

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1720 of 2006
and C.M.P.No.7542 of 2006

United India Insurance Co.Ltd.,
Coimbatore.

..Appellant/Petitioner

Vs

1.Dhana Bggiyam

2.Kalpana

3.K.Marathal

4.Thahir,
The Managing Director,
Aswin Roadways,
37/5, Moolakadau, Pandakkal,
Mahe.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.10.2004 made in MCOP No.901 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional District Judge (FTC-V), Tirupur.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.S.S.Swaminathan for
R1 to R3

JUDGMENT

This appeal has been filed by the Insurance Company against the judgment and decree dated 28.10.2004 made in MCOP No.901 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional District Judge (FTC-V), Tirupur.

2.The facts of the case would run thus:

On 09.09.2001, the husband of the first respondent, viz. K.Kumarasamy, was riding his scooter bearing Regn.No.TN-41-Y-9855 from West to East direction in the NH47 Main Road, in front of New Bus Stand, Avinashi, keeping left side of the road. While so, at about 13.45 hours, a lorry bearing Regn.No.PY-03-1969 belonging to the fourth respondent herein, driven by its driver in a rash and negligent manner, without adhering to the traffic rules, dashed against the said Kumarasamy. Due to the said impact, the said Kumarasamy sustained grievous injuries all over the body and he was taken to the CMC Hospital, Coimbatore and he succumbed to the injuries. The legal heirs of the deceased filed a claim petition before the Tribunal. The Tribunal awarded a compensation of Rs.9,98,000/- with interest at 9% p.a.from the date of petition. The said sum was directed to be paid to the legal heirs of the deceased, by the owner of the lorry as well as the Insurance Company jointly and severally.

3.Challenging the compensation awarded by the Tribunal, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in concluding that the driver of the lorry was responsible for the accident, when the fact remains that the accident had occurred only due to the rash and negligent driving of the scooter. He submitted that the award passed by the Tribunal is excessive and exorbitant and that even though the claimants claimed a sum of Rs.5,00,000/- as compensation, the Tribunal has awarded a sum of Rs.9,98,000/- for no good reason.

5.The learned counsel for the respondents 1 to 3 / claimants has submitted that the Tribunal has considered all the materials and evidence available on record and has rightly awarded the compensation which is just and reasonable, and hence the judgment of the Tribunal need not be interfered with by this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.Ex.P1 is the First Information Report, in which it has been clearly stated as to how the accident took place. It has been stated that only because of the rash and negligent driving of the driver of the lorry, the accident took place. Further the Tribunal examined P.W.2-Karthikeyan, who is the eye-witness to the accident. He deposed before the Tribunal that the lorry driver was solely responsible for the accident. Corroborating both the evidence of P.W.2 as well as the First Information Report, the Tribunal came to the conclusion that the deposition

of P.W.2 that the lorry driver alone was responsible for the accident, cannot be rejected. This Court is not inclined to interfere with the said finding and accordingly, the finding of the Tribunal that the lorry driver alone was responsible for the accident, is confirmed.

8. With regard to the quantum of compensation awarded by the Tribunal, P.W.1, the wife of the deceased, deposed before the Tribunal that the deceased was earning a sum of Rs.5,000/- per month in a Garment Company at Tirupur. The Tribunal observed that no questions have been put forth on the side of the Insurance Company opposing the claim that the deceased was earning Rs.5,000/- per month. Further, the Salary Certificate was also filed before the Tribunal, by the employer. Taking note of the future salary increase and future prospects in life, the Tribunal worked out the monthly income of the deceased at Rs.7,500/-, arrived at the annual income at Rs.90,000/- and adopting the multiplier of 16, arrived at a sum of Rs.14,40,000/-. Thereafter, deducting 1/3rd towards personal expenses of the deceased, the Tribunal arrived at a sum of Rs.9,60,000/- towards loss of income. The Tribunal has rightly considered the materials and evidence, adopted the correct multiplier and arrived at a sum of Rs.9,60,000/- towards loss of income. The amounts awarded by the Tribunal towards other heads, ie., Rs.20,000/- towards loss of love and affection to the wife and daughter of the deceased, Rs.10,000/- towards loss of consortium to the wife of the deceased, Rs.5,000/- towards loss of love and affection to the mother of the deceased and Rs.3,000/- towards funeral expenses, are very reasonable.

9. In view of the above stated circumstances, the Civil Miscellaneous Appeal is dismissed, confirming the impugned judgment and decree passed by the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

10. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal
Additional District Judge (FTC-V),
Tirupur.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.Arunkumar, Advocate SR.No.45914

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.45601

C.M.A.No.1720 of 2006
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MG (CO)
GMY (05/09/2019)



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