

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3358 of 2013
and M.P.No.1 of 2013

M/s.New India Assurance Co. Ltd.,
No.66, WB Road,
Trichy. Appellant/R2

vs

Thiru. Mani (Deceased)

1.Tmt.Lakshmi

2.Tmt.Kala

3.Thiru.Veerasingam

4.Thiru.Karthick

5.Thiru.Dharmaraj Respondents/Petitioners 1 to 5 &
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.260 of 2009 on 19-07-2012 on the file of the Learned Motor Accident Claims Tribunal (Subordinate - Judge) at Ariyalur.

For Appellant : Mr.J.Chandran

For Respondents : Mr.S.Kaithamalai Kumaran R1 to
R4

: R5 - served - no appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 19.07.2012, passed by the Motor Accident Claims Tribunal, Subordinate Judge at Ariyalur in MCOP.No.260 of 2009.

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

(i)One Mani sustained grievous injuries on 04.05.2009 as a result of an accident caused by a bus bearing Registration No.TN 45 AA 7297 owned by the fifth respondent and insured with the Appellant.

(ii)The injured Mani preferred a claim before the Motor Accident Claims Tribunal in MCOP No.260 of 2009, seeking a compensation of Rs.5,00,000/-. After filing of the claim, the injured Mani died on 15.02.2010 and his legal representatives are the respondent Nos.1 to 4 in this appeal. They sought for enhancement of compensation before the Tribunal from Rs.5,00,000/- to Rs.7,00,000/- as a result of the death of Mani. According to them, Mani died only due to the accident caused by the insured vehicle.

(iii)The Motor Accident Claims Tribunal by its Award dated 19.07.2012 in M.C.O.P.No.260 of 2009, directed the Appellant to pay the respondent Nos.1 to 4 a sum of Rs.3,75,000/- together with interest at 7.5% per annum from the date of claim till the date of realization.

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

4.Heard, Mr.J.Chandran, learned Counsel for the Appellant and Mr.S.Kaithamalai Kumaran, learned Counsel for the respondent Nos.1 to 4.

5.According to the learned Counsel for the Appellant, under the impugned Award, the Tribunal treated the case as a fatal accident, but, in fact it is a injury claim. He drew the attention of this Court to the claim petition and submitted that the claim was filed only by the deceased while he was alive and during the pendency of the claim, he died and no documents were produced by the respondent Nos.1 to 4 before the Tribunal to establish that the deceased was continuously taking medical treatment right from the date of the accident till the date of death. According to him, the Tribunal erroneously treated the case as a fatal accident and has erroneously granted higher compensation to the respondent Nos.1 to 4 under the impugned Award.

6.Per contra, the learned Counsel for the respondent Nos.1 to 4 submitted that only due to the accident Mani sustained fracture, crush injuries on his left leg and abrasions all over the body which resulted in his death subsequently. According to him, the Tribunal awarded a just compensation under the impugned Award.

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)The accident happened on 04.05.2009 and the claim was filed on 25.05.2009 before the Tribunal. The claim was filed

only by Mani, who died during the pendency of MCOP No.260 of 2009. Mani sustained injuries as a result of the accident caused by the insured vehicle.

(b)As seen from the injury, it would certainly not have resulted in the death of Mani as no head injury has been sustained by him or he has not sustained any injuries to his vital organs. But based on the evidence of the Doctors PW3 and PW4, who have not treated Mani, the Tribunal erroneously came to the wrong conclusion that only due to the injuries sustained as a result of the accident he died and has also awarded excessive compensation to the respondent Nos.1 to 4.

(c)The respondent Nos.1 to 4 have also not produced before the Tribunal any medical records to establish that Mani was taking continuous medical treatment for the injuries sustained by him as a result of the accident, from the date of accident till date of his death. Without any documentary evidence, the Tribunal erroneously treated the claim as a fatal accident claim and awarded excess compensation to the respondent Nos.1 to 4 under the impugned Award.

(d)The Tribunal under the impugned Award awarded Rs.2,64,000/- towards loss of earning, Rs.30,000/- towards loss of consortium, Rs.30,000/- towards love and affection, Rs.41,000/- towards medical expenses, Rs.5,000/- towards transportation to hospital, Rs.5,000/- towards funeral expenses in all put together a total compensation of Rs.3,75,000/- has been awarded by the Tribunal under the impugned Award. The compensation awarded by the Tribunal under the impugned Award as follows:

S.No.	Head	Amount awarded by the Tribunal
1	Loss of Earning	Rs.2,64,000/-
2	Loss of Consortium	Rs.30,000/-
3	Loss of Love and Affection	Rs.30,000/-
4	Medical Express	Rs.41,000/-
5	Transport to Hospital	Rs.5,000/-
6	Funeral Expenses	Rs.5,000/-
	Total	Rs.3,75,000/-

(e)As observed earlier, the Tribunal ought not to have held the claim as a fatal accident claim but ought to have held the claim as an injury claim. Therefore, the compensation awarded by the Tribunal under the impugned Award towards loss of earning, loss of consortium, loss of love and affection and funeral expenses ought not to have been awarded and the same has erroneously been awarded by the Tribunal under the impugned Award and the respondent Nos.1 to 4 are not entitled to receive any compensation under those heads:

(f) Considering the nature of injuries sustained by Mani as a result of the accident, the respondent Nos.1 to 4, who are the legal representatives are entitled to receive compensation under the loss of estate, medical expenses, transportation to hospital, attender charges, extra nourishment, loss of income during the treatment period. In the considered view of this Court, the award passed by the Tribunal under the impugned Award as modified in the following manner:

S.No.	Head	Modified amount
1	Loss of Estate	Rs.75,000/-
2	Medical Expenses	Rs.41,000/-
3	Transport to Hospital	Rs.25,000/-
4	Attender Charges	Rs.25,000/-
5	Extra nourishment	Rs.29,000/-
6	Loss of income during treatment period	Rs.30,000/-
	Total	Rs.2,25,000/-

8. In the light of the above observations, the impugned Award dated 19.07.2012, passed in MCOP No.260 of 2009 by the Motor Accident Claims Tribunal Subordinate Judge at Ariyalur is hereby modified and the compensation awarded is reduced from Rs.3,75,000/- to Rs.2,25,000/- and the Appellant is directed to deposit the balance amount after adjusting the sum already deposited before the Tribunal along with interest at 7.5% per annum on the balance amount from the date of claim till date of realization, to the credit of MCOP No.260 of 2009, on the file of the Motor Accident Claims Tribunal Subordinate Judge at Ariyalur, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents Nos.1 to 4 are permitted to withdraw the said sum by filing an appropriate application. No costs. Consequently, the connected miscellaneous petition is closed.

pam

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Subordinate Judge at Ariyalur

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

+lcc to M/s.S.Kaithamalai Kumaran, Advocate SR.NO.69877

SAI (CO)
sm:13.11.2018

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