

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2018

CORAM

THE HONOURABLE MR. JUSTICE Abdul Quddhose

C.M.A.No.2406 of 2010

and

M.P.No.1 of 2010

National Insurance Co. Ltd.,
Divisional Manager,
No.19, Officers Line,
Vellore.

..Appellant

..Vs..

1. V.Adimurugan
- 2.Minor. Adi Arunachalam
- 3.Minor. Iswariya
[Minor petitioners 2 & 3 rep by their
Father & next friend V.Adimurugan]
- 4.T.Kanagavijayan
- 5.R.Anandaravi
- 6.The Oriental Insurance Co. Ltd.,
Divisional Manager,
Katpadi Road,
Vellore.

..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 22.03.2010 made in M.C.O.P.No.158 of 2005 on the file of the Motor Accidents Claims Tribunal, Arani, Thiruvannamalai District.

For Appellant : Mr.R.Navaneetha Krishnan
For RR1 to R3 : Mr.P.Satheesh Kumar

For RR4 : Mr.J.Chandran

For RR5 to R6 : No appearance

J U D G M E N T

The instant appeal has been filed, challenging the award dated 22.03.2010 passed by the Motor Accidents Claims Tribunal, Arani, Thiruvannamalai District in M.C.O.P.No.158 of 2005. The Appellant is the Insurance Company and they have challenged the quantum of compensation awarded by the Tribunal in favour of the respondents No.1 to 3.

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

2. Kalaiselvi @ Selvi died on 19.05.2005 as a result of an accident caused by a passenger bus bearing registration No.TN.23D8179 insured with the appellant. The dependents of the deceased Kalaiselvi @ Selvi preferred a claim before the Motor Accident Claims Tribunal, Arani in M.C.O.P.No.158 of 2005 seeking compensation of Rs.18,00,000/- for the death of Kalaiselvi @ Selvi. The Motor Accident Claims Tribunal by its award dated 22.03.2010 in M.C.O.P.No.158 of 2005 directed the appellant to pay the respondents No.1 to 3, a sum of Rs.18,00,000/- together with interest of 7.5% per annum from the date of claim till the date of realization and also awarded costs.

3. Aggrieved by the award dated 22.03.2010 passed by the Motor Accident Claims Tribunal, Arani in M.C.O.P.No.158 of 2005, the instant appeal has been filed by the Insurance Company challenging the quantum of compensation awarded to the respondents No.1 to 3.

4. Heard Mr.R.Navaneetha Krishnan, learned counsel for the appellant and Mr.P.Satheesh Kumar, learned counsel for Respondents No.1 to 3.

5.The primary ground for challenge in the instant appeal is that the compensation awarded to the respondents No.1 to 3 under the impugned award is excessive and not in accordance with law.

6.According to the appellant, the Tribunal has erred in applying 17 multiplier and has also erroneously awarded Rs.20,000/- towards love and affection and Rs.20,000/- towards mental agony and Rs.5,000/- towards funeral expenses. Further, the appellant has also challenged the award of interest at 7.5 % per annum on the compensation amount.

7.Per contra, the learned counsel for the respondents No.1 to 3 would submit that the award passed by the Tribunal is a just compensation. He referred to the judgment of the Hon'ble Constitution Bench of Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) and submitted that the quantum of compensation awarded to the respondents No.1 to 3 is

well within the limits prescribed under the said judgment.

8.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) It is an undisputed fact as per the findings of the Tribunal that the bus which is insured with the appellant was at fault and only due to the rash and negligent driving of its driver, the accident happened, resulting in the death of the deceased Kalaiselvi @ Selvi.

(b) The age of the deceased as well as her dependents are undisputed.

(c) On the side of the respondents No.1 to 3, two witnesses were examined including respondent No.1 as well as an eye witness and seven documents were marked as Exs.P1 to P7. On the side of the appellant, no document was marked as exhibit and no witness was examined.

9.The Tribunal awarded Rs.17,79,900/- towards loss of future income by applying 17 multiplier, considering the fact that the deceased was earning Rs.8,725/- per month as a Government teacher. The salary certificate of the deceased Kalaiselvi @ Selvi was also filed as a document which was marked as Ex.P5 before the Tribunal, confirming that her salary was Rs.8,725/- per month at the time of the accident. The Tribunal has also awarded Rs.20,000/- towards loss of love and affection and another Rs.20,000/- towards loss of happiness and Rs.5000/- for funeral expenses. All these sums are well within the limits prescribed under the Constitution Bench Judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) referred to supra.

10.Considering all these facts, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed.

11.Learned counsel for the respondents submits that the second respondent, at the time, when the appeal was filed, was a minor and now he has attained majority. The second respondent is directed to file an application before the Motor Accidents Claims Tribunal, Arani to declare him as a major and the Tribunal shall allow the said application subject to filing of documentary proof by the second respondent as regards the age of the second respondent.

12.It is brought to the notice of this Court that at the time of granting stay by this Court, the appellant had deposited a sum of Rs.10,00,000/- to the credit of M.C.O.P.No.158 of 2005. The appellant is now directed to

deposit the balance amount as directed by this Court to the credit of M.C.O.P.No.158 of 2005 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 2 are permitted to withdraw their proportionate share from and out of the amount lying to the credit of MCOP.No.158 of 2005 on the file of the Motor Accident Claims Tribunal, Arani, along with accrued interest by filing an appropriate application. Insofar as respondent No.3, who still continues to be a minor, the Tribunal is directed to invest the proportionate share of the third respondent in any of the Nationalized Bank in a fixed deposit scheme till he attains majority and the first respondent the father is permitted to withdraw the interest portion alone in respect of the entitlement of the third respondent under the award for the welfare of the minor.

13.Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mfa

To:

1.The Motor Accident Claims Tribunal,
Arani, Thiruvannamalai District.

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

+lcc to Mr.P.Satheesh Kumar, Advocate sr.no.58095
+lcc to Mr.S.Arunkumar, Advocate sr.no.58502

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