

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.764 of 2017

Divisional Manager,
United India Insurance Company Limited,
Divisional Office,
Nethaji Road, Cuddalore - 607 001

.. Appellant/2nd Respondent
versus

1. Morlin Padma Vasanth
2. Minor Agnal Reynold
3. Minor Emima Priscilla Vasanth
4. G.Kumar .. Respondents/Petitioner
1 to 3/1st respondent

[Minors 2 and 3 are represented by their mother and next friend, the 1st respondent]
[4th respondent set exparte]

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.632 of 2004, dated 25.04.2005, on the file of the Motor Accident Claims Tribunal, [Chief Judicial Magistrate], Cuddalore.

For Appellant : Mr.N.Vijayaraghavan

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR ,J.)

Being aggrieved by the judgment and decree in M.C.O.P.No.632 of 2004, dated 25.04.2005, on the file of the Motor Accident Claims Tribunal, [Chief Judicial Magistrate], Cuddalore, by which, a sum of Rs.16,81,700/-, has been awarded as compensation, with interest, at the rate of 9% per annum, from the date of claim, till the date of realisation and costs, to the legal representatives of the deceased, M/s.United India Insurance Company Limited, has preferred the present appeal.

2. Facts as deduced from the material on record and the impugned judgment are that on 06.08.2002, when one Saravanan was riding a motor cycle bearing Regn.No.TN31-M-0722 with a pillion rider Vasanth Vincent, and proceeding from Pondicherry

to Cuddalore, on the extreme left of the road and following the traffic rules, about 7.00pm, at RK ITI, Chinna Kanganakuppam, an Auto rickshaw, bearing Regn.No.TN 57 2854, which came in the opposite direction, at a hectic speed and without blowing horn, hit the motor cycle. As a result, the pillion rider Vasanth Vincent, sustained fatal injuries. He was taken to NLC General Hospital, Neyveli. Later, he was taken to Appollo Hospital, Chennai for further treatment. Despite best efforts, Vasanth Vincent, died on 14.08.2002 and postmortem was done in Government Hospital, Royapettah. In this regard a criminal case in Cr.No.211 of 2002 has been registered against the driver of the autorickshaw bearing Regn.No.TN 57 2854.

3. At the time of accident, the deceased was aged 42 years and as a Senior Technician, Grade-II, Thermal-II, in M/s.Neyveli Lignite Corporation Limited, Neyveli, earned Rs.22,000/- per month. Legal representatives of the deceased viz., wife and two minor sons aged about 13 and 9 years, respectively, claimed compensation of Rs.30,00,000/- under various heads.

4. Before the claims tribunal, appellant-Insurance Company, has filed a counter affidavit denying, the manner of accident. Without prejudice to the above, the company has also disputed the age, avocation and income of the deceased, and the quantum of compensation claimed under various heads.

5. On behalf of the claimants, wife of the deceased examined herself as PW1 and reiterated the averments made in the claim petition. Mr.Saravanan, rider of the motor cycle has been examined as PW2 and Exhibits P1 to P10, have been marked. Insurance company neither filed any document nor examined any witness.

6. On evaluation of pleadings and evidence, the Claims Tribunal, held that the accident occurred only due to rash and negligent act of the driver of the autorickshaw bearing Regn.No.TN-57-2854 and insured with the appellant-insurance company. Considering the age, avocation, income and other parameters, required to be taken into consideration, the Claims Tribunal, fixed the monthly income of the deceased as Rs.13,560/-. By applying multiplier '15', and after deducting 1/3 towards the personal and living expenses, computed the loss of contribution as Rs.16,27,200/-. That apart the claims tribunal has awarded compensation of Rs.25,000/-, towards loss of consortium to the wife and Rs.10,000/- to each of the minor sons, towards loss of love and affection. A sum of Rs.2,500/- has been awarded under the head, loss of estate. Further, sum of Rs.5,000/- and Rs.2,000/- have been awarded under the heads funeral expenses and transportation charges, respectively. In all, the claims tribunal has quantified the

compensation at Rs.16,81,700/-, with interest, at the rate of 9% per annum, from the date of claim, till the date of realisation and costs.

7. Mr.N.Vijayaraghavan, learned counsel for the appellant-insurance company submitted that though finding fixing negligence on the driver of the autorickshaw, insured with them is challenged, he is not pressing the same.

8. On the quantum of compensation, learned counsel for the appellant insurance company contended that '15' multiplier applied by the tribunal is excessive. Income fixed and the rate of interest awarded by the tribunal, are also challenged by the appellant-insurance company.

9. Heard the learned counsel for the appellant-Insurance Company and perused the materials available on record.

10. Perusal of the tribunal's award shows that though the deceased was a Senior Technician, Grade-II, in M/s.Neyveli Lignite Corporation and claimed to have earned Rs.22,000/- per month. On the basis of salary certificates marked as Exs.P7 & P8, tribunal has fixed the monthly income of the deceased as Rs.11,126/-. Further, taking into consideration the future prospects, increments and promotion, which, the deceased would have earned during the remaining period of service, has fixed the monthly income as Rs.13,560/- only.

11. As rightly pointed out by the learned counsel for the appellant insurance company, as per the decision of the Hon'ble Apex Court in Sarla Verma and Others Vs. Delhi Transport Corporation, reported in 2009 ACJ 1298, the correct multiplier applicable to the age group of persons between 40 to 45 is '14' and in the case on hand, the deceased was aged 42 years. Hence, the tribunal was wrong in applying '15' multiplier. Rate of interest viz., 9% per annum award by the tribunal is also on the higher side.

12. As regards award under other heads, viz., loss of love and affection to minor sons and loss of consortium, the amount awarded is less. So also, the award under the heads transportation and funeral. Though, accident took place on 14.08.2002, the injured Vasanth Vincent has taken treatment in NLC General Hospital, Neyveli and latter at Appollo Hospital, Chennai and died on the next day. There is no award under the head medical expenses.

13. In view of the above, we are not inclined to reduce the award amount for the reason that the overall compensation, appears to be less. Since, no appeal has been filed by the claimants seeking enhancement, award of the tribunal is sustained and the Civil Miscellaneous Appeal is dismissed. No

costs.

14. The appellant-Insurance Company is directed to deposit the entire award amount with accrued interest and costs to the credit of M.C.O.P.No.632 of 2004 on the file of the Motor Accident Claims Tribunal, [Chief Judicial Magistrate], Cuddalore, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier.

15. On such deposit, except the minor respondents, the 1st respondent is permitted to withdraw her share, as apportioned by the tribunal, with proportionate accrued interest and costs, by making necessary applications. The share of the minors/respondents 2 and 3 shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors / respondents 2 and 3, shall be paid to the mother of the minors, the 1st respondent herein viz., Mrs.Morlin Padma Vasanth, once in three months, till they attain majority.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Motor Accident Claims Tribunal,
([Chief Judicial Magistrate], Cuddalore.

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C.M.A.No.764 of 2017

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