

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2559 of 2018

and

C.M.P.No.19442 of 2018

The Branch Manager,
The New India Assurance Co. Ltd.,
Bagalur Road,
Hosur - 635 109. ... Appellant/2nd Respondent

Vs.

1.Sudha

2.Ravi

3.Pillamma ... Respondents 1 to 3/
Claimants 1 to 3

4.A.Syed Jakir Hussain ... 4th Respondent/
1st Respondent

(4th respondent remained exparte and
notice dispensed with for him)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.02.2018 made in M.C.O.P.No.572 of 2017, on the file of Motor Accidents Claims Tribunal / Special District Court, Krishnagiri.

For Appellant : M.Krishnamoorthy

WEB COPY
J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 06.02.2018 made in M.C.O.P.No.572 of 2017, on the file of Motor Accidents Claims Tribunal / Special District Court, Krishnagiri.

2.The appellant is second respondent/Insurance Company, respondents 1 to 3 are the claimants and fourth respondent, owner of vehicle, is first respondent in M.C.O.P.No.572 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. The respondents 1 to 3 filed the above claim petition claiming a sum of Rs.35,00,000/- as compensation for the death of one Srinivasan, who died in the accident that took place on 01.08.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the driver of the car belonging to the fourth respondent and directed the fourth respondent and the appellant to pay the compensation jointly and severally to the respondents 1 to 3 and awarded a sum of Rs.12,40,000/- as compensation.

4.Against the said award dated 06.02.2018 made in M.C.O.P.No.572 of 2017, the appellant has come out with the present appeal challenging the quantum of compensation granted by the Tribunal.

5.The learned counsel appearing for the appellant contended that the date of birth of the deceased is 04.03.1961 as per the driving license and he was aged 54 years at the time of accident. The Tribunal erroneously fixed the age of the deceased at 46 years based on postmortem report. The Tribunal without any basis fixed notional income of the deceased at Rs.9,000/- per month, which is on higher side. The respondents 1 to 3 are not entitled to 25% enhancement towards future prospects. The respondents 1 to 3 are entitled only 10% towards future prospects. The amounts awarded by the Tribunal under different heads are excessive and hence, prayed for setting aside the award passed by the Tribunal.

6.Heard the learned counsel appearing for the appellant and perused the materials on record.

7.From the materials available on record, it is seen that both the appellant and respondents 1 to 3 have not filed any document before the Tribunal to prove the age of the deceased. The learned counsel appearing for the appellant contended that the date of birth of the deceased is 04.03.1961 as per the driving license and age of the deceased was 54 years at the time of accident. The appellant has not produced the said driving license before the Tribunal. In view of the above circumstances, the Tribunal has taken the age of the deceased as mentioned in the postmortem report, i.e., 46 years, which is proper.

8.As far as notional income of the deceased fixed by the Tribunal is concerned, the respondents 1 to 3 have contended that the deceased was owning poultry farm and earning a sum of Rs.40,000/- per month. The respondents 1 to 3 have not produced any documents with regard to the said income. It is not the case of the appellant that deceased was not the owner of the poultry farm. In view of the undisputed fact, the amount of Rs.9,000/- per month, fixed as the notional income of the deceased by the Tribunal for the accident that took place in the year 2015 is not excessive. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) in (National Insurance Company v. Pranay Sethi), granted compensation under the different heads, which is not excessive. In my considered opinion, the compensation awarded by the Tribunal at Rs.12,40,000/- is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

9. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw their respective shares as apportioned by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk/kj

To

The Motor Accidents Claims Tribunal
Special District Judge, Krishnagiri.

+1 cc to Mr.M.Krishnamoorthy, Advocate Sr.No.79243

C.M.A.No.2559 of 2018

GMR (CO)
CSL/03.01.2019