

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.825 of 2018
and
C.M.P.No.6817 of 2018

United India Insurance Company Limited,
No.134 & 135, Greams Road,
Thousand Lights,
Chennai 600 006. ... Appellant

Vs

1.K.Kalaichelvi

2.K.K.Kaniskar
(Minor rep. by his mother and next friend
the 1st respondent herein)

3.N.Vasantha

4.M.Nachimuthu

5.P.Ravi

6.P.Philomi
(3rd respondent impleaded as per order in
M.P.No.2133 of 2016 dated 26.08.2016) ... Respondents

PRAYER : Civil Miscellaneous Appeal filed against the award
and decree dated 12.12.2017 made in M.C.O.P.No.7703 of 2013 on
the file of Motor Accidents Claims Tribunal, (In the II Court of
Small Causes, Chennai)

For Appellant : Mr.A.Dhiraviyanathan

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company
against the award of Rs.15,67,000/- for the death of one
Mr.N.Kotteswaran, aged about 39 years, who was self employed,
allegedly earning about Rs.3,22,456/- per month, in the accident

occurred on 25.08.2013, when the deceased was riding his motorcycle, which was hit down by a lorry driven rashly and negligently.

2. Heard Mr.A.Dhiraviyanathan, learned counsel appearing for the appellant.

3. Mr.A.Dhiraviyanathan, learned counsel appearing for the appellant would submit that the accident occurred, because of the deceased, as the lorry was coming in the reverse and the deceased did not move his vehicle, inviting the accident. Further, he would submit that instead of 7.5% interest, 9% interest has been granted. Moreover, 1/4th has been deducted, in spite of the fact that Class I legal heirs are only respondents 1 to 3, whereas the 4th respondent is the father, who is not a Class I legal heir.

4. A perusal of the records would show that on 25.08.2013, the driver of the lorry, which is insured with the appellant company came on the reverse side, rashly, negligently and recklessly, without noticing the motorcycle. Moreover, while taking reverse into the company, dashed against the motorcycle and caused fatal accident and it is proved by PW2, eyewitness, as well as Ex.P.1-F.I.R and Ex.P.3-charge sheet. In view of the categorical statement made by PW2/eyewitness that the accident had occurred due to the rash and negligent driving of the lorry, which was insured with the appellant, the Tribunal rightly came to the conclusion that the accident had occurred because of the negligent driving of the lorry driver, as there was no rebuttal evidence on the side of the appellant/insurance company.

5. With regard to 1/4th deduction is concerned, the deceased was aged about 39 years and the 4th respondent, who is the father of the deceased was aged about 65 years. Though the 4th respondent may not be a Class I heir, still he is a dependent on his deceased son. What is required to be seen, under the provisions of the Motorcycle Act is only the dependency and not whether the dependents are Class I heirs or Class II heirs. Therefore, the Tribunal, taking into consideration the size of the family (i.e.,) four, rightly deducted 1/4th towards personal expenses of the deceased, as per the judgment of the Honourable Supreme Court in Sarala Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC). Therefore, the contention of the learned counsel appearing for the appellant in this regard is liable to be rejected.

6. With regard to 9% interest awarded by the Tribunal, though usually, it is 7.5%, in the facts and circumstances of the case, Tribunal, in its discretion, awarded 9% interest and therefore, it does not call for any interference. In fact, a sum of Rs.15,000/- towards loss of estate should have been awarded.

Moreover, no amount was awarded towards loss of love and affection, to respondents 2 to 4 which is akin to the amount given towards loss of consortium. Taking into consideration the above facts, this Court is not inclined to reduce the rate of interest.

7.The award of the Tribunal is confirmed on all aspects. The ratio adopted by the Tribunal to apportion the compensation is also confirmed.

8.The appellant is directed to deposit the entire award amount along with interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the respective shares to the respective respondents through RTGS, except the 2nd respondent/minor's share, which has to be deposited in interest bearing fixed deposit in any one of the nationalised banks, till he attains majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

9.Accordingly, this Appeal is dismissed. Consequently connected miscellaneous petitions are closed. No costs.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

sai

To

The II Judge,
Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

+1 CC to Mr.A.Dhiraviyanathan, Advocate sr 25787.

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C.M.A.No.825 of 2018

MG(CO)
SP(06/06/2018)