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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

C.M.A.No.3445 of 2005
and C.M.P.No.17466 of 2005

The Divisional Manager,
The New India Assurance Co. Ltd.,
Vellore.

... Appellant

..vs..

1. Vinmathi
 2. Minor.Manikandan
(Minor Rept. by Mother and Natural Friend, R-1, Vinmathi)
 3. Murugan
 4. R.Paramaeswaran S/o Ramasamy
(R-4 exparte in lower court, hence,
notice is dispensed with)
- ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 30.09.2004 made in MCOP No.481 of 2002 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tiruvannamalai District at Cheyyar.

For Appellant : Mr. B.Raghavan

For Respondents: No Appearance.

J U D G M E N T

As against the claim made for a sum of Rs.18,00,000/-, there is an award for a sum of Rs.3,91,000/-. Challenging the quantum of compensation awarded as disproportionate, the Insurance Company has filed this Appeal.

2. The legal representatives of the deceased Venkatesan in the capacity as widow (Vinmathi, aged 28), son (Minor.Manikandan, aged 4) and father (Murugan aged 70) of the deceased have filed the claim petition. The Tribunal has quantified the compensation with the following breakup details:-



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Loss of dependency	-	Rs.3,84,000.00
(Rs.3,000/- x 16 x 2/3)		
Funeral expenses	-	Rs. 2,000.00
Loss of consortium	-	Rs. 5,000.00

		Rs.3,91,000.00

3. The case of the appellant / Insurance company is that the rider of the two-wheeler (TVS 50 bearing Registration No.TN25Y4982) also contributed to the accident and hence, the compensation claimed by the legal representatives of the deceased, (in which the deceased was only a pillion rider) has no basis and hence, the appellant ought to have been exonerated from the liability. Whereas it is the case of the claimants / respondents 1 to 3 herein that the deceased, who was seated as pillion rider to TVS 50 bearing No.TN25Y4982 was hit by the Mini Van bearing No.TN21-A-0747 belonging to the fourth respondent (insured with the appellant herein) and due to the said incident, the deceased succumbed to the injuries.

4. The Tribunal, after consideration of the materials, came to the conclusion that it is only the Mini Van driver, who was negligent in causing the accident and thus, the appellant is liable to compensate the claimants.

4.1. This finding does not require any interference as it is based on oral and documentary evidence adduced and also based on Section 163-A of the Motor Vehicles Act, 1988 (amended).

5. So far as the quantum of compensation is concerned, the monthly income of the deceased has been taken at Rs.3,000/- and the annual income has been fixed at Rs.36,000/- and deducting 2/3rd towards the personal expenses and adopting the multiplier of '16', the loss of dependency has been calculated at Rs.3,84,000/-. Awarding a sum of Rs.2,000/- towards the cremation expenses and Rs.5,000/- towards loss of consortium to wife, the total has been quantified at Rs.3,91,000/-.

6. This compensation award amount is under challenge by the Insurance Company on the ground that the award is excessive.

7. It is relevant to point out that the accident is of the year 2002 and when there are three claimants, i.e., wife, son and aged father to be maintained, it is unexpected of the deceased to spend 1/3rd towards the personal expenses, if his income is taken only at Rs.3,000/-. With that meager income, nobody can afford to spend 1/3rd towards the personal expenses.



8. It is also relevant to point out that the Tribunal has failed to consider the compensation amount under the heads of 'future prospective increase in income' and the 'loss of love and affection to the Minor Son and father'. Added to that, the Tribunal also failed to consider the compensation amount on damage to cloth or personal materials. If those heads are considered, the amount awarded by the Tribunal, which is stated to be on higher range, would get offset.

9. Further, the accident had taken place in the year 2002 and the Appeal is being heard, on merits, in the year 2019. So far there is no Appeal by the claimants. Under these given set of circumstances, it may not be appropriate to either reduce or enhance the quantum of compensation.

10. Therefore, the Appeal has no merits and thus, the Appeal is dismissed. No costs. Consequently, the connected CMP is closed.

11. The Insurance Company shall deposit the entire compensation amount, as awarded by the Claims Tribunal, along with interest at 9% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. The ratio of apportionment shall be as ordered by the Claims Tribunal. The minor claimant should have attained majority as on now. Therefore, on such petition being taken out to declare the minor claimant as major, the claims Tribunal shall pay the compensation to the RTGS Account of the claimant and if not, that share amount shall be deposited in a Nationalised Bank and interest accrued thereon shall be withdrawn by the guardian of the minor claimant. In respect of other claimants also, the same procedure shall be followed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



To

1. Motor Accident Claims Tribunal, Subordinate Court,
Tiruvannamalai District at Cheyyar.

2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104.

+lcc to Mr.N.Vijaya Raghavan, Advocate Sr.46505

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& C.M.P.No.17466 of 2005

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srg 03/10/2019