

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1893 of 2019
and C.M.P.No.6487 of 2019

M/s.National Insurance Co. Ltd.,
Third Party Claims Office,
No.751, Mount Road,
Chennai 600 002.

..Appellant

Vs.

1.Saroja @ Sarojammal
2.Kumaresan
3.Sivakumar
4.Sasikala
5.Ravikumar
6.Kalyanasundaram

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 12.09.2018 made in M.C.O.P.No.1784 of 2015 on the file of the Special Sub Court-I, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 12.09.2018 made in M.C.O.P.No.1784 of 2015 on the file of the Special Sub Court-I, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 2nd respondent in M.C.O.P.No.1784 of 2015 on the file of the Special Sub Court-I, (Motor Accident Claims Tribunal), Chennai. The respondents 1 to 5 filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Patchimuthu who died in the accident that took place on 31.01.2015.

3.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 6th respondent and directed the appellant-Insurance Company to pay a sum of Rs.7,09,600/- as compensation to the

respondents 1 to 5 at the first instance and recover the same from the 6th respondent. Challenging the said award dated 12.09.2018 made in M.C.O.P.No.1784 of 2015, the appellant-Insurance Company has come out with the present appeal.

4.The learned counsel appearing for the appellant-Insurance Company contended that the respondents 1 to 5 have not proved the age and income of the deceased. In the absence of materials, the Tribunal erroneously fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased and granted 10% towards future prospects. The 1st respondent is wife. The respondents 2 to 5 are the major sons and married daughter. The respondents 2 to 5 are not dependents of the deceased. On the other hand, the deceased who was aged 60 years was depending on the respondents 2 to 5. The Tribunal ought to have deducted 50% towards personal expenses, instead of deducting ¼th, as the respondents 2 to 5 are not the dependents of the deceased. The Tribunal erroneously awarded a sum of Rs.5,34,600/- towards loss of dependency. The amounts granted by the Tribunal for loss of love and affection is not correct and prayed for setting aside the award of the Tribunal.

5.Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

6.The respondents 1 to 5 contended that the deceased was doing business and was earning a sum of Rs.15,000/- per month. They have not produced any materials to show that the deceased was earning a sum of Rs.15,000/- per month. The appellant has not let in any evidence to prove their contention that the deceased was a non-earning member and was a dependent on the respondents 2 to 5. In the absence of materials, the Tribunal fixed notional income of the deceased at Rs.6,000/- per month and granted 10% enhancement towards future prospects. The accident is of the year 2015. The notional income fixed by the Tribunal is very meagre and in view of the same, there is no reason to interfere with the income fixed by the Tribunal and deduction made by the Tribunal. Similarly, the amounts awarded under other heads are just compensation and this Court is not inclined to interfere with the amounts awarded under different heads. The provision of Motor Vehicles Act includes not only legal heirs of the deceased, but also dependents on the deceased. It is held in number of cases that married daughter is also a dependent on the deceased. In view of the same, the contention of the learned counsel appearing for the appellant that only the 1st respondent is dependent on the deceased and Tribunal ought to have deducted 50% towards personal expenses of the deceased is without merits.

7.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.7,09,600/- awarded by the Tribunal as compensation to the respondents 1 to 5/claimants, along with interest and costs is 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.1784 of 2015 at the first instance and recover the same from the 6th respondent. On such deposit, the respondents 1 to 5/claimants are permitted to withdraw their shares of the award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary application before the Tribunal. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gsa

To

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

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.26082

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RR(CO)
GMY(14/10/2019)

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