

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.598 OF 2015
AND M.P.NO.1 OF 2015

The Oriental Insurance Co. Ltd.,
AAA Complex, First Floor,
159, Kumaran Road,
Tiruppur.

... Appellant/3rd Respondent

Versus

1.Thayunnai
2.Ambujakshi
3.Suma
4.Minor Alwin
5.Minor Alan

(Minors 4 and 5 are represented by their
mother and next friend R3 herein)

... Respondents 1 to 5/Petitioners

6.Vadivalagan
7.Kumar

... Respondents 6 & 7/ Respondents 1 & 2

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2014 passed in MCOP No.8 of 2012 on the file of Motor Accidents Claims Tribunal, District Judge of Nilgiris, Uthagamandalam.

For Appellant : Mr.M.B.Gopalan
For Respondents 1 to 5 : Mr.S.Elambharathi
For Respondents 6 & 7 : No appearance

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award dated 19.08.2014, passed in MCOP No.8 of 2012, by the Motor Accidents Claims Tribunal (District Court) Nilgiris, Uthagamandalam, the insurance company has come up with the present appeal, against the quantum of compensation.

2. The insurance company has challenged the fixation of monthly income of the deceased at the rate of Rs.10,400/-, as erroneous, as the employer was not examined, to prove the same. The ultimate compensation awarded by the Tribunal at Rs.17,42,280/-, was considered to be excessive. The Tribunal below has relied on Ex.P10 - salary slip of the deceased, for deciding the annual income.

3. The deceased was working as a Lorry driver. It is proved that the accident had happened due to the rash and negligent driving of the Driver of the Van, bearing Registration No.TN20-H-5505, insured with the appellant insurance company and the deceased died on the spot. The deceased was 34 years of age at the time of accident and was earning Rs.5,000/- per month and Rs.300/- towards daily batta.

4. It is well known that the Drivers are earning much more than the amount quoted here. The Tribunal, after considering the present price index, has fixed the salary at Rs.8,000/- per month, which is comparatively lesser than the market rate. The Tribunal has awarded 30% towards future prospects and fixed the monthly salary at Rs.10,400/- [Rs.8000/- + Rs.2400/-].

5. It is not in dispute that the deceased was employed as a Driver and he was killed in the accident, which occurred on 29.06.2011. Naturally, the monthly salary fixed by the Tribunal, for a Lorry Driver, at the rate of Rs.10,400/- is not in excess at any count. When the employment of the deceased is not in dispute and it is well proved, we are not inclined to interfere with the monthly income of the deceased, only because the employer of the deceased was not examined. On the other hand, the respondents have not adduced any evidence contradicting the nature of employment and the income of the deceased. In such circumstances, we are not inclined to interfere with the monthly income of the deceased and the finding of the Tribunal is just and proper and the compensation awarded on the other heads is also correctly fixed.

6. Therefore, we are not inclined to interfere with the award of the compensation and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7. Learned counsel appearing for the appellant insurance company would submit that the entire award amount has already been deposited. In that event, the claimants are entitled to seek for withdrawal of compensation apportioned to them, on making proper applications, before the Tribunal.

8. Since it is seen from the records that the respondent nos.4 and 5 are minors, the share in respect of the minors, is directed to be deposited in a reinvestment scheme, in any one of the Nationalised Banks, initially for a period of three years, proximate to their residence, till they attain majority. The mother of the minors is entitled to withdraw the accrued interest, for the welfare of the minors.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

The Motor Accidents Claims Tribunal
(District Court)
Nilgiris,
Udhagamandalam.

+1cc to Mr.S.Elambharathi, Advocate Sr. 15961

C.M.A.NO.598 OF 2015

NRJK (CO)
VR(23/06/2017)

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