IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2148 of 2017
and C.M.P.No.11400 of 2017

United India Insurance Co. Ltd.,
Erode ... Appellant

..vs..

1. M.Prabhu
2. M.Rajkumar
3. M.Latha Priya
4. Mrs. Nachammal
5. M.Khader Moideen
6. R.Shanmugam ... Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the decree and Judgment, dated 23.02.2004, made in M.C.O.P.No.1118 of 1999 on the file of the Motor Accident Claims Tribunal, First Additional District Court, Coimbatore.

For Appellant : M/s. N.Rosi Naidu

J U D G M E N T

The legal representatives, namely, claimants 1 and 2 / sons, the third claimant / daughter, and the fourth claimant / mother of the deceased have filed the claim petition, claiming compensation of Rs.20,00,000/-.

2. The Tribunal has passed an award for a sum of Rs.9,79,000/- on 23.02.2004. This award is under challenge by the Insurance Company in this Appeal.

3. The claimants are not yet served, even though the appeal has been filed in the year 2005. The Application to condone the delay of 18 days was considered along with the merits of the matter, as consideration on merits alone will give sense of satisfaction to the litigants. Therefore, the delay is condoned, without notice, as there is no prejudice to the opposite side.

4. The accident had taken place on 09.07.1999. It is a case, where, in the same accident, the claimants have lost the parents, namely, the mother as well as the father.

5. In respect of the death of the mother, the Tribunal has passed an award for a sum of Rs.3,15,000/-. So far as the claim in respect of the death of the mother is concerned, the monthly income has been taken at Rs.2,500/- and deducting Rs.1,000/- towards personal expenses, the monthly contribution has been taken at Rs.1,500/- and adopting the multiplier of '15', the loss of dependency has been calculated at Rs.2,70,000/-. Awarding a sum of Rs.30,000/- towards the loss of love and affection and Rs.10,000/- towards cremation expenses, awarding Rs.5,000/- towards transport expenses, the total compensation has been quantified at Rs.3,15,000/-.

6. So far as the death of the father is concerned, at the time of accident, the deceased Muthusamy had been aged 50.

7. Considering the prospects of promotion and consequent increase in salary, the monthly income has been fixed at Rs.12,000/-. Fixing the personal expenses at Rs.5,000/-, the monthly contribution to the family has been taken as Rs.7,000/- and the annual dependency has been fixed at Rs.84,000/- and adopting the multiplier of '11', the loss of dependency has been calculated at Rs.9,24,000/-.

8. The learned counsel for the appellant / Insurance Company would submit that there is no scope for taking into account the income from agriculture, when he is employed as Assistant Accountant in Tamil Nadu Electricity Board.

8.1. This contention cannot be accepted, when he is shown to be the owner of agricultural land through (Ex.A-12), Chitta.

9. So far as the amount deducted towards personal expenses is concerned, the Tribunal has deducted a sum of Rs.5,000/-, roughly 40% towards the personal expenses, which is not permissible. When the claimants are four in numbers, the deduction towards the personal expenses may be either 1/3rd or 1/4th and not more than that. Loss of love and affection

has been awarded only at Rs.10,000/- to each of them, totalling to Rs.40,000/-. Cremation expenses has been awarded at Rs.10,000/-, transportation expenses has been awarded at Rs.5,000/-. Thus, the total amount of compensation has been awarded at Rs.9,79,000/-.

10. Till this appeal is taken up for hearing there is no appeal by the claimants. Had this appeal had been taken up at the earliest point of time, there is scope for enhancement also even in the absence of an independent appeal or cross-appeal. After lapse of decades, especially when the appeal filed by the Insurance Company is pending, it may not be appropriate to enhance the quantum of compensation awarded.

11. When the claimants have lost both their parents at the same time, the shock and agony and the consequent, loss of guidance and support in addition to loss of love and affection would be enormous. The amount of compensation awarded under the circumstances can be said to be less and not more. Therefore, the appeal has no acceptable grounds. Hence, the appeal is dismissed.

12. In the result, this Civil Miscellaneous Appeal, filed by the Insurance Company, is dismissed. No costs. Consequently, the connected CMP is closed.

13. The appellant / Insurance Company shall deposit the entire compensation amount, as awarded by the Claims Tribunal, along with interest at 9% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. The ratio of apportionment shall be as ordered by the Claims Tribunal. The minor claimants should have attained majority as on now. Therefore, on such petition being taken out to declare the minor claimants as majors, the claims Tribunal shall pay the compensation to the RTGS Account(s) of the claimants. In respect of other claimants also, the amount shall be transferred to their respective Savings Bank Account(s), through RTGS.

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Index : Yes / No

Web : Yes / No

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To

1. Motor Accident Claims Tribunal, First Additional District Court, Coimbatore.
2. The Section Officer, V.R.Section, Madras High Court, Chennai 104

Dr. S.VIMALA, J.,

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& CMP No.11400 of 2017

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