IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3715 of 2005

& C.M.P.No.18690 of 2005

1. R.J.Senthilkumar

2. National Insurance Co. Ltd.,
City Branch Office - II
United Shopping Complex,
94/34, Dr. Nanjappa Road,
Coimbatore 18 ... Appellants /
Owner & Insurer of the vehicle
R-2 & R-3 before the Tribunal

..Vs..

1. Thangavel
2. Rukmani
3. Dhanabakiyam @ Dhanalakshmi
4. R.J.Jothikumar
(R-4 driver, givenup) ... Respondents /
Claimants / driver of the vehicle.
P-1 to P-3 & R-1 before the Tribunal.

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 23.09.2003, made in MCOP No.809 of 2001 on the file of the Motor Accident Claims Tribunal, Principal District Court, Erode.

For Appellants : Mr. N.Vijayaraghavan

J U D G M E N T

Claimants 1 and 2, as father and mother and the third claimant as sister of the deceased Saravanan have filed the claim petition for compensation claiming a sum of Rs.5,00,000/- as compensation.

2. The deceased, Saravanan, was aged 23, employed as a Labourer, earning a sum of Rs.3,500/- per month, died, in an accident that took place on 26.02.2001. The Claims Tribunal,

after going through the oral and documentary evidence has chosen to pass an award for a sum of Rs.4,50,800/-. Alleging that the compensation awarded is disproportionate to the income of the deceased, this Appeal has been filed by the Insurance Company.

3. The learned counsel appearing for the Insurance Company / appellant herein would submit that the Tribunal committed error in fixing the monthly earnings of the deceased at Rs.3,300/- and the monthly dependency at Rs.2,200/- is on the higher side, having regard to the fact that the accident was of the year 2001.

4. In order to appreciate the contentions raised by the Insurance Company, it is necessary to consider the details of the employment and earnings and age of the deceased. The deceased, at the time of accident, had been aged 23 years. He had large number of family members to support. There are three claimants in this case. At the age of 23, when the deceased had large number of family members to be supported by him, it is impossible to support the family, with the meager earnings and the minimum earning of the deceased would definitely be at Rs.3,500/- per month. Therefore, the contention that the monthly income fixed is on the higher side cannot be accepted.

5. A further perusal of the award passed by the Claims Tribunal would go to show that the age of the deceased had been taken as 23, basing reliance on paragraph 7 of the counter filed by the second appellant herein. Even though the claimants claimed that the deceased was earning a sum of Rs.3,500/- per month, in the absence of any documentary evidence, the Tribunal has chosen to fix the monthly income only at Rs.3,300/- and after deducting 1/3rd towards the personal expenses, has taken the monthly contribution at Rs.2,200/-. As the age was 23, applying the multiplier of 17, the loss of dependency has been assessed at Rs.4,48,500/- and awarding a sum of Rs.2,000/- towards cremation expenses, the total has been quantified at Rs.4,50,800/-.

6. It is pertinent to note that the Tribunal has not taken into consideration the future prospective increase in income and if the same is taken into consideration, the deduction of 1/3rd, instead of 50% towards the personal and living expenses of the deceased, being bachelor, would get offset and therefore this Court finds it appropriate not to modify the deduction of 1/3rd made by the Claims Tribunal.

7. Further, the Tribunal has taken into consideration the fact that the deceased being bachelor, Class I legal heirs, i.e., parents alone are eligible to claim compensation and has rightly rejected the claim as against the sister, i.e., the

third claimant. In any way, the quantum of compensation as fixed by the Tribunal is fairly reasonable and it can be said to be less and not more.

8. Therefore, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

9. The second appellant / Insurance Company is directed to deposit the amount of compensation, as determined 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 determined by the claims Tribunal. On such deposit being made, the Tribunal shall transfer the award amount to the Savings Bank Accounts of the claimants / respondents 1 and 2 herein.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

srk

To

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

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 46506

C.M.A.No.3715 of 2005
& C.M.P.No.18690 of 2005

SSV(CO)
GN(03/12/2019)