

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM:

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.357 of 2017
and C.M.P. No.2583 of 2017

The Branch Manager,
United India Insurance Co. Ltd.,
Branch Office-1,
No.2, First Floor, Osur Main Road,
Madivala,
Bangalore - 68.

... Appellant / 2nd respondent in
Tribunal

versus

1. Vijaya
2. Rajagopal
3. Minor Sivasubramani
4. Minor Manikandan
5. Minor Kavitha

(Minors 3 to 5, rep. by the
mother, next friend Vijaya,
1st respondent/1st petitioner)

6. G.Sivakumar
- ... Respondents 1 to 5/petitioners and
... 6th respondent/1st respondent in Tribunal below

Prayer :

The appeal filed under Section 173 of Motor Vehicles Act,
against the Judgment and Decree dated 10.02.2005 made in
M.C.O.P.No.264 of 2003 on the file of the Motor Accident Claims
Tribunal (Sub Judge), Krishnagiri.

For Appellant : Mr.K.Suryanarayan

JUDGMENT

The deceased Meganatha, aged 39 years, employed as a Lorry
Driver, earning a sum of Rs.6,500/- p.m. died in the accident on
01.05.2002. Hence, the legal representatives of the deceased,
viz., wife, sons and daughter, filed a claim petition in
M.C.O.P.No.264 of 2003 before the Motor Accident Claims Tribunal
(Sub Judge), Krishnagiri, claiming compensation of Rs.7,00,000/-.

2. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.6,10,000/- as compensation. Challenging the same, the Insurance Company has filed this appeal.

3. The only contention advanced by the learned counsel appearing for the appellant is that the claim is covered under Workmen's Compensation Act and not covered under the Motor Vehicles Act. Hence, the compensation awarded by the Tribunal is unsustainable.

4. This Court gave its anxious consideration to the contention advanced by the learned counsel for the appellant and perused the materials available on record as also the order passed by the Tribunal.

5. A perusal of the award reveals that no documents were produced to prove the income of the deceased at Rs.6,500/-. Therefore, the Tribunal has fixed the income of the deceased at Rs.3,000/- p.m. and the consequent annual income of the deceased was arrived at Rs.36,000/-. Based on the evidence of P.W.1-wife of the deceased, the Tribunal has fixed the age of the deceased at 39. Considering the number of family members, the Tribunal has deducted 1/3rd towards personal expenses of the deceased and adopting multiplier of 16, the Tribunal quantified the compensation at Rs.3,84,000/-. The Tribunal has also awarded a sum of Rs.5,000/- towards transport expenses, Rs.5000/- towards cremation expenses, Rs.50,000/- towards loss of love and affection, Rs.50,000/- towards loss of consortium, Rs.66,000/- towards loss of mental agony and Rs.50,000/- towards future loss of expectation, totalling Rs.6,10,000/- as compensation.

6. Though it is contended that the claim is covered only under the Workmen's Compensation Act and not under the Motor Vehicles Act, however, no cogent or convincing reason has been adduced by the appellant to substantiate as to why the claim is not maintainable under the Motor Vehicles Act. If the claim is under Workmen's Compensation Act, the monthly income of the deceased ought to have been taken at Rs.4,000/-. Further, adopting the relevant factor as is codified under the Workmen Compensation Act, the compensation that would be payable to the claimants will be on the higher side. However, the claimants have thought it fit to file the claim petition under the Motor Vehicles Act, which is sustainable for the reason aforesaid. Further, considering the entire materials available on record, the Tribunal has fixed the monthly income of the deceased at Rs.3,000/- and has calculated the income, which cannot be said to be unreasonable or excessive. Therefore, the contention advanced by the appellant that the claimants should move for

compensation only under the Workmen Compensation Act is liable to be rejected.

7. For the reasons stated above, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 10.02.2005 made in M.C.O.P.No.264 of 2003 on the file of the Motor Accident Claims Tribunal (Sub Judge), Krishnagiri. Consequently, connected miscellaneous petition is closed.

8. The Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal, less the amount if any already deposited, along with interest at the rate of 9% p.a. from the date of petition till the date of deposit, to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the share of the 1st and 2nd claimants as apportioned above, directly to the bank account of the 1st and 2nd claimants through RTGS, within a period of two weeks thereafter. Insofar as the share of claimants 3 to 5 is concerned, though claimants 3 to 5 were minors on the date of the accident, which happened in the year 2001, by now, both the claimants would have attained majority. In such view of the matter, the claimants 3 to 5 are directed to produce relevant documents to establish their attaining majority. On the claimants producing proof of their attaining majority, the Tribunal is directed to transfer the share of claimants 3 and 5 to their respective bank accounts through RTGS forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal
(Sub Judge), Krishnagiri.

Copy To
The Section Officer,
VR Section, High Court, Madras

C.M.A.No.357 of 2017

mg(co)
cs/19/03/18