IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.1436 of 2005
and CMP.No.8326 of 2005

The Branch Manager,
United India Insurance Company Ltd.,
No.3, Main Road, Post Box No.22,
Gobichettipalayam - 638 452. .. Appellant/ Respondent- I

Versus

1.V.Suresh
2.V.Dhanasekaran
3.V.Babu
4.V.Mohana Sundari
5.V.Veeranan .. Respondents 1-5/Petitioners 3-7
6.S.Shanthi .. Respondent 6 / Respondent- II
7.R.Raj .. Respondent 7 / Respondent - III

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 29.04.2004 made in MCOP.No.523 of 1997 on the file of Motor Accident Claims Tribunal, VI Small Causes Court at Madras.

For Appellant : Mr.K.Padmanabhan
For Respondents : No Appearance

J U D G M E N T

The Appellant / United India Insurance Company Ltd., has preferred this Appeal against the decree and judgment dated 29.04.2004 made in MCOP.No.523 of 1997 on the file of Motor Accident Claims Tribunal, VI Small Causes Court at Madras.

2. The brief facts, leading to the Claim Application, are as follows:-

(i) On 17.09.1994, the deceased Rajendran was proceeding in his Motor Cycle bearing Registration No.TN - 07-A-5348 in Anna Salai Main Road, when he near the three main road junction, the second respondent, who drove the vehicle bearing Registration No.T.C.B.6901 in a rash and negligence manner dashed against Rajendran, resulting the same, Rajendran died on the spot, in view of the injuries sustained.

(ii) The respondent/Insurance Company in the counter statement, by denying the averments made by the claim petition has stated that the deceased had driven the vehicle, in a rash and negligence manner which resulted in the accidents. It is also stated that the claimants have not mentioned the age, income and occupation of the deceased for claiming compensation.

(iii) The Claimants being legal heirs of the deceased have claimed a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) as compensation before the Tribunal. The Tribunal after analyzing the evidence and documents placed before it, has awarded a sum of Rs.4,77,894/- (Rupees Four Lakhs Seventy Seven Thousand Eight Hundred and Ninety Four Only) under the various heads, as follows:-

1. Loss of Income	=	Rs.6,71,840/-
(-) 1/3 of Personal expenses	=	Rs.2,23,946/-
		Rs.4,47,893.33/-
2. Nourishment	=	Rs.300/-
3. Damages for Watch	=	Rs.700/-
4. Damages for Cycle	=	Rs.4,000/-
5. Loss of love & affection	=	Rs.25,000/-
Total	=	Rs.4,77,894/-

(iv) Aggrieved against the above said award, the Insurance Company has preferred this Appeal.

3. In the grounds of appeal, the appellant / Insurance Company has stated that the total award passed by the Tribunal at Rs.4,77,894/- is highly excessive, since the claimants are only Brother and Sister. The multiplier applied by the Tribunal at 13 is also not proper, by considering the age of the mother of the deceased. Further, the averments made in the Appeal is that, in the absence of the original claimants, who are parents, the multiplier applied at 13% is not proper. With regard to the contribution to the family members, deduction of 1/3rd is not proper, since the claimants are unmarried persons. Hence, on the whole, the sum arrived by the Tribunal at Rs.4,77,894/-, as compensation is highly excessive.

4. Heard the learned counsel appearing for the appellant. Though notice has been served on the claimants / respondents, none appeared on behalf of the respondents.

5. On a perusal of the records, it is seen that the claimants herein are Brother and Sister of the deceased; The original claim application was filed by the parents and subsequently the parents died, hence during the pendency of the claim application before the Tribunal, the legal representatives have been impleaded. The Tribunal after verifying the income of the deceased, by perusing Ex.P10, agreement-Ex.P13, and also his education qualifications-Exs.P15 & 16, has taken the annual income of the deceased at Rs.51,680/-.

6. It is submitted by the learned counsel appearing for the appellant / Insurance company that the multiplier taken at 13, by taking into account the age of the mother is not proper. It is further argued by the appellant that the proper multiplier to be applied to the deceased, who was an unmarried person, which is 10; hence, the multiplier taken by the Tribunal is not sustainable;

7. The contention raised by the appellant with regard to the multiplier adopted by the Tribunal has no legs to stand, in view of the age, avocation and income of the deceased. Further, this Court finds that the annual income arrived by the Tribunal at Rs.51,680/- is also not on the higher side, considering the age and qualification of the deceased. However, by considering the fact that the deceased was an unmarried person, this Court inclined to modify the deduction of 1/3rd towards the personal expenses from the total loss of income alone. Accordingly, this Court deducts the 50% of the amount from the total loss of Income arrived by the Tribunal. The amounts awarded in other respects are found proper and reasonable and does not warrant any interference. Accordingly, this Court modifies the awarded compensation given by the Tribunal, under the heads:-

1. Loss of Income : (Rs.51,680/- x 13 (-) 50% deducted towards personal expenses)	=Rs.3,35,920/-
2. Damages for Cloths	=Rs. 300/-
3. Damages for Watch	=Rs. 700/-
4. Damages for Cycle	=Rs. 4,000/-
5. Loss of love & affection	=Rs. 25,000/-
	Rs.3,65,920/-

8. In the result, the Civil Miscellaneous Appeal is partly-allowed by reducing the award from Rs.4,77,894/- to Rs.3,65,920/-. No Costs. This modified award amount shall carry the interest at the rate of 9% per annum as ordered by the Claims Tribunal from the date of petition till the date of deposit.

9. Since, it is represented by the learned counsel appearing for the appellant / Insurance Company that the entire award amount as ordered by the Claims Tribunal has already been deposited, this Court permitts the appellant to withdraw the balance amount lying to the credit of the said MCOP, if any.

10. The share of the compensation amount shall be as apportioned by the Claims Tribunal. Since all the respondents / claimants are majors, the Tribunal shall transfer the respective shares of the compensation awarded in this Appeal to the respondents/ claimants' bank accounts through RTGS

within a period of one week from the date of receipt of a copy of this order, if not already transferred.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

klt

To

1. VI Judge, Small Causes Court,
   The Motor Accident Claims Tribunal,
   Chennai.

Copy to
The section officer,
VR Section,
High court
Madras

+1cc to Mr. K.Padmanabhan, Advocate SR.No. 70336

C.M.A.No.1436 of 2005

A.SK(12/03/2019)