IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1042 of 2015
and
M.P.No.1 of 2015

The Branch Manager,
M/s.United India Insurance Company Ltd.,
No.50 A, Pallivasal Street,
Perambalur. ... Appellant /2nd Respondent

Vs

1.Balasubramaniyan
2.Sumathi
3.Murugesan
4.Latha
5.Vidhya
6.Manikandan ... Respondents 1 to 6/Petitioners

7.Dinesh ...7th Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 25.09.2014 made in MCOP No.446 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.D.Bhaskaran
For R1 to R6 : Mr.T.Gobinath

JUDGMENT

This appeal has been preferred by the Insurance Company against the award of a sum of Rs.6,10,500/- towards compensation to the respondents 1 to 6 / claimants, due to the death of the wife of the first respondent / mother of the respondents 2 to 6 in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 30.05.2012, the wife of the first respondent by name Indhirani, was travelling as pillion rider in the two-wheeler bearing Reg.No.TN-45-R-4115 which was driven by her son Manikandan/sixth respondent herein, on the

Tiruchy-Chennai Main Road, keeping extreme left side of the road. At about 1.45 p.m., when they were proceeding opposite to Sellandiyamman Koil, the seventh respondent's TATA Eicher Lorry bearing Reg.No.TN-73-B-0934 belonging to the seventh respondent and insured with the appellant Insurance Company, came from behind in a rash and negligent manner at hectic speed and the consequently the left side iron hook of the lorry caught hold of the right hand of Indhirani and due to the same, she was dragged to some distance. When the rider of the two-wheeler shouted, the lorry was stopped and by that time, the left side back wheel of the lorry ran over the said Indhirani. She was immediately taken to the Government Hospital, Tiruchy, but she succumbed to the injuries on the way to the hospital. The legal heirs of the deceased filed a claim petition before the Tribunal claiming compensation for the death of the said Indhirani. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.6,10,500/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has not questioned the manner in which the accident took place. However, he submitted that the Tribunal has erred in fixing the age of the deceased as 52 and adopting the multiplier of '11', when the proper multiplier is only '7'. It is also submitted that the Tribunal has erred in deducting $1/4^{th}$ of the amount towards personal and living expenses of the deceased in spite of the fact that the respondents 1 to 6/claimants are not her dependants as they are married daughters and major sons.

5.The learned counsel for the respondents 1 to 6/claimants has submitted that the Tribunal has correctly considered the materials and evidence available on record and has arrived at the compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant/Insurance Company as well as the learned counsel for the respondents 1 to 6/claimants and perused the materials available on record carefully and meticulously.

7.Since the learned counsel for the appellant has not questioned the manner in which the accident took place, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the TATA Eicher lorry, need not be interfered with by this Court.

8.It was claimed by the claimants that the deceased was self-employed as a tailor and was earning a sum of Rs.10,000/- per month. Taking note of the materials and evidence available on record, the Tribunal has awarded a sum of Rs.4,45,500/- towards loss of income. The said sum has been arrived at by taking the monthly income of the deceased at Rs.4,500/- p.m., deducting 1/4th of the amount towards personal expenses of the deceased and adopting the multiplier of '11'. It is seen that the Tribunal has not properly assessed the age of the deceased. As per Ex.P3-Death Certificate, the age of the deceased was 61 years and for that age, the proper multiplier that should be adopted is 7. Therefore, the Tribunal ought to have taken the age of the deceased as 61 years and adopted the multiplier of 7. Further, this Court is of the view that it would be appropriate to deduct 1/3rd of the amount towards personal expenses of the deceased, instead of 1/4th. If that is done, the loss of income works out to Rs.2,52,000/- (Rs.4,500/- x 12 x 7 x 2/3). Thus, the loss of income awarded by the Tribunal stands modified to Rs.2,52,000/-. The amounts awarded by the Tribunal towards other heads are reasonable and hence the same are confirmed. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	2,52,000/-
Loss of love and affection	1,20,000/-
Transportation	10,000/-
Funeral expenses	25,000/-
Loss of estate	10,000/-
TOTAL	4,17,000/-

Thus, the compensation awarded by the Tribunal stands reduced to Rs.4,17,000/- with interest at the rate of 7.5% per annum from the date of petition.

9.The Civil Miscellaneous Appeal is partly allowed. Consequently, the connected miscellaneous petition is closed. No costs.

10.At this juncture, the learned counsel for the appellant Insurance Company has submitted that as per the order passed by this Court on 03.06.2015 in the stay application, the entire award amount has been deposited. Taking note of the same, the respondents 1 to 6/ claimants are permitted to withdraw the modified compensation of Rs.4,17,000/- with interest at the rate of 7.5% per annum from the date of petition, less the amount if any already withdrawn, out of the compensation amount deposited by the Insurance Company, on making proper application before the Tribunal. The Insurance Company is also permitted to withdraw the balance amount lying in the deposit, on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gbi/km

To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Perambalur.

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

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 91472

C.M.A.No.1042 of 2015
and M.P.No.1 of 2015

PPA(CO)
GN(03/09/2020)