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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2018

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1967 of 2008

&

M.P.No.1 of 2008

1.Kulandaivel Gounder

2.Navaneetham Ammal

.. Appellants/4th & 5th Respondents

..Vs..

1.K.Valarmathi

2.Minor Kanimozhi

3.Minor B.Jeevitha

4.Minor Nithyanandan

.. Respondents 1 to 4/Claimants

(R2 to R4 minors rep by R1)

5.D.Selvi

6.The Divisional Manager,

Divisional Office, United Insurance Co. India Ltd.,

46-51, Katpadi Road, Vellore - 4.

7.M.Ezhumalai

.. Respondents 5 to 7/

Respondents 2 to 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 06.07.2005 passed by the Motor Accidents Claims Tribunal (CJM), Thiruvannamalai in MCOP.No.228 of 2004.

For Appellants

: Mr.G.Rajan

For Respondent 6

: Mr.S.Arun Kumar

For Respondents 1 to 5 & 7 : No appearance

J U D G M E N T

The instant appeal has been filed by the parents of the deceased challenging the non-apportionment of any part of compensation to them under the impugned Award dated 06.07.2005



passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai in MCOP.No.288 of 2004.

The brief facts leading to the filing of the instant appeal are as follows:

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2. One Bharathivijayan died on 04.05.2002 as a result of an accident caused by a lorry bearing registration No. TN25-C-5959 owned by the fifth respondent and insured with the sixth respondent. The respondents 1 to 4 who are the dependents of the deceased, preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.288 of 2004 seeking a compensation of Rs.20,00,000/- for the death of Bharathi Vijayan. The Appellants who are the parents of the deceased are the fourth and fifth respondents in the claim petition. The Motor Accident Claims Tribunal by its Award dated 06.07.2005 in MCOP.No.288 of 2004 directed the sixth respondent to pay the respondents 1 to 4 a sum of Rs.2,07,880/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and rejected the claim of the Appellants for apportionment of a part of the compensation awarded by the Tribunal to them as they claimed that they are also dependents of the deceased Bharathivijayan.

3. Aggrieved by the findings of the Tribunal rejecting the claim of the Appellants, the instant appeal has been filed by the parents of the deceased Bharathi Vijayan.

4. Heard, Mr.G.Rajan, learned counsel for the Appellants and Mr.S.Arun Kumar, learned counsel for the sixth respondent, insurance company. Despite service of notice on the remaining respondents and their names having been printed in the cause list today, none appears on their behalf.

5. According to the learned counsel for the Appellants, the Tribunal under the impugned Award ought to have considered the claim of the Appellants and ought to have apportioned a part of the compensation to the Appellants. According to the learned counsel for the Appellants, the Appellants being the parents of the deceased Bharathi Vijayan, the Tribunal ought to have apportioned a part of the compensation to them also. The learned counsel for the Appellants drew the attention of this Court to the findings of the Tribunal rejecting the claim of the Appellants for apportionment of a part of the compensation to them. The learned counsel for the Appellants submitted that the Tribunal has not given any reason for rejecting the claim of the Appellants.

6. Per contra, learned counsel for the sixth respondent insurance company would submit that no evidence was produced by



the Appellants before the Tribunal to prove that they are the dependents of the deceased Bharathi Vijayan.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) Excepting for filing a counter statement before the Tribunal that being the parents they are the dependents of the deceased Bharathi Vijayan, no oral or documentary evidence has been produced by the Appellant before the Tribunal to establish their dependency.

b) The legal heirship certificate for the deceased Bharathivijayan was not marked as an Exhibit before the Tribunal, the Appellants have also not cross-examined the claimants namely the respondents 1 to 4, before the Tribunal. On the other hand, it has been the consistent stand of the claimants that they are the only dependents of the deceased Bharathi Vijayan. The claimants are wife and minor children of the deceased Bharathivijayan.

c) The claimants have filed pension book and the pension certificate which were marked as Exs.P4 and P5 respectively before the Tribunal to prove that they are the only dependents of the deceased Bharathi Vijayan.

d) The Tribunal has considered all these documents and only thereafter, has passed the Award in favour of the respondents 1 to 4 who are the claimants and has rightly rejected the claim of the Appellants who are the respondents 4 and 5 in the claim petition, before the Tribunal

8. In the light of the above observations, this Court is of the considered view that there is no merit in the Appeal. Accordingly the Appeal is dismissed without costs. Consequently, connected miscellaneous petition is closed.

9. The sixth respondent is directed to deposit the amount awarded by the Tribunal together with interest from the date of claim till the date of deposit, after deducting the amount already deposited, to the credit of MCOP.No.228 of 2004 on the file of the Motor Accidents Claims Tribunal (CJM), Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent is permitted to withdraw her respective share by filing an appropriate application. Insofar as the minor respondents 2, 3 & 4 are concerned, their respective shares shall be deposited in any one of the Nationalised Banks



till they attain majority and the 1st respondent/mother of the minors is permitted to withdraw the interest accrued once in six months.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
Chief Judicial Magistrate,
Thiruvannamalai.

2. The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.G.Rajan, Advocate Sr.No.72049

+1 cc to Mr.S.Arun Kumar, Advocate Sr.No.72131

C.M.A.No.1967 of 2008 &
M.P.No.1 of 2008

BR(CO)
CSL/12.12.2018