IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.697 of 2010 and
M.P.No.1 of 2010

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.41, Big Street,
Vasavi Complex,
Thiruvannamalai. ... Appellant/2nd Respondent

Vs

Selvi (died)

1.Natarajan

2.Raman

3.Lakshmanan

4.Minor Murugan
(rep. by father &
guardian Natarajan) ...1 to 4 Respondents/Petitioners

5.R.Subramaniyan ...5th Respondent/1st Respondent

(5th Respondent ex parte before Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 22.07.2009 passed in M.C.O.P.No.113 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.II), Tindivanam.

For Appellant : Mr.N.Vijayaraghavan

JUDGMENT

Calling into question the award dated 22.07.2009 passed by the Tribunal in M.C.O.P.No.113 of 2008, the appellant insurance company has filed the present appeal.

2. The deceased Selvi is the claimant in M.C.O.P.No.113 of 2008 and she filed the claim petition claiming compensation of Rs.5.00 lakhs for the injuries sustained by her in the accident occurred on 21.12.2005. During pendency of the claim petition, she died and her legal heirs were brought on record as claimants 2 to 5.

3. It is stated that on 21.12.2005 at 4.15 P.M., the deceased was standing on Salavathy bus stop in G.S.T. Road and at that time, a tempo traveller bearing registration No.TN-09 AA 5029 driven by its driver in a rash and negligent manner dashed against her. Due to the impact, the deceased sustained fracture on her both legs and hip and also sustained multiple grievous injuries all over the body including head injury. Immediately after the accident she was admitted in Government Hospital, Tindivanam, where from she was taken to Government General Hospital, Pondicherry and thereafter, she was shifted to Stanley Hospital, Chennai. Stating that the accident occurred due to rash and negligent driving of the driver of the tempo traveller, owned by the fifth respondent and insured with the appellant, the deceased filed the claim petition. During pendency of the claim petition, she died due to the injuries sustained in the accident and her legal heirs i.e., respondents 1 to 4 herein were brought on record.

4. The appellant insurance company filed a counter before the Tribunal refuting the claim petition, inter alia, pleading that it is the deceased who was responsible for the accident and therefore, she cannot maintain the claim petition. It is also stated that the vehicle in question was not having valid permit, certificate of registration and further the driver of the tempo traveller was not having valid licence to drive the same at the time of accident. That apart, the appellant disputed the age, occupation and income of the deceased claimant and pleaded that the claim made by the claimants is, in any event, exorbitant.

5. The Tribunal, on consideration of the oral and documentary evidence placed before it, by the judgment impugned, awarded compensation to the tune of Rs.2,56,400/- to the claimants.

6. Calling in question the said judgment and decree, the present appeal is filed by the appellant insurance company.

7. Heard the learned counsel for the appellant Insurance Company.

8. The service report of this Court states that notice in respect of respondent Nos.1 to 3 returned as no such address. Respondent No.4 is a minor, who is to be served through

respondent No.1. Respondent No.5 is owner of the vehicle, who remained ex parte in the claim petition. Considering the long pendency of the matter, this Court is inclined to take up this appeal for final disposal at the stage of await service.

9. The learned counsel for the appellant urged before this Court that the Tribunal erred in allowing the claim petition where the accident had occurred on 21.12.2005 and injured Selvi died on 02.04.2008 without any medical evidence to show that the death was due to injuries sustained by her in the accident.

10. On a perusal of the judgment of the Tribunal, it is seen that P.W.1 husband of the deceased categorically deposed in his evidence that the accident occurred due to rash and negligent driving of the driver of the tempo traveller and in the accident, his wife Selvi sustained fracture on both legs and the pubic rami was also fractured apart from head injury. He further deposed that during treatment his wife underwent surgery and died only due to the injuries sustained by her in the accident. P.W.2, who is the eye-witness to the accident also clearly spoken about the negligence on the part of the driver of the temp traveller.

11. To rebut the claim of the claimants, the appellant insurance company has not produced any materials. In fact, no oral and documentary evidence was adduced by the appellant insurance company before the Tribunal. Therefore, in the absence of rebuttal evidence and also considering the oral and documentary evidence produced by the claimants, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the tempo traveller. Since the said finding of the Tribunal is based on documentary evidence, this Court confirms the finding of the Tribunal in respect of negligence on the part of the driver of the tempo traveller.

12. As far as quantum of compensation of Rs.2,56,400/- awarded by the Tribunal is concerned, the learned counsel for the appellant insurance company contended that the ultimate compensation of Rs.2,56,400/- awarded by the Tribunal under various heads as the case of death from accident is excessive and not justified in the circumstances of the case. Admittedly, the appellant has failed to show how the total compensation of Rs.2,56,400/- awarded by the Tribunal is excessive.

13. It is stated that the deceased was aged 36 years at the time of accident and was earning Rs.5,000/- per month by doing mason work. The claimants have not produced any document to show the monthly income of the deceased. In the absence of proof, the Tribunal has fixed the monthly income of the deceased

at Rs.2,000/- per month, i.e., Rs.24,000/- per annum. Considering the date of accident and also in the absence of proof, the Tribunal was right in fixing the monthly income of the deceased at Rs.2,000/- per month. Deducting one-third towards personal expenses, the Tribunal calculated the contribution to the family at Rs.16,000/-. Adopting multiplier 15, the Tribunal awarded Rs.2,40,000/- towards loss of dependency. This Court finds no infirmity in awarding Rs.2,40,000/- towards loss of dependency by the Tribunal.

14. As far as conventional damages are concerned, the Tribunal awarded Rs.2,000/- towards funeral expenses; Rs.5,000/- towards loss of consortium; Rs.2,500/- towards loss of estate and Rs.6,900/- towards medical expenses. Since amounts awarded under the conventional heads are reasonable, the same are maintained. Thus, the total compensation of Rs.2,56,400/- awarded by the Tribunal is just and reasonable warranting no interference and the same is confirmed. No valid grounds have been made out to interfere with the judgment and decree passed by the Tribunal. Therefore, this Court is of the firm view that the appeal filed by the appellant is liable to be dismissed.

15. Accordingly, the appeal filed by the appellant insurance company is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs
To

The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court No.II,
Tindivanam.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.11961

C.M.A.No.697 of 2010 and
M.P.No.1 of 2010

KJ(CO)
SSM(09/05/2019)