IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.621 of 2017
and C.M.P.No.3605 of 2017

The ICICI Lombard Insurance
Company Limited,
Trichy.
Rep. by its Branch Manager ... Appellant / 2nd respondent

versus

1. Mahendran (since died)
2. Velambal
3. Arun
4. Rajesh
5. Minor Krishnan
(Rep. by his mother Velambal) ... Respondents 1 to 5/
Petitioners 1 to 5
6. Bahrudheen Ali Ahammed ... 6th respondent/1st respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 25.07.2011 made in M.C.O.P.No.224 of 2011 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagappatinam.

For Appellant : Mrs.R.Sree Vidhya

For Respondents 1 to 5: No appearance
For R6 : No appearance

JUDGMENT

Originally, the claim petition was filed by the claimant Mahendran and pending the claim petition, he died and later on, claimants 2 to 5, who are wife and sons of the deceased were impleaded as per the order dated 29.01.2010 passed in I.A.No.314 of 2009.

2. It is the case of the claimants that the first claimant, since deceased, was doing fish business and he was earning a sum of not less than Rs.15,000/- p.m. met with an accident on 05.10.2007 and on account of the said injuries, died later on 05.12.2008.

3. The Tribunal, considering the oral and documentary evidence adduced on behalf of the claimants, rendered a finding that from the date of accident, the injured was under continuous treatment and therefore, the injury was the root cause for the death and therefore, the death is only on account of injuries sustained in the accident.

4. The Tribunal, fixing the age of the deceased at 50 years at the time of accident and in the absence of any documentary evidence, fixed his monthly income at Rs.3,000/- and deducting 1/3rd towards his personal expenses, quantified the loss of income to the family per year at Rs.24,000/- (Rs.3,000 - 1/3 x 12) and by applying the multiplier of 11, the loss of dependency has been quantified at Rs.2,64,000/-. The Tribunal, further, awarded a sum of Rs.15,000/- towards loss of estate; Rs.10,000/- towards funeral expenses and Rs.20,000/- towards loss of consortium to the wife. Further, the Tribunal held that since the date of the accident, the deceased has taken treatment in the hospital and had incurred medical expenses to the tune of Rs.42,189.23, which is supported by bills and, accordingly, Rs.42,189.23 was awarded towards medical bills. An amount of Rs.4,300/- was awarded towards transport expenses. In all, the total compensation has been quantified at Rs.3,55,489.23/- (rounded off Rs.3,55,500/-).

5. The main contention of the learned counsel for the appellant is that the compensation awarded is disproportionate, especially, when there is no proximity between the injuries and the death.

6. The contention advanced by the appellant/insurer is not acceptable for the simple reason that though such a stand is taken, however, for reasons best known, no oral or documentary evidence has been adduced to show that the injuries were not the cause of death of the deceased. The claimants have established that the deceased died on account of the injuries sustained in the accident and that he was taking continuous treatment since the accident for the injuries suffered. In the absence of any evidence to the contra, the finding of the Tribunal that the injuries suffered by the deceased in the accident was the cause of death is wholly justified and the same does not require any interference.



7. The Tribunal has deducted 1/3rd towards the personal expenses of the deceased. However it is seen that the claimants are more than four in number and the deduction towards personal expenses should have been still less. Further, the accident had happened in the year 2007 and the deceased had died in the year 2008. The monthly income fixed at Rs.3,000/- is on the lower side, considering the age of the deceased as 50 years. On an

overall consideration of the entire matter, this Court is of the considered opinion that the compensation awarded by the Tribunal cannot be said to be excessive or disproportionate.

8. Accordingly, finding no merit, this Civil Miscellaneous Appeal is dismissed, confirming the Judgment and Decree dated 25.07.2011 passed in M.C.O.P.No.224 of 2011 by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagappatinam. No costs. Consequently, connected miscellaneous petition is closed.

9. The Insurance Company shall deposit the entire amount of compensation, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the Tribunal is directed to transfer the share of the respective major claimants, as per the apportionment made by the Tribunal, directly to their bank account through RTGS within a period of two weeks thereafter. Insofar as the share of the minor is concerned, the same shall be kept in an interest bearing fixed deposit in any one of the Nationalized Bank for a period of three years, to be renewed periodically, till the minor attains majority. The mother of the minor claimant is permited to withdraw the interest accrued thereon once in three months.

Sd/-
Asst.Registrar (CS VII )

/true copy/

Sub Asst. Registrar

ogy/GLN

To

1. The Chief Judicial Magistrate,
   Motor Accident Claims Tribunal,
   Nagappatinam.



C.M.A.No.621 of 2017

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nr 05/04/2018