

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2730 of 2018
and C.M.P.No.20695 of 2018

M/s.United India Insurance Company Limited,
'Silingi Buildings', No.134, Greams Road,
Chennai - 600 006.

.. Appellant

Vs.

1.R.Dheenadayalan
2.E.Victor Paul Jaisingh
3.R.Padmavathi
4.D.Sumathi
5.M.Visalakshi
6.J.Anandhi

.. Respondents

(2nd 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 17.04.2018 made in M.C.O.P.No.265 of 2014, on the file of Special Subordinate Judge No.1, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 17.04.2018 made in M.C.O.P.No.265 of 2014, on the file of Special Subordinate Judge No.1, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.The appellant-Insurance Company is the second respondent in M.C.O.P.No.265 of 2014. The first respondent filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for himself and for the respondents 3 to 6 for the death of one Kousalya, mother of the respondents 1 & 3 to 6 in the accident that took place on 10.10.2011.

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 Sumo Motor car and the appellant-Insurance Company as an insurer, is liable

to pay compensation to the respondents 1 and 3 to 6.

4. Against the said award dated 17.04.2018 made in M.C.O.P.No.265 of 2014, the appellant-Insurance Company has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the accident occurred only due to the negligence of the deceased who suddenly crossed the road without seeing oncoming vehicle. In Ex.P1, FIR, it has been stated that the accident occurred while the deceased was crossing the road. The Tribunal without considering the FIR, has erroneously held that accident occurred due to rash and negligent driving by the driver of the Sumo Motor car, belonging to the second respondent. The respondents 1, 3 to 6 have not proved that the deceased was doing milk business and was earning a sum of Rs.10,000/- per month. Without any evidence, the Tribunal has fixed notional income of the deceased at Rs.5,000/- per month and added 10% towards future prospects of the deceased. The amounts awarded by the Tribunal under loss of love and affection is excessive and prayed for setting aside the award.

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

7. From the materials on record, it is seen that P.W.2, eye-witness has stated that the accident occurred only due to rash and negligent driving by the driver of the Sumo Motor car belonging to the second respondent. The Tribunal has considered the deposition given by P.W.2, eye-witness in the cross examination by the counsel for the appellant and held that no contra evidence was elucidated from P.W.2, eye-witness. The learned counsel appearing for appellant contended that in the FIR, it has been stated that while the deceased was crossing the road, the accident occurred. The appellant has not examined any eye-witness or driver of the car to substantiate their contention that the accident occurred only when the deceased suddenly tried to cross the road. The Tribunal appreciating the pleadings and evidence on record, held that the accident occurred only due to rash and negligent driving by the driver of the Sumo Motor car belonging to the second respondent. There is no error in the said reasoning, warranting interference by this Court.

8. As far as the quantum of compensation is concerned, in the absence of any evidence with regard to income of the deceased, the Tribunal has fixed the notional income of the deceased at Rs.5,000/- per month. The same is proper and is not excessive. The Tribunal has ordered 10% enhancement towards future prospects and deducted 1/4th from the total income and applied the multiplier of '9' as per the judgments of the Hon'ble Apex

Court reported in 2009 (2) TNMAC 1 SC [Sarla Verma & others vs. Delhi Transport Corporation & another] and 2017 (2) TNMAC 609 (SC) [National Ins. Co. v. Pranay Sethi]. The amounts awarded under the head of loss of love and affection and other heads are not excessive. Hence, I do not find any error in the award of the Tribunal warranting interference by this Court.

9. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation of Rs.6,05,500/- awarded by the Tribunal is hereby confirmed with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant-Insurance Company is directed to deposit the award amount along with interest and cost, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 3 to 6 are permitted to withdraw the award amount with accrued interest and costs as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

krk/gsa

To

The Special Subordinate Judge-I,
Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai.

+1 CC to Mr.J. Michael Visuvasam, Advocate sr 80294.

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RR(CO)
SP(05/02/2019)

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