WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No.2073 of 2014
and
M.P. No.1 of 2014

IFFCO TOKIO General Insurance Co. Ltd.,
No.28, 2nd Floor,
North Usman Road,
T.Nagar, Chennai - 600 017. ... Appellant/2nd Respondent

Vs

1.Mrs.Subbathal
2.M.Pechimuthu
3.M.Mahesan
4.V.M.Aruchamy ...Respondents 1to4/Petitioners

5.Thiyagarajan ...5th Respondent/1st Respondent

(5th Respondent ex parte in Lower Court
Hence notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.186 of 2010, dated 29.07.2011 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.2, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.A.Swaminathan for R1 to R4

JUDGMENT

The instant appeal has been filed by the Insurance Company, challenging the Award dated 29.07.2011, passed by the Motor Accident Claims Tribunal, Fast Track Court No.2, Coimbatore, in M.C.O.P.No.186 of 2010.

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

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

(i)One Muthusamy Gounder, died on 29.03.2008, as a result of an accident caused by an Ambassador Car, bearing Registration No.TN-38-AR-7439 owned by the fifth respondent and insured with the Appellant.

(ii)The dependents of the deceased Muthusamy Gounder, who are the respondent Nos.1 to 4 in this appeal, preferred a claim before the Motor Accident Claims Tribunal, Fast Track Court No.2, Coimbatore, in M.C.O.P.No.186 of 2010, seeking a compensation of Rs.15,00,000/- for the death of Muthusamy Gounder, caused by the Ambassador Car, owned by the fifth respondent and insured with the Appellant.

(iii)The Motor Accident Claims Tribunal, Fast Track Court No.2, Coimbatore, by its Award dated 29.07.2011, passed in M.C.O.P.No.186 of 2010, directed the Appellant to pay the respondent Nos.1 to 4 a sum of Rs.3,71,000/-, together with interest at 7.5 % per annum from the date of claim till the date of realization.

3.Aggrieved by the Award dated 29.07.2011, passed by the Motor Accident Claims Tribunal in M.C.O.P.No.186 of 2010, the Insurance Company, has filed the instant appeal.

4.Heard, Mr.N.Vijayaraghavan, learned Counsel for the Appellant and Mr.A.Swaminathan, learned Counsel for the respondent Nos.1 to 4.

5.According to the learned Counsel for the Appellant, the Tribunal has erroneously assessed the monthly income of the deceased at Rs.3,000/- and also assessed the loss of income at Rs.1,20,000/- without any oral or documentary evidence to substantiate the same. According to him, considering the age of the deceased, who was 68 years old at the time of the accident, the Tribunal ought not to have awarded Rs.1,00,000/- towards mental agony and another Rs.1,00,000/- towards loss of love and affection, and ought not to have awarded a total compensation of Rs.3,71,000/- to the respondent Nos.1 to 4.

6.Per contra, the learned Counsel for the respondent Nos.1 to 4 would submit that the deceased was an agriculturalist, owning 15 acres of land and the respondent Nos.1 to 4 had made a claim for Rs.15,00,000/- before the Tribunal, but the Tribunal has awarded only Rs.3,71,000/-. According to him, the respondent Nos.1 to 4 were entirely dependent on the income of the deceased, for their survival.

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

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

observes the following:

(a)Before the Tribunal, the respondent Nos.1 to 4 have examined two witnesses namely, the first respondent herein and Mr.Kumar, a person belonging to the same village as that of the deceased. In their chief examination, they have stated that the deceased was owning 15 acres of agricultural land at the time of his death. The Appellant has not examined any witness on their side, nor have they filed any documents before the Tribunal, to disprove the claim of the respondent Nos.1 to 4.

(b)The accident took place in the year 2008, resulting in the death of Muthusamy Gounder. The Tribunal has assessed the notional income of the deceased at the time of his death at Rs.3,000/-. Even though, no documentary evidence was placed by the respondent Nos.1 to 4 to prove that the deceased was owning 15 acres of agricultural land at the time of his death, there is also no contra evidence let in by the Appellant to disprove the said claim of the respondent Nos.1 to 4 before the Tribunal.

(c)The Tribunal has awarded Rs.1,00,000/- towards mental agony and another Rs.1,00,000/- towards loss of love and affection, under the impugned Award. Even though, this may amount to duplication, being a fatal case and considering the quantum of compensation awarded by the Tribunal under the impugned Award, this Court is of the considered view that the Tribunal awarding separately a sum of Rs.1,00,000/- towards mental agony and loss of love and affection can be adjusted towards transportation cost, loss of estate and funeral expenses where the respondent Nos.1 to 4 were not adequately compensated.

8.In light of the above observations, there is no merit in this appeal and the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest at 7.5% per annum from the date of claim till the date of realization, after deducting the amount already deposited, if any, to the credit of MCOP No.186 of 2010, on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Coimbatore, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the respondent Nos.1 to 4 are permitted to withdraw the said sum by filing an appropriate application.

mkn/pam

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

To

1. The Motor Accident Claims Tribunal,
   Fast Track Court No.2, Coimbatore.

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.65161
+1cc to Mr.A.Swaminathan, Advocate, S.R.No.65187.

C.M.A.No.2073 of 2014
and M.P.No.1 of 2014

RR(CO)
KAK(09/01/2019)

https://hcservices.ecourts.gov.in/hcservices/