

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3006 of 2009

and

M.P.No.1 of 2009

National Insurance Company Ltd.,
Divisional Office 2,
Ramakrishna Road,
Salem 637 007.

... Appellant/2nd Respondent

Vs.

1.Maheswaran
2.Ashok Kumar
3.Nalathambi
4.Raja
5.V.Thangam
(Ex parte in T.C)

... 1 to 4 Respondents/Petitioners

... 5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.02.2009 and made in M.A.C.T.O.P.No.1192 of 2005 on the file of the Motor Accident Claims Tribunal, Salem (1st Additional District Judge, Salem).

For Appellant : Mr.S.Vadivel

For Respondents 1 to 4 : Mr.K.Kuppusamy

For Respondent 5 : No Appearance

J U D G M E N T

Challenging the quantum of compensation awarded by the Tribunal, the appellant insurance company has preferred the present Civil Miscellaneous Appeal.

2.The case in brief is as follows:

On 26.10.2004 at about 04.00 p.m., one Marakkal was walking on the road. When she was nearing South Alagapuram Colony, the 5th respondent's Maruthi Van bearing Registration No. TN-34-A-

0390 came in a rash and negligent manner and hit the said Marakkal. Due to the said impact, she sustained severe fracture injuries all over her body. Immediately she was given first aid at Bharat Hospital and then shifted to Sri Gokulam Hospital for further treatment. Despite best treatment, she died in the hospital. Stating so, her legal heirs/respondents 1 to 4 preferred a claim petition claiming a compensation of Rs.5,00,000/-. On a consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,98,295/- with interest at 7.5% pa from the date of claim petition. Aggrieved over the same, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant has disputed only the quantum of compensation awarded by the Tribunal. According to him, the Tribunal has erred in awarding a disproportionate compensation without appreciating the pleadings and the nature of the claim made by the respondents/claimants. The learned counsel also submitted that in the absence of any authenticated proof, the Tribunal has erred in adopting the multiplier of 11, by taking the age of the deceased between 50 and 55. Hence, the learned counsel sought to reduce the compensation awarded by the Tribunal to some extent.

4.Per contra, the learned counsel for the respondents/claimants submitted that the Tribunal based on the oral and documentary evidence adduced by the claimants, has awarded the just compensation, which warrants no interference at the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4 and perused the materials available on record carefully and meticulously.

6.There is no dispute with regard to the findings of the Tribunal on negligence and liability of the appellant insurance company to pay compensation. What was disputed herein is the quantum of compensation. P.W.1/one of the sons of the deceased has deposed in his cross examination that her mother/deceased was aged about 50 years and was earning Rs.3,000/- per month as coolie. In the claim petition, her aged was stated to be 50 years. As per Ex.P2 post mortem, the age of the deceased was 60 years, but Ex.P3 death certificate showed her age as 55 years. Based on those evidence and materials, the Tribunal has taken her age between 50 to 55 years and adopted the multiplier of 11 and fixed her income at Rs.3,000/- per month and after deducting $1/3^{\text{rd}}$ towards personal expenses, has rightly determined the compensation under the head "loss of income" at Rs.2,64,000/- ($2000 \times 12 \times 11$), which this Court is not inclined to interfere.

7. That apart, taking note of the fact that the husband of the deceased and father of the respondents/claimants predeceased her, the Tribunal has awarded Rs.20,000/- towards loss of love and affection to the respondents 1 to 4, besides awarding Rs.5,000/- towards pain and suffering and mental agony, Rs.6,794.50 and Rs.2,500/- towards funeral expenses, which, in the opinion of this Court, are just and reasonable, as the same are based on conventional methodologies and having regard to the facts and circumstances of the case and hence, the same need not be interfered.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. The appellant / Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, 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 same, as per the ratio of apportionment made by the Tribunal, to the respective Savings Bank Accounts of the respondents 1 to 4/claimants, through RTGS, within one week thereafter.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

rna/rk

To

1. The Motor Accidents Claims Tribunal,
1st Additional District Judge, Salem.

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No. 70522

C.M.A.No.3006 of 2009
and M.P.No.1 of 2009

CP(CO)
GN(16/03/2020)
GN(22/07/2020)