

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3048 of 2018 and
C.M.P.No.23082 of 2018

United India Insurance Company Limited,
No.13-A, Nethaji Road,
Cuddalore - 1. ...Appellant/2nd Respondent

Vs.

1.Malliga
2.Pachaiammal
3.Malathi
4.Minor.Iyappan
5.Minor.Arumugam
6.Minor.Captain Prabhakaran ...Respondents 1 to 6/Petitioners
7.K.Subramanian ...7th Respondent/1st Respondent

(Minor respondents 4 to 6 are
represented by their mother/next friend,
the first respondent herein)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.02.2003 made in M.C.O.P.No.118 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.2, Cuddalore.

For Appellant : Mr.S.J.Jagadev

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 27.02.2003 made in M.C.O.P.No.118 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.2, Cuddalore.

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

3.The appellant is second respondent in M.C.O.P.No.118 of 2003 on the file of the Motor Accidents Claims Tribunal,

Additional District Court, Fast Track Court No.2, Cuddalore. The respondents 1 to 6 filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Devadoss, who died in the accident that took place on 05.09.1999.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the seventh respondent and directed both the seventh respondent and appellant-Insurance Company to pay a sum of Rs.3,87,200/- as compensation to the respondents 1 to 6/claimants. Challenging the said award dated 27.02.2003, made in M.C.O.P.No.118 of 2003 granting compensation to the respondents 1 to 6, the appellant-Insurance Company has come out with the present appeal.

5.The contention of the learned counsel appearing for the appellant-Insurance Company that the Tribunal erred in not fixing negligence on the part of the deceased and fixed negligence only on the part of the driver of the lorry and awarded excessive amounts are contrary to the materials available on record. From the materials on record, it is seen that the Tribunal has considered the evidences of one Moorthi as P.W.2, who is an eye-witness and Ex.P1/copy of F.I.R., held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the seventh respondent herein and directed both the appellant-Insurance Company and the seventh respondent to pay compensation to the respondents 1 to 6/claimants. The Tribunal considering Ex.P3/copy of postmortem report and Ex.P7/copy of driving license of deceased Devadoss, fixed the age of the deceased as 40 years. By fixing Rs.2,400/- as notional income per month and after deducting 1/3rd towards personal expenses and applying multiplier '16', awarded a sum of Rs.3,07,200/- ($\text{Rs.2,400} \times 12 \times 16 \times \frac{2}{3}$) as compensation towards loss of income. The Tribunal has awarded a sum of Rs.15,000/- towards loss of love and affection to the first respondent, a sum of Rs.10,000/- each to the respondents 2 to 6 towards loss of love and affection, a sum of Rs.5,000/- towards funeral expenses and a sum of Rs.10,000/- towards loss of estate. Thus, the Tribunal awarded a total sum of Rs.3,87,200/- as compensation to the respondents 1 to 6/claimants. The compensation awarded by the Tribunal under different heads are just compensation and not excessive and hence there is no reason warranting interference by this Court.

6.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.3,87,200/- awarded by the Tribunal as compensation to the respondents 1 to 6/claimants, along with interest and costs is hereby confirmed. The appellant-Insurance Company 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 to the credit of M.C.O.P.No.118 of 2003. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount along with interest and costs on the basis of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The award amount of the minor respondents 4 to 6 is directed to be deposited in any one of the Nationalized Bank, till they attain majority. The first respondent, being the mother of the minor respondents 4 to 6 is permitted to withdraw the accrued interest once in every three months for the welfare of the minor respondents. No costs. Consequently, connected Miscellaneous Petition is closed.

krk

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District
and Sessions Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.2,
Cuddalore.
2. The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.3048 of 2018
and

C.M.P.No.23082 of 2018

Kak(21/05/2019)

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