IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3121 of 2006
and
M.P.No.1 of 2006

National Insurance Company Limited,
Chennai-6. ... Appellant/2nd Respondent

..vs..

1. Shanmugathamma
2. Lakshmi
3. Perumal
4. Thirumal
5. Velammal
6. Vellamammal ... 1 to 6 Respondents/Petitioner

7. Lella Srinivasa Reddy
(R7 was set Ex-parte in the lower Court)
...7th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.02.2006 made in MCOP.No.2297 of 1998 on the file of the Motor Accident Claims Tribunal (3rd Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.J.Mahalingam for R1
R2 to R6 Not Ready in notice

J U D G M E N T

This appeal arises out of the order and decree dated 15.02.2006 passed by the Motor Accidents Claims Tribunal, 3rd Small Causes Court, Chennai, in MCOP.No.2297 of 1998.

2. Brief facts, which are necessary for disposal of the Appeal, are as follows :

On 29.04.1998 at about 4.30 p.m, one Subbiah was passing Urine by the side of 100 feet Road at Thanduma Nagar, St.Thomas Mount, Chennai, a lorry bearing Registration No.AP-7-1395 belonging to the seventh respondent and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the said Subbiah and thereby caused the fatal accident. The legal representatives of the deceased/respondents 1 to 6 filed a claim petition claiming a compensation of Rs.5,00,000/-. On consideration of the oral and documentary evidence, the Tribunal has awarded a total compensation at Rs.2,22,000/- with interest at 7.5%pa from the date of petition. Aggrieved over the same, the appellant insurance company has preferred this appeal.

3.The learned counsel for the appellant submitted that when the case was posted for arguments on 30.03.2004, the claimants have filed an application for re-opening the evidence and P.W.4 was examined much later to fill up the lacuna in the evidence; and there was contradiction between the evidence of P.W.2 and P.W.4; however, the Tribunal has erred in holding that the lorry bearing Regn.No.AP7 W 1395 was involved in the accident occurred on 29.04.1998 at 4.30pm near Dhandumanagar. The learned counsel also submitted that the compensation awarded by the Tribunal under the head “loss of income” is excessive and exorbitant and hence, the same needs interference by this Court.

4.Per contra, the learned counsel for the first respondent/claimant submitted that based on the oral and documentary evidence let in by the parties, the Tribunal has rightly fastened the liability on the appellant insurance company and awarded the just compensation and hence, the same do not call for any interference.

5.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record.

6.Though this appeal was admitted way back in the year 2006, the appellant has not taken proper steps to serve papers on the other side. However, considering the passage of time, this Court is inclined to proceed with this appeal on merits.

7.The wife of the deceased was examined as P.W.1, who has deposed in her evidence that on 29.4.1998, while her husband/deceased had crossed the road, the lorry insured with the appellant insurance company came in a rash and negligent manner and dashed against him. P.W.2/son of the deceased, who was stated to be the eye witness to the accident, has deposed that he had parked the vehicle on the edge of the Road; his father/deceased had crossed the road and sat on the edge of the Road to answer the call of the nature; at that time, the driver of the lorry drove the vehicle rashly and negligently and dashed against the deceased. Ex.P5 First Information

Report corroborated the evidence of P.W.2. The version of P.W.2 and the contents of Ex.P5 were supported by the evidence of P.W.4, who was also stated to be the eye witness to the occurrence. On the side of the appellant insurance company, the owner of the lorry was examined as R.W.1, through him, Ex.R1 letter was marked. However, the Tribunal has rejected the said evidence, stating that he was not the eye witness to the accident. Though the driver of the lorry was examined as R.W.2, who stated that he was not responsible for the accident, the Tribunal has disbelieved the same. Thus, the Tribunal, taking note of the evidence and materials adduced by the parties and also considering the fact that Ex.P5 FIR was lodged immediately by P.W.2, has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry and accordingly, fastened the liability on the appellant insurance company, which this Court is not inclined to interfere.

8.As regards the quantum of compensation, P.W.1 has stated that her husband was earning Rs.7,000/- per month by supplying building materials and his age was 55 years at the time of accident. P.W.3/contractor has stated in his evidence that the deceased was earning Rs.7,000/- to Rs.10,000/- per month by supplying building materials. However, no authenticated document was produced to substantiate the same. Taking note of the same, the Tribunal has taken Rs.3,000/- as the monthly income of the deceased, in which, 1/3rd was deducted towards his personal expenses. Thereafter, the Tribunal has adopted the multiplier of 8, fixing the age of the deceased between 55 to 60 and determined the compensation under the head "loss of income" at Rs.1,92,000/- (2000 x 12 x 8), which, in the opinion of this Court, is just and reasonable, as the same is based on the evidence and materials adduced by the claimants and hence, the same is hereby confirmed.

9.Further, the Tribunal has awarded Rs.10,000/- towards transport and funeral expenses, Rs.10,000/- towards loss of love and affection and pain and suffering and Rs.10,000/- towards loss of amenities. This Court is of the view that the compensation awarded under the said heads are based on conventional methodology and are very reasonable and hence, the same need not be interfered.

10.In such view of the matter, this Civil Miscellaneous appeal filed by the Insurance company deserves to be dismissed and is accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

11.The appellant / Insurance Company is directed to deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the respective Savings Bank Accounts of the respondents /claimants as per the ratio of apportionment made by the Tribunal, within one week thereafter, through RTGS.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vv/rk

To

1. The 3rd Judge,
Court of Small Causes,
The Motor Accident Claims Tribunal
Chennai.

+1cc to Mr.S.Vadivel, Advocate, S.R.No. 48310
+1cc to Mr.J.Mahalingam, Advocate, S.R.No. 48412

CMA.No.3121 of 2006

SSD(CO)
GN(26/06/2020)