

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.476 of 2017

Oriental Insurance Co. Ltd,
Lodge President Complex,
Thanjavur Salai,
Thiruvarur Town,
Thiruvarur Taluk.

... Appellant/2nd respondent

Versus

1. Marimuthi
2. Ramasami
3. Senthilvelan
4. Jayaselvi
5. Tamilselvi ...1to5th Respondents/Petitioner
6. M. Karunanithi ...6th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 06.06.2003 made in M.C.O.P.No.718/2002 on the file of Motor Accident Claims Tribunal (Principal District Judge), Nagapattinam.

For appellant : Ms. Sreevidhya

J U D G M E N T

Challenging the finding of negligence as well as quantum of compensation awarded by the Claims Tribunal in M.C.O.P.No.718 of 2002, dated 06.06.2003, the appellant/Insurance Company has filed this Appeal.

2. The deceased, Pushpanathan aged 58 years, an agriculturist and also engaged in the work of broker, met with an accident on 4.6.2001 in which he sustained grievous injuries and died. The dependents of the deceased, viz., his wife, daughter and sons filed a claim petition, in M.C.O.P.No.718 of 2002, before the Principal District Court, Nagapattinam, seeking compensation in a sum of Rs.2,00,000/-. The Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs. 75,000/- (Rupees Seventy Five Thousand Only) as compensation. The break up details of the

Loss of Earnings	:	Rs. 60,000/-
(1000x12x5)		
Loss of love & affection :	Rs.	8,000/-
Loss of Consortium :	Rs.	5,000/-
Funeral Expenses :	Rs.	2,000/-

		Rs. 75,000/-

Aggrieved by the compensation awarded by the Tribunal, the present appeal has been filed by the appellant/insurance company.

3. The learned counsel for the appellant submits that the compensation awarded by the Tribunal is very high and the same needs to be reduced. He further submitted that the Tribunal has erred in considering the fact that the claimants have deliberately substituted the vehicle involved in the accident to secure compensation from the appellant.

4. On the question of negligence, a cursory perusal of the findings rendered by the Tribunal reveals that the Tribunal has taken into consideration the evidence of P.W.1 and also the FIR and has given a finding that the vehicle was driven in a rash and negligent manner and dashed against the deceased due to which the deceased died. No evidence, contra to the above has been adduced on behalf of the appellant. A mere error in mentioning the vehicle number would not alone discredit the whole testimony of P.W.1 when P.W.1 has identified the persons, who had driven the vehicle, which is mentioned in the FIR. Therefore, the finding of the Tribunal that the vehicle was driven in a rash and negligent manner does not warrant any interference.

5. On the question of compensation, a perusal of the award passed by the Tribunal reveals that the Tribunal has taken the age of the deceased as 64 based on Ex.P-2, post mortem report (though the age of the deceased was mentioned as 58 in the claim petition). Though the deceased was said to be earning Rs.4,500/= p.m., however, the Tribunal, in the absence of any proof as to the said earning, fixing the daily wage at Rs.80/- and calculating for working 25 days per month, arrived at the monthly income of the deceased at Rs.2,000/-. Considering the fact that the claimants 2 to 5 are married and living separately, deducting one-half towards the personal expenses of the deceased, the contribution to the family was fixed at Rs.1,000/- per month and adopting the multiplier of 5, loss of income was quantified at Rs.60,00/- (1000 x 12 x 5). Towards the head 'Love and Affection' a sum of Rs.2,000/- each was awarded to the claimants, in all totalling to Rs.8,000/-. Towards 'Loss of Consortium', a sum of Rs.5,000/- was awarded to the first claimant and a sum of Rs.2,000/- was awarded towards Funeral expenses. In all, the Tribunal has awarded a sum of Rs.75,000/=.

6. It is the contention of the appellant/insurance company that the compensation awarded by the Tribunal is excessive and, therefore, it is liable to be interfered with, the oral and documentary evidence conclusively prove that the quantum awarded is fair and reasonable. The Tribunal has fixed the income of the deceased at a very nominal value, which cannot be said to be excessive and adopting the proper multiplier and also deducting the required amount towards the personal expenses of the deceased, the amount of compensation has been quantified. Further, on the other heads as well, the Tribunal has awarded very meagre amounts and in the absence of any appeal by the claimants, this Court is not inclined to enhance the same. Therefore, the quantum of compensation awarded by the Tribunal cannot be said to be excessive and, therefore, the compensation awarded by the Tribunal does not call for any interference.

7. In view of the discussion made above, there being no merit in the appeal, this appeal is dismissed confirming the judgment and decree passed by Tribunal in M.C.O.P.No.718 of 2002 dated 06.06.2003. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. The Motor Accident Claims Tribunal
(Principal District Judge)
Nagapattinam.
2. The Section Officer (2-Copies)
VR Section
High Court, Madras.

C.M.A. No.476 of 2017

SJ (CO)
EU (03/02/2018)