

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM:

THE HON'BLE DR. JUSTICE **S.VIMALA**

Civil Miscellaneous Appeal No.883 of 2017
[(SR) No.129048 of 2004]
& C.M.P.No.20180 of 2005 & 596 of 2006

United India Insurance Co. Ltd.,
Cuddalore ... Appellant / R-2 before the Tribunal

..Vs..

1. Krishnamoorthy
2. Rasayal
3. Saroja
4. Rajasekaran
5. Rajakantham
6. Vimaladevi
7. Ragavan
8. Rajeswari
9. Chellu Anjaneyalu

(R-9 exparte before the lower court,
hence, notice may be dispensed with)

... Respondents / petitioners & R-1
before the Tribunal

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 23.07.2004, made in MCOP No.193 of 2003 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

For Appellant : Mr. N.Vijayaraghavan

For Respondents : R-1 – Exparte;

R-2 to R-8 No Appearance

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J U D G M E N T

The claimants 1 and 2, as father and mother, and claimants 3 to 8, as brothers and sister of the deceased Chinnathambi, have filed the claim petition for compensation, claiming a sum of Rs.15,00,000/- as compensation.

2. The deceased, Chinnathambi was aged 35 years, employed as a Contractor and Commission Agent, earning a sum of Rs.10,000/- per month, died in an accident that took place on 29.09.2002. The Claims Tribunal, after going through the oral and documentary evidence has chosen to pass an award for a sum of Rs.4,48,000/-. Alleging that the compensation awarded is disproportionate to the income of the deceased, the Appeal has been filed by the Insurance Company.

3. The learned counsel appearing for the Insurance Company / appellant herein would submit that the Tribunal committed an error in fixing the monthly earnings of the deceased at Rs.3,000/- and the monthly dependency at Rs.2,000/- which are on the higher side for the year 2002.

4. In order to appreciate the contentions raised by the Insurance Company, it is necessary to consider the details of the employment and earnings and age of the deceased.

5. The deceased, at the time of accident, had been aged 35 years. He had large number of family members to support. There are eight claimants, in this case. At the age of 35, when the deceased had large family to be supported by him, it is impossible to support the family, with this meager earnings and he would have at least earned a sum of Rs.3,000/- per month. Therefore, the contention that the monthly income fixed is on the higher side cannot be accepted.

6. The details of the award passed by the Claims Tribunal would go to show that the age of the deceased has been taken as 35, depending upon the age noted in the post-mortem certificate. Even though the claimant claimed that he was earning a sum of Rs.10,000/- per month, in the absence of any documentary evidence, the Tribunal has chosen to fix the monthly income only at Rs.3,000/- and as the age of the deceased was 35 at the time of accident, the multiplier of '17' has been adopted, but it should have been 16, as

contended by the learned counsel for the appellant. But the fact remains that the future prospective increase in income has not taken into account at all. Therefore, the multiplier adopted is not altered and it is taken, as fixed by the Claims Tribunal. Applying the multiplier of '17', the loss of dependency has been assessed at Rs.4,08,000/-. The award of the sum of Rs.5,000/- to claimants 2 to 8 towards loss of love and affection and an award of a sum of Rs.5,000/- towards cremation expenses cannot be said to be excessive.

7. Pending the claim petition, the first claimant is reported dead and the remaining petitioners are on record in the capacity as legal representatives of the deceased / first claimant. The quantum of compensation, as fixed by the Tribunal, is reasonable and it can be said to be less and not more. Therefore, this Appeal is dismissed. No costs. No costs. Consequently, the CMPs are also dismissed.

27.02.2017

Index : Yes / No
Web : Yes / No
srk

To

1. Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore
2. The Section Officer, V.R.Section, High Court, Madras

Dr. S.VIMALA, J.,

srk

C.M.A.No.883 of 2017
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