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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN
Civil Miscellaneous Appeal No.3447 of 2006
& M.P.No.2 of 2006

The Divisional Manager,
M/s. United India Insurance Company Limited,
Vellore .. Appellant/4th respondent

..VS..

1. Mrs. Julian Mary
2. Mrs. Samborrna Mary
3. Mr. S.Anthonisamy
4. Minor. J.Arokya Divya
5. Mr.Amalraj
6. Mrs. Amali
7. Minor. Aorphine
8. Mrs. Sowriammal
(Minors, R-4 rep. by mother and natural
guardian, R-1-Mrs. Julian Mary &
R-7, Rep. by mother and natural guardian
R-2-Mrs. Samboorna Mary) ...Respondents 1 to 8/
Petitioners
9. Mr. P.Gurusamy
10. Mrs. K.Rukmani
11. The Divisional Manager,
M/s. Oriental Insurance Company Limited,
No.1 Katpadi Road, Vellore ..9 to 11 Respondents/
Respondents 1 to 3

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 31.10.2005 made in M.C.O.P.No.574 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruvannamalai.

For Appellant : Mr. J.Raja Kalifulla.
For Respondents: Mr. R.Thirugnanam, for R-1 to R-6.
Respondents 7 to 11:Not Ready



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The legal representatives, namely, wife, parents, daughter, brothers, sister and grand mother of the deceased, John Britto, have filed a claim petition before the Claims Tribunal, claiming compensation of Rs.10,00,000/-.

2. The Tribunal has passed an award for a sum of Rs.5,17,000/- on 31.10.2005. This award is under challenge by the Insurance Company in this Appeal.

3. The accident had taken place on 19.03.2003. It is a case, where, the deceased John Britto was working under the tenth respondent herein and earning a sum of Rs.6,000/- per month. The deceased, at the time of accident, had travelled in a lorry bearing Registration No.TN22-D-9549, (insured with the appellant herein) which dashed against the stationed trailer lorry, bearing Registration No.TN09-E-6579, whose owner is the ninth respondent and insured with the 11th respondent. After contest, the Tribunal has fixed the liability on the driver of the lorry, which was insured with the appellant herein and awarded the compensation, as stated supra, to the claimants.

4. Heard both sides.

5. The learned counsel for the Insurance Company submitted that the accident had happened due to negligent driving of both the vehicles and there is no material to hold that the lorry insured with the appellant herein alone was responsible for the accident. He further submitted that the quantum of compensation arrived at by the Claims Tribunal is against evidence and probabilities of the case.

6. Per contra, the learned counsel for respondents 1 to 6 / claimants submitted that the award passed by the Claims Tribunal is based on settled principles of law and hence no interference is called for.

7. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.



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8. The first issue that has been dealt with by the Tribunal was with regard to the fact that, on whose negligence the accident had happened and whether it is on the part of rash and negligent driving of the ninth respondent's driver or the tenth respondent's driver.

8.1. To answer this issue, the Tribunal has analysed the evidence of P.Ws.1 and 2 and marked Exs.P-1 to P-4 and established the proximate mode / cause of accident and held that the accident had happened only on account of rash and negligent driving of the driver of the lorry, which was insured with the appellant herein.

9. The next issue that was dealt with by the Tribunal was, by whom the compensation is liable to be payable to the claimants.

9.1. Taking shelter from the answer to the first issue and discussing the aspect of rash and negligent driving by the driver of the lorry, stationed lorry, railer and discussing about the legal heirship between the deceased and claimants, the Tribunal fixed the liability on the driver of the lorry, which was insured with the appellant herein.

10. The third issue that was dealt with by the Tribunal was, whether the claimants are entitled to compensation and if so, to what extent.

10.1. While answering this issue, the Tribunal has taken the age of the deceased as 25, his daily wage at Rs.150/-, calculated for 25 days; arrived at a monthly income at Rs.3,750/- and annual income at Rs.45,000/-. From the said amount, 1/3rd was deducted towards personal expenses and taking Rs.30,000/-, adopting the multiplier of 17, the loss of dependency was arrived at Rs.5,10,000/-. Apart from the above, the Tribunal awarded Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium. Thus, the total compensation was quantified at Rs.5,17,000/- and apportioned the same among the claimants.

11. This Court is of the considered opinion that the Tribunal has framed the issues correctly and dealt with the same, according to the weightage of evidence, settled principles of law, documents available on record and probabilities of case. Added to the above, the Tribunal has deducted only 1/3rd towards the personal expenses. When the dependents are large in number, normally the Courts would consider the deduction of even 1/5th,



but the Tribunal has deducted only 1/3rd. If the said yardstick is adopted, the compensation that was awarded by the Claims Tribunal would be less and in fact not more.

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12. Further, no document was marked and no evidence was examined on the side of the appellant herein before the Tribunal. If the appellant is so aggrieved, nothing prevented them from marking any document or examining any witness before the Tribunal, to prove their case. Further more, the grounds raised by the appellant herein have been dealt with by the Tribunal, in detail, in its judgment. No new ground has been invented by the appellant herein. Hence, this Court is of the opinion that the award passed by the Claims Tribunal is perfectly valid, just and equitable to the Legal Representatives of the deceased.

13. In the result, affirming the award of the Claims Tribunal, this Appeal is dismissed. No costs. Consequently, the connected MP is closed.

14. The appellant herein / Insurance Company shall deposit the entire compensation amount, as awarded by the Claims Tribunal, along with interests 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. The ratio of apportionment shall be as ordered by the Claims Tribunal. The minor claimants should have attained majority as on now. Therefore, on such petition being taken out to declare the minor claimants as majors, the claims Tribunal shall pay the compensation to the RTGS Account(s) of the minor claimants. In respect of other claimants also, the same procedure shall be followed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

srk



To

1. Motor Accident Claims Tribunal, Principal District Court,
Tiruvannamalai.

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

+1 cc to M/s.R.Thirugnanam Advocate sr 53688

+1 cc to M/s.J.Raja Kalifulla Advocate sr53259

C.M.A.No.3447 of 2006
& M.P.No.2 of 2006

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