

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2932 of 2009
& M.P.No.1 of 2009

M/s.HDFC Chubb General Insurance Company,
5th floor, Express Towers, Narimen Point,
Mumbai - 400 001. ... Appellant/3rd Respondent

Vs.

1. Pushpavalli
2. Minor Sabithamani @ Sabitha,
D/o. R.Jagannathan
3. Minor Karthikeyan,
S/o. R.Jagannathan
(Minor 2 and 3 represented by 1st respondent herein)
4. Nanjammal @ Mylathal.
5. M.Ramasamy Gounder ... Respondents/Petitioners
6. S.Ashok Kumar ... 6th Respondent/Ist Respondent
7. S.Mylathal ... 7th Respondent/II Respondent
(Sl.No.6 and 7 were Ex-parte in the lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.08.2007 made in MCOP.No.1261 of 2004 on the file of the Motor Accident Claims Tribunal (Additional District and Session Judge-FTC2) at Coimbatore.

For Appellant : M/s.R.Sreevidhya

For Respondents : R6 & R7 - Exparte

J U D G M E N T

In respect of an accident that took place on 25.08.20014, one R.Jegannathan has sustained severe head injuries and later, succumbed to the injuries. The legal heirs of R.Jegannathan had filed a Claim Petition before the Tribunal, claiming a sum of Rs.10,00,000/- as compensation.

2. The Tribunal, based on the witnesses and documents adduced, has awarded a sum of Rs.6,00,000/- as total compensation payable with interest at the rate of 7.5% per annum.

3. The case of the claimant is that R.Jegannathan was walking on the extreme left side of the road, the two-wheeler bearing registration number TN 37 AB 2819, driven by the 6th respondent herein, in a rash and negligent manner, hit him at the backside and due to the said impact, he was thrown out on the road and sustained severe head injuries and succumbed to the injuries later.

4. Heard the learned counsel for the appellant / Insurance company. Despite ordering notice for more than couple of occasions, the respondents have not been served till date. Hence, considering the paucity of time, the appeal itself is taken up for final disposal, since the disposal of this Appeal will not any way affect the respondents herein.

5. The learned counsel for the appellant at the outset contended that the Tribunal ought to have held that the deceased was guilty of contributory negligence, if not totally negligent, since he suddenly crossed the road and invited the accident. He further submitted that the monthly income and the avocation of the deceased were denied by the Insurance Company before the Tribunal and the Tribunal has not appreciated the same properly. He further submitted that, in any event, the total compensation awarded by the Tribunal is on the higher side.

6. An analysis of the award of the Tribunal would go to show that, the Tribunal has taken note of Exhibits P1 FIR, P3 sketch, P4 Motor Vehicle Inspector report, coupled with the evidence of PW1 and held that the rider of the two-wheeler was negligent in his driving and due to the negligence act of the driver, the accident had happened. In support of the said findings, the Tribunal has relied upon the evidence of PW2, who is an eye-witness to the accident.

7. The Tribunal has also observed that there was no evidence or documents adduced by the appellant herein to disprove the claim of the claimants and accordingly, held that the rider of the two-wheeler was responsible for the accident. The said findings rendered by the Tribunal are based on the evidence and documents adduced by both sides. Hence, the findings on negligence by the Tribunal are confirmed as such.

8. As far as the quantum of compensation awarded by the Tribunal is concerned, it has taken the monthly income of the

deceased at Rs.3000/-, adopted the multiplier of 16 and awarded a sum of Rs.5,76,000/- towards loss of income. The Tribunal has also awarded sums of Rs.2000/-, Rs.15000/-, Rs.5000/- and Rs.2000/- towards transportation, love and affection, loss of consortium to the wife of the deceased and funeral expenses, respectively.

9. The quantum arrived by the Tribunal perfectly matches with the second schedule of the Motor Vehicle Act. In the absence of any contra evidence being available on record, it cannot be permitted to contend, at this distant point of time, that the quantum awarded by the Tribunal is on the higher side. Added to the above, nothing prevented the appellant herein, to adduce any evidence or mark any document before the Tribunal to falsify the claim of the claimants in this connection.

10. Furthermore, the accident was of the year 2004. The judgment of the Tribunal was of the year 2007. The appeal was filed during the year 2009. The appeal is being disposed of only in 2009. Considering the lapse of time, escalation in the value of commodities and reduction in the value of money, this Court is of the view that the award passed in the year 2007 cannot be said to be on the higher side during the year 2019.

11. In such view of the matter, affirming the findings on negligence as well as the quantum, the Civil Miscellaneous Appeal filed by the Insurance Company/Insurer is dismissed. No Costs. Consequently, the connected MP is closed.

12. At this juncture, the learned counsel for the appellant submitted that the minor claimants had attained majority.

13. The appellant / Insurance Company is directed to deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, 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 is directed to transfer the deposited amount to the Savings Bank Accounts of all the claimants / respondents 1 to 5 herein, forthwith, through RTGS, as per the ratio of apportionment fixed by the Claims Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
(Additional District and Session Judge-FTC2),
Coimbatore.

2.The Section Officer,
VR Section, High Court, Chennai-104.

+1cc to Mrs.R.Sreevidhya, Advocate Sr.72819

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