

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.NO.3882 of 2008
and
M.P.No.1 of 2008

The Branch Manager,
National Insurance Co. Ltd.,
Branch Office,
Post Box No.23,
88-F, Bye Pass Road,
Dharmapuri Town & District. ... Appellant/2nd Respondent

Vs

1.Selvam
2.Thiagarajan
3.Maruthanayagam
4.Vivega Rani
5.Minor S.Goutham

Represented by his mother S.Saraswathi
... Respondents/ 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.11.2007 and made in MACTOP.No.442 of 2006 on the file of the Dharmapuri District Motor Accident Claims Tribunal at Krishnagiri (Chief Judicial Magistrate No.2 Court)

For Appellant : Mr.S.Vadivel

For Respondent No.2 : No appearance
No.1;Set Exparte before tribunal

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 29.11.2007 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate No.2 at Krishnagiri) in MACTOP.No.442 of 2006.

The brief facts leading to the filing of the instant appeal are as follows: 2. One Vellaiyan @ Vellaiya Gounder died as a result of an accident that took place on 16.07.2005 caused by a bus bearing registration No.TN29-M-0988 owned by the fifth respondent and insured with the Appellant. The accident happened due to the rash and

negligent driving by the driver of the bus which dashed against the TVS50-XL moped bearing registration No.TN23-K-6091, in which the deceased Vellaiyan @ Vellaiya Gounder was the rider. Vellaiyan @ Vellaiya Gounder succumbed to the injuries after taking treatment on 28.07.2005. The dependents of the deceased Vellaiyan @ Vellaiya Gounder, who are the respondents 1 to 4 in the instant Appeal preferred a claim before the Motor Accident Claims Tribunal seeking a compensation of Rs.9,00,000/- for the death of Vellaiyan @ Vellaiya Gounder. The Motor Accident Claims Tribunal by its Award dated 29.11.2007 in MACTOP.No.442 of 2006 directed the Appellant to pay the respondents 1 to 4 a sum of Rs.9,00,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal to the respondents 1 to 4, the instant appeal has been filed by the Insurance Company.

4. Heard Mr.S.Vadivel, learned counsel for the appellant. There is no representation on the side of the respondents. Notice sent to the respondents 1 to 4 was returned with an endorsement "Person not found". Since the appeal pertains to the year 2008 and this Court is going to confirm the Award, there is no necessity to serve notice on the respondents 1 to 4.

5. According to the learned counsel for the Appellant, the instant appeal has been filed questioning the quantum of compensation alone. According to the learned counsel for the Appellant, the quantum of compensation awarded by the Tribunal to the claimants is an excessive compensation. The learned counsel for the Appellant would contend that the compensation awarded by the Tribunal towards Transportation charges, Extra Nourishment Charges, Damages to clothing, Medical Bills, Funeral Expenses, Love and Affection and Loss of happiness and pecuniary loss is on the higher side.

6. This Court has examined the impugned Award.

7. The deceased Vellaiyan @ Vellaiya Gounder at the time of the accident, was doing rice and grain business and in the claim petition filed by the claimants, they had disclosed that the deceased was earning a monthly income of Rs.10,000/- at the time of the accident. The Tribunal assessed the age of the deceased Vellaiyan @ Vellaiya Gounder under the impugned Award at 54 years at the time of the accident. The accident happened on 16.07.2005. Due to the accident, the deceased was thrown out of the vehicle at a distance and sustained fatal injuries on his vital

organs. After the first aid treatment, the deceased was taken to the Manipal Hospital at Bangalore by Ambulance and admitted there, as an in-patient from 16.07.2005 to 28.07.2005 and then, for further treatment he was taken to the Government General Hospital at Chennai through Ambulance with two Doctors. In spite of intensive treatment given, the deceased died on 28.07.2005.

8. In the claim petition and in their oral evidence, the claimants have stated that they were entirely dependant on the deceased for their livelihood. They have also stated that the 1st respondent, who is the wife of the deceased, aged only 42 years at the time of the death of her husband has lost the company of her husband because of the accident at a very young age. The 2nd to 4th respondents who are the children of the deceased have also lost their parental care and affection of their father.

9. The respondents 1 to 4 have filed 8 documents before the Tribunal, which were marked as Exs.P1 to P8 which includes FIR (Ex.P1), Postmortem Certificate (Ex.P2), Insurance policy (Ex.P3), MVI Report (Ex.P4), Medical bills (Ex.P5), Transportation Bills (Ex.P6), Agreement (Ex.P7) and Legal Heirship Certificate (Ex.P8). They have also examined four witnesses on their side namely the 1st respondent (PW1), Nagendran, an eye-witness (PW2), Sivaji (PW3) and kalaiselvam (PW4). On the side of the appellant, no document was filed and no witness was examined.

10. The Tribunal under the impugned award has considered the oral and documentary evidence available on record and only thereafter, has passed the Award in favour of the respondents 1 to 4. The Tribunal under the impugned Award, has assessed the total compensation of Rs.9,93,000/- comprising of Rs.34,000/- towards Transport, Rs.10,000/- towards Extra Nourishment, Rs.6,000/- towards Damage occurred to TVS 50, Clothings, Chappan and Watch, Rs.1,00,000/- towards Medical Bills, Rs.15,000/- towards Ambulance and Funeral Expenses, Rs.1,00,000/- towards Love and Affection, Rs.2,00,000/- towards Loss of Happiness and Rs.5,28,000/- towards Pecuniary Loss. But the Tribunal has restricted the Award amount to Rs.9,00,000/-, since the claim was made by the claimants only for Rs.9,00,000/-.

11. This Court is of the considered view that the Award passed by the Tribunal is a reasoned and well considered Award and the total compensation awarded by the Tribunal under the impugned Award to the respondents 1 to 4 is a just compensation.

12. In the result, there is no merit in the instant appeal. Accordingly, the appeal is dismissed without costs. Consequently connected miscellaneous petition is closed.

13. The Appellant is directed to deposit the amount awarded by the Tribunal, after deducting the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, to the credit of MACTOP.No.442 of 2006, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the respondents 1 to 4 are permitted to withdraw their respective shares as per the ratio apportioned by the Tribunal, along with the accrued interest, lying to the credit of MACTOP.No.442 of 2006 by filing an appropriate application.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

nl
To

- 1.The Dharmapuri District,
The Motor Accident Claims Tribunal
Chief Judicial Magistrate No.2 Court
Krishnagiri
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Vadivel , Advocate SR.No. 74770

ASK(18/12/2018) C.M.A.No.3882 of 2008

WEB COPY