IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.04.2017
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.816 OF 2015
AND
M.P.NO.1 OF 2015

The Branch Manager
United India Insurance Co. Ltd.,
Branch Office
No.1170, Mettur Road, 2nd Floor,
Muthiah Complex,
Erode - 11. ... Appellant/2nd Respondent

Versus

1.Mariammal
2.Minor Prema
3.Alamelu
4.Chinnusamy
5.K.N.Muthusamy ... Respondents /Petitioners & 1st Respondent

(Minor Represented by her
Mother Mariamma

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.02.2013 made in M.C.O.P.No.1433 of 2006 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri.

For Appellant	:	Mr.S.Arun Kumar
For Respondents 1 to 4	:	Mr.M.Sivakumar for Mr.C.Prabakaran

J U D G M E N T

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

Challenging the award of compensation made by the Motor Accidents Claims Tribunal (Principal District Judge) Krishnagiri, in MCOP No.1433 of 2006, dated 12.02.2013, the United India Insurance Company Limited has preferred the appeal.

2. The claimants/ respondents 1 to 4 herein, are the legal heirs of the deceased. On 27.06.2006, the husband of the first respondent along with his friends, while returning from Coimbatore to Salem, in a Tata Indica Car, bearing Registration No.TN30-J-4371, at about 24.00 hours, in the midnight, a Tata 407 Tempo, bearing Registration No.TN33-D-9398, belonging to the fifth respondent herein, driven by its driver, in a rash and negligent manner, dashed against the Car, in which the deceased was travelling. A case was registered against the driver of the offending vehicle, in Crime No.411/2006, under Sections 279, 338 and 304-A IPC.

3. At the time of accident, the deceased was only 34 years. The first respondent / claimant was 23 years old and second respondent was nine months in the womb. The claimants have estimated the loss to the tune of Rs.1,07,00,000/- and restricted their claim to Rs.30,00,000/- in the claim petition filed before the Tribunal.

4. The appellant insurance company among other grounds has denied the allegations of negligence and liability.

5. Before the Tribunal, the first respondent / wife has let in evidence as P.W.1. Eye witness Vediappan has let in evidence as P.W.3 and the auditor of the deceased has let in evidence as P.W.4 and 36 documents were marked as Exs.P1 to P36. On the side of the respondents, Inspector of Police was examined as R.W.1 and a rough sketch was marked as Ex.R1.

6. On the basis of evidence of eye witness P.W.3; evidence of P.W.1 / wife; and evidence of R.W.1 - Inspector of Police, the Tribunal has concluded that the driver of the tempo van, bearing Registration No.TN33-D-9398, belonging to the fifth respondent, was rash and negligent in causing the accident. The offending vehicle was covered by insurance policy under the appellant insurance company and therefore, the Tribunal has held that the appellant insurance company is liable to pay the compensation.

7. On the basis of Exs.P3, P9 to P15 and Exs.P31 to 36, the Tribunal has fixed the monthly income of the deceased at Rs.9,000/-. After deducting 1/3rd towards personal and living expenses, the monthly income was arrived at Rs.6,000/-, for calculating the loss of dependency. Since the deceased was 34 years of age at the time of accident, multiplier 17 was applied. Accordingly, a sum of Rs.12,24,000/- was arrived at, as loss of contribution to the family (Rs.6000/- X 12 X 17). Towards loss of consortium, a sum of Rs.10,000/- was awarded to the first respondent / wife; Rs.10,000/- to the minor towards loss of love and affection; Rs.10,000/- towards funeral expenses; in total a sum of Rs.12,54,000/- was awarded by the Tribunal as

compensation.

8. The appellant insurance company has challenged the quantum as excessive, as the same was without any proof of earnings of the deceased. The deceased was a certified Contractor under Electricity Board, Highways and Public Works Department. He was also a partner with the other two persons, who were in the vehicle. The work order awarded by the Electricity Department to the Public Works Department shows that they were actively involved in contract works. Even a worker employed under him will be drawing a salary of Rs.10,000/- per month and hence, the fixation of Rs.9,000/- as monthly income is very nominal and it is supported by the documents filed before the Tribunal. As per the living cost index of the year 2006, the deceased had to maintain his wife and parents. For maintaining a family consisting of four members, minimum a sum of Rs.10,000/- may be required at the relevant point of time, whereas the Tribunal has fixed the income at Rs.9,000/- and has deducted 1/3rd towards personal and living expenses and arrived at a sum of Rs.6,000/- per month. The monthly income arrived at by the Tribunal is very nominal and it does not require any interference.

9. Applying the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] multiplier 17 was applied, as the deceased was 34 years old at the time of accident. By applying the multiplier, the loss of compensation is arrived at Rs.12,24,000/- (Rs.6000/- X 12 X 17 = Rs.12,24,000/-). Under the other heads of loss of consortium, loss of love and affection and funeral expenses, the Tribunal has awarded a very meager amount of Rs.10,000/-, under each head. Since the amount awarded is very meager, we are not inclined to interfere with the same.

10. Accordingly, the award of compensation at Rs.12,54,000/- for the death of the husband of the first respondent / claimant and father of second respondent and son of the third and fourth respondents is very reasonable and we are not inclined to interfere with the same.

11. The appellant - insurance company is directed to deposit the entire award amount, with proportionate interest at the rate of 7.5% per annum and costs, from the date of petition, till the date of realization, within a period of four weeks from the date of receipt of a copy of this order, to the credit of MCOP No.1433 of 2006, on the file of Motor Accidents Claims Tribunal [Principal District Court] Krishnagiri.

12. On such deposit being made, the respondents 1, 3 and 4 / claimants are permitted to withdraw their respective shares, on filing proper applications before the Tribunal.

13. In so far as the share apportioned to the second respondent / minor is concerned, the same should be deposited in favour of the minor, in a Nationalised Bank, in a reinvestment scheme, till she attains majority. The first respondent / mother is entitled to withdraw the interest accrued thereon, for the welfare of the minor. The apportionment given by the Tribunal can be applied for the rest of the amount.

14. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tk

To
The Motor Accidents Claims Tribunal
Principal District Judge
Krishnagiri.

copy to
The Section Officer
VR Section
High Court Madras

+1 cc to Mr.S.Arunkumar Advocate sr 21988
+1 cc to Mr.C.Prabakaran Advocate sr 22049

C.M.A.NO.816 OF 2015

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