

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2946 of 2018
and C.M.P.No.22311 of 2018

M/s.Reliance General Insurance Company Limited,
The Branch Office, 3rd Floor,
No.408, Perundurai Salai,
Erode - 638 011. ... Appellant/3rd Respondent

Vs.

A.Subramaniam(Died)
1.S.Premavathi

2.S.Usha Nandhini

3.S.Priyadharshini

... Respondents 1 to 3 /Petitioners

4.P.Eswaramoorthy

5.P.Palaniammal ... 4 & 5 Respondents/Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 12.04.2018 made in M.C.O.P.No.319 of 2012 on the file of Motor Accidents Claims Tribunal, Sub Court, Bhavani, Erode.

For Appellant : M/s.M.B.Gopalan Associates

For Respondents: Mr.N.Chinnaraj
1 to 3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 12.04.2018 made in M.C.O.P.No.319 of 2012 on the file of Motor Accidents Claims Tribunal, Sub Court, Bhavani, Erode.

2.The appellant is the third respondent in M.C.O.P.No.319 of 2012 on the file of Motor Accidents Claims Tribunal, Sub Court, Bhavani, Erode. The respondents 1 to 3 filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one A.Subramaniam, who died in the accident that took place on 22.05.2012. Originally, the deceased A.Subramaniam filed the claim petition, claiming a sum of

Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.05.2012. Pending claim petition, he died on 17.09.2013. The respondents 1 to 3 were brought on record and they claimed compensation for death of the said A.Subramaniam.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the said A.Subramaniam did not die due to the injuries sustained by him in the accident. Considering the evidence of P.W.3/Doctor, the Tribunal held that the deceased A.Subramaniam sustained 50% disability, applying multiplier of '9' and granted a sum of Rs.5,40,000/- as compensation towards permanent disability and awarded compensation under other heads and directed the appellant-Insurance Company to pay a sum of Rs.15,15,000/- as total compensation to the respondents 1 to 3.

4.Against the said award dated 12.04.2018 made in M.C.O.P.No.319 of 2012 , the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in holding that the deceased died due to the injuries sustained by him in the accident. The Tribunal failed to see that respondents 1 to 3 have failed to prove that the deceased died only due to injuries sustained by him in the accident. The injuries suffered by the deceased is only simple injuries in the accident and they are not cause for the death of the deceased. The amounts awarded by the Tribunal are excessive and the Tribunal erred in ordering pay and recovery method in the absence of license for the driver of the insured vehicle and prayed for setting aside the award passed by the Tribunal.

6.Per contra, the learned counsel appearing for the respondents 1 to 3/caveator contended that the Tribunal did not hold that the deceased died only due to the injuries sustained by him in the accident and therefore contended that amounts awarded by the Tribunal are not excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the respondents 1 to 3 and perused all the materials available on record.

8.From the award of the Tribunal, it is seen that the Tribunal has held that the deceased died when he fell down in his house and not due to the injuries sustained by him in the accident which happened 1 ½ years back. In view of the said clear finding, the contention of the learned counsel for the appellant that the Tribunal erred in holding that the deceased died due to the injuries sustained by him in the accident is

contrary to the materials on record and is without merits.

9.As far as quantum of compensation is concerned, the Tribunal held that the deceased suffered 50% disability as per the evidence of Doctor who was examined as P.W.3. The Tribunal while calculating the amounts, awarded compensation for 100% of disability and the same is liable to be set aside. The learned counsel appearing for the respondents 1 to 3 have contended that the deceased was earning a sum of Rs.30,000/- per month from his agricultural work. In the absence of any evidence to substantiate the income of the deceased, the Tribunal has fixed a sum of Rs.5,000/- per month as notional income of the deceased A.Subrmaniam. The said amount is meager and the same is enhanced to a sum of Rs.10,000/- per month and the respondents 1 to 3 are entitled to compensation as follows:

$$\text{Rs.10,000/-} \times 12 \times 9 \times 50/100 = \text{Rs.5,40,000/-}$$

The Tribunal has awarded a sum of Rs.25,000/- for pain and suffering to the respondents 1 to 3. The respondents 1 to 3 are not entitled to the said amount as only the person injured is entitled to get compensation for pain and suffering and the Tribunal has awarded meager amounts under other heads. In view of the same, the amounts awarded by the Tribunal for pain and suffering is not modified. In the result, this Civil Miscellaneous Appeal is disposed of by modifying the award amount as stated above.

S.N o	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Disability	5,40,000/-	-	set aside
2.	Loss of Income	-	5,40,000/-	granted
3.	Medical Bills	9,00,000/-	9,00,000/-	confirmed
4.	Pain and Suffering	25,000/-	25,000/-	confirmed
5.	Loss of Consortium	25,000/-	25,000/-	confirmed
6.	Extra Nourishment	15,000/-	15,000/-	confirmed
7.	Attender Charges	10,000/-	10,000/-	granted
	Total	15,15,000/-	15,15,000/-	confirmed

10.In the result, this Civil Miscellaneous Appeal is Disposed of, by modifying the award as mentioned above. The

appellant/Insurance is directed to deposit the award amount along with interest and costs, less the amount already 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 share of the award amount as per the ratio of apportionment fixed by the Tribunal with interest and costs, after adjusting the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge,
(Motor Accidents Claims Tribunal)
Bhavani,
Erode.
 2. The Section officer
VR Section, High Court, Madras 104. (2 copies)
- +1 CC to Mr.N.Chinnaraj, Advocate sr 89697.
+1 CC to M/s.M.B. Gopalan Associates sr 89878.

C.M.A.No.2946 of 2018
and C.M.P.No.22311 of 2018

BR (CO)
SP (24/04/2019)

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