. The deceased was aged 73 years at the time of accident and was working in a medical shop and earning a sum of Rs.5000/- per month. The Claim Petition has been filed by his wife and children, before the Tribunal, seeking a sum of Rs. 4,00,000/- as compensation.

3. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the 1st respondent was having valid driving licence to drive the two wheeler came to the conclusion that the rider of the two wheeler was rash and negligent and was responsible for the accident and consequently liability was fixed on him. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived at by the Tribunal.

4. After analyzing the available oral and documentary evidences, the Tribunal awarded a sum of Rs.3,22,472/- as compensation, under the following heads:

Sl.No	Heads	Amount
1	Loss of dependency	Rs.1,80,000.00
2	Medical Bills	Rs.1,12,472.00
3	Consortium	Rs. 20,000.00
4	Loss of estate	Rs. 5,000.00
5	Funeral Expenses	Rs. 5,000.00
	Total	Rs.3,22,472.00

5. Learned counsel appearing for the appellant/Insurance Company, mainly contended that the accident took place on 06.02.2008 and he passed away on 17.08.2009, after a period of nearly 1½ years, which would be on account of age and not due to the accident. Moreover, the compensation arrived by the Tribunal is on the higher side. There is no proof of income and no documents have been produced to show that he was on continuous treatment and the Tribunal ought to have dismissed the claim petition. Hence, the Insurance Company has filed this appeal, questioning the liability and also the quantum of compensation.

6. The learned counsel for the claimants, per contra, contended that the deceased was employed in a medical shop and was earning a sum of Rs.5000/- per month but the Tribunal has taken only Rs.4000/- per month as income. Eventhough, there was no income proof, the Tribunal having considered the age of the deceased, the period of hospitalization and the pain and sufferings undergone by him in his old age, has granted

compensation of Rs.3,22,472/- under different heads and has apportioned the compensation to his dependents.

7. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

8. It is not in dispute that the accident occurred on 06.02.2008 and the said Krishnamoorthy was seriously injured and subsequently, after more than a year, on 17.08.2009, he died. A perusal of the records would show that the deceased was aged 73 years at the time of accident. Although, he died after 18 months, from the date of accident, the Tribunal has rightly held that due to the serious injuries caused in the bones during the accident, in his old age, he could not get cured and hence he died. So, the appellant/ Insurance Company is liable to pay the compensation, which is also accepted by this Court. However, in the absence of any documentary evidences, filed by the claimants with regard to income, the Tribunal has rendered a finding that the deceased would have drawn a sum of Rs.4000/- per month as income. Hence, this Court is not inclined to grant the compensation arrived by the Tribunal and the same is modified as follows :

Sl. No	Heads	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.1,80,000.00	Rs.1,20,000.00
2	Medical Bills	Rs.1,12,472.00	Rs.1,12,472.00
3	Consortium	Rs.20,000.00	Rs.20,000.00
4	Loss of estate	Rs.5,000.00	Rs.5,000.00
5	Funeral Expenses	Rs.5,000.00	Rs.10,000.00
	Total	Rs.3,22,472.00	Rs.2,67,472.00

There is no serious objection in respect of the interest granted at 7.5% per annum.

9. Accordingly, the Civil Miscellaneous Appeal is allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.2,67,472/- from Rs.3,22,472/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The appellant /Insurance Company is directed to deposit the entire award amount as ordered by this Court, with interest and costs, less the amount already deposited, to the credit of M.C.O.P.No.1691 of 2008,

on the file of the Motor Accidents Claims

Tribunal, First Additional District Court, Salem, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant is permitted to withdraw the award amount on filing necessary application before the Tribunal.

(v) It is also made clear that the award amount shall be paid to the respondents/claimants by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

avr

To :

The I Additional District Judge
Motor Accidents Claims Tribunal,
Salem.

Copy to: The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr.D. Shivakumaran, Advocate SR.15183

+ 1 cc to MR.M.B. Gopalan, Advocate SR.15410

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C.M.A.NO.514 of 2013

and

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KSJ(CO)
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