IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3148 of 2006
and
M.P.No.10180 of 2006

Branch Manager,
National Insurance Co.Ltd.
First Floor,
Saradhamma Buildings,
Bye-Pass Road,
Hosur, .. Appellant /2nd Respondent

Vs.

1.Musthafa
2.Zahida
3.Fias
4.Irshad
5.Minor Aman
6.Minor Ishrath
(R5&R6 are represented by their guardian and father, the first respondent)
... 1 to 6 Respondents/Petitioners

7.K.Gopinath ..7th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.03.2003 made in M.C.O.P.No.287 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur.

For Appellant : Mr.S.Vadivel
For R1 & R3 to R6 : No Appearance

J U D G M E N T

The Insurance company is the appellant herein. The respondents 1 to 6 herein are the claimants in MCOP.No.287 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur (for brevity, “the Tribunal”).

2.The facts leading to the filing of this appeal are as follows:

In an accident that had occurred on 05.10.2001 involving a bus bearing Regn.No.TN 29 S 0009 belonging to the seventh respondent herein and insured with the appellant Insurance

Company, one Bashu Rahuman succumbed to the injuries. Hence, the claimants, being the legal heirs of the deceased, filed a claim petition seeking compensation of Rs.7,00,000/- before the Tribunal, which, after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus and awarded a sum of Rs.3,52,200/- as compensation to the respondents 1 to 6/claimants. Challenging the same, the appellant Insurance Company has preferred this Civil Miscellaneous Appeal.

3.The learned counsel appearing for the appellant-Insurance Company contended that though the claimants produced Ex.P4/Bill book, they have not examined the author of Ex.P4 to prove the avocation of the deceased. However, the Tribunal fixed a sum of Rs.4,000/- as monthly income of the deceased, which is not proper. The learned counsel further submitted that the deceased was a bachelor and was aged 30 years at the time of the accident and the parents were aged 65 and 50 years and hence, the multiplier to be applied in this case would be '5', whereas, the Tribunal applied the multiplier of '12', which is against the II Schedule of the Motor Vehicles Act. The learned counsel also contended that the claimants have not produced legal heirship certificate to prove their relationship with the deceased. Thus, according to the learned counsel, the quantum of compensation awarded by the Tribunal is excessive and exorbitant and the same has to be reduced.

4.Heard the learned counsel appearing for the appellant and perused the materials available on record. Despite the service of notice and the name of the contesting respondents having been printed in the cause list, there is no representation on their behalf.

5.There is no dispute with regard to the liability of the appellant insurance company to pay compensation to the claimant.

6.As far as the quantum of compensation awarded by the Tribunal is concerned, the respondents 1 to 6/claimants stated that the deceased was aged 30 years; and was earning a sum of Rs.10,000/- per month by doing vegetable business. However, they have not produced any evidence to substantiate the same. Hence, the Tribunal fixed a sum of Rs.4,000/- as monthly income of the deceased, which, in the considered opinion of this Court, appears to be fair, just and reasonable, as the Supreme Court in Syed Sadiq v. United India Insurance Co. Ltd [(2014) 2 SCC 735], has taken Rs.6,500/- as the monthly income of the victim, who was working in an unorganised sector. Further, the Tribunal, considering the age of the deceased, applied the multiplier of '12' and after deducting 1/3rd towards personal expenses, quantified the compensation under the head "loss of income" at Rs.3,31,200/-, which is fair, just and reasonable and the same is hereby confirmed.

7.That apart, the Tribunal awarded a sum of Rs.10,000/- towards loss of love and affection to the claimants 1 and 2; Rs.8,000/- towards loss of love and affection to the claimants 3 to 6; and Rs.3,000/- towards funeral expenses, which are just and proper, having regard to the given facts and circumstances of the case and the same warrant no interference at the hands of this Court.

8.Thus, affirming the award passed by the Tribunal, this Civil Miscellaneous Appeal stands dismissed. No costs. The appellant-Insurance Company is directed to deposit the entire compensation amount, with interest and costs, 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 shall transfer the shares of the claimants as apportioned by it, to the respective savings bank accounts of the claimants through RTGS within a period of one week thereafter. In respect of the minor shares, the Tribunal shall deposit the same in any one of the Nationalized Banks till they attain majority and the interest accrued therein shall be permitted to be withdrawn by the first respondent once in three months. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Subordinate Court,
   Motor Accidents Claims Tribunal,
   Hosur.

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No. 47230

C.M.A.No.3148 of 2006
12.06.2019

RJI
GN(11/11/2019)