

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.09.2018

CORAM:
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.NO.1062 of 2009
and
M.P.No.1/2009

M/s. United India Insurance & Co.Ltd.,
53, A.KT.Complex, Katcherry Road,
Kallakuruchi Town and Taluk

...Appellant

Vs

1. Maruthai
2. Azhagammal (Died)
3. Kandasamy
4. MGP Marketing Centre,
469. Mahalakshmi Complex,
Annapuranam, Salem.

...Respondents

(R2 -Died. R1 & R3 LRs of the deceased
R2 as per memo dated 11/9/2018 & vide
court order dated 11.09.2018)

Prayer: Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act, 1988 against the Judgment and Decree
dated 29.7.2005 made in MACTOP.NO.162 of 2005 on the file of
the Motor Accident Claims Tribunal, (Fast Track Court),
Kallakuruchi.

For Appellant : Mr. S.Ramalingam

For Respondents : R1, R3 and R4 served-
No appearance, R2 - died

JUDGMENT

A memo dated 23.08.2018 has been filed by the appellant
stating that the 2nd respondent being the mother of the deceased
died leaving behind the 1st respondent viz., father of the
deceased and 3rd respondent viz., the brother of the deceased
as legal heirs and legal representatives. The said memo is
recorded and the 1st and 3rd respondents are treated as legal
heirs and legal representatives of the deceased 2nd respondent.

2. The instant appeal has been filed challenging the Award
dated 29.07.2005 passed in MACTOP.No.162 of 2005 by the Motor
Accident Claims Tribunal, Fast Track Court , Kallakuruchi.

3. The brief facts leading to the filing of the instant appeal are as follows;

(i) One Pichamuthu died as a result of an accident caused by a vehicle bearing Registration No.TN-30-E-3620 (Mini Lorry) owned by the 4th respondent and insured with the appellant. The dependants of the deceased who are the respondents 1 to 3 in this appeal preferred a claim before the Motor Accident Claims Tribunal in MACTOP.No.162 of 2005 seeking compensation of Rs.5 lakhs.

(ii) The Motor Accident Claims Tribunal, by its Award dated 29.07.2005 passed in MACTOP.No.162 of 2005 directed the appellant to pay the respondents 1 to 3, a sum of Rs.5,47,300/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation.

(iii) The 2nd respondent, who is the mother of the deceased is also dead and the first and third respondents are her legal heirs and a memo to that effect was also filed before this Court by the appellant which was taken on file and recorded by this Court. Accordingly, Maruthai and Kandasami are the present legal heirs of the deceased.

(iv) Aggrieved by the Award dated 29.07.2005 passed in MACTOP.No.162 of 2005, the instant appeal has been filed by the Insurance Company.

4. Heard Mr.S. Ramalingam, learned counsel for the appellant Insurance Company. Despite service of notice on the respondents and their names having been printed in the cause list today, none appears on their side.

5. According to the learned counsel for the appellant, the tribunal has erroneously fixed the monthly income of the deceased at the time of the accident at Rs.4,000/- without any basis. Further the respondents 1 to 3/claimants have also failed to prove the employment details of the deceased before the tribunal. Further he would contend that the tribunal has erroneously applied 17 multiplier while calculating the quantum of compensation. He would also contend that the interest awarded by the tribunal at 9% per annum is excessive.

6.This Court, after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the learned counsel for the appellant, observes the following;

a) In their claim petition, the respondents 1 to 3 have claimed that the deceased Pichamuthu was doing Tapioca business and was aged 21 years at the time of accident and was earning a monthly income of Rs.5,000/- and no contra evidence has been produced by the appellant before the tribunal to disprove the avocation of the deceased, his age and his monthly income. Since no document was filed to prove the monthly income of the

deceased, the tribunal has rightly assessed the notional income of the deceased at Rs.4,000/- per month, considering the nature of his avocation, his age and the year of accident which happened in the year 2004.

b) As per the decision of the Apex Court in the case of (Sarla Verma and others Vs. Delhi Transport Corporation and another), reported in 2009 ACJ 1298, the deceased being 21 years of age at the time of accident, the correct multiplier to be applied is 18, whereas the tribunal has applied only 17 multiplier in assessing the compensation towards loss of dependency, but the tribunal did not deduct 50% towards personal expenses of the deceased at the time of the accident, as he was a bachelor. Considering the same, the compensation awarded towards loss of dependency in favour of the respondents is a just compensation.

7. Insofar as the interest is concerned, considering the facts and circumstances of the instant case, the tribunal has awarded interest at the rate of 9% per annum on the compensation amount. In the considered view of this Court, the said interest payable to the respondents 1 to 3 is a reasonable interest.

8. In the result, this Court is of the considered view that there is no merit in the instant appeal and accordingly, the appeal is dismissed. No costs. Consequently, connected M.P.No.1 of 2009 is closed.

9. It is represented by the learned counsel for the appellant that the appellant at the time of admission of the appeal and as directed by this Court, has deposited 50% of the Award amount before the Tribunal. The appellant is directed to deposit the remaining award amount together with interest at the rate of 9% per annum within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 and 3 are permitted to withdraw the said sum together with accrued interest by filing an appropriate application as per the apportionment made by the tribunal.

msr

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal, (Fast Track Court),
Kallakuruchi.
2. The Record Clerk,
VR Section,
Madras High Court.

+1cc Mr.S.Ramalingam, Advocate SR.NO.63026

C.M.A.NO.1062 of 2009
and
M.P.No.1/2009

VSN(CO)
KAK (29/11/2018)



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