IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1089 of 2016
and
C.M.P.Nos.2468 and 8068 of 2016

United India Insurance Company Ltd.,
Dindugal, (having its branch at
'Jeeva Jothi'Buildings)
Salai Road, Dindugal. .. Appellant/2nd Respondent

Vs.

1.Rameswari
2. Minor. Monika
3. Minor. Devadharshini
4. Minor. Harshavarthini
... Respondents 1 to 4/Petitioners 1 to 4

5. Ramar ... 5th Respondent/1st Respondent
6. Venkatesan ... 6th Respondent/3rd Respondents

7. Bharathi AXA General Insurance Co Ltd.,
Sri Ram Center, PP Chavadi,
Madurai -625 016. ..7th Respondent/4th Respondent

R2 to R4 re by Next Friend/Mother R1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 16.10.2015 made in O.P.No.988 of 2012 on the file of the Motor Accident Claims Tribunal (Special District court), Salem.

For Appellant : Mr.D.Bhaskaran

For Respondents 1-4 : Mr.T.M. Karthikeyan

For Respondents 5 to 7 :(No Appearance)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 16.10.2015 made in O.P.No.988 of 2012 on the file of the Motor Accident Claims Tribunal (Special District court), Salem

2.The brief facts of the case is as follows:

On 28.04.2012 at about 4:00 hours the deceased travelled as a Co-driver in the Tempo bearing Registration No.TN-47-F-3516 driven by another driver namely Ramar on Salem to Namakkal NH Road. At that time the driver of the 3rd respondent Lorry bearing Registration No. TN 64 7134 stopped the lorry on the road without any caution or signal, in the impact the Tempo dashed behind the lorry and caused the accident. As a result of which the deceased sustained grevious injuries on the head and all over the body and died on the spot itself. Hence, the legal heirs filed a claim petition before the Tribunal seeking compensation for a sum of Rs.40,00,000/-.

3.The appellant herein who is the respondent before the Tribunal has filed a counter statement denying the mode of the accident as stated by the claimants and further states that the negligence is on the driver of the lorry, who drove the same in an rash and negligent manner and invited the accident and also states that the compensation claimed is highly excessive.

4.The Tribunal upon consideration of the evidence available on record, has awarded a total compensation of Rs.10,50,500/- with interest at the rate of 7.5% per annum from the date of petition, to the respondents/claimants. Aggrieved against the same award and liability, the United India Insurance Company has preferred this appeal to set aside the same.

5. Heard both sides and perused the materials available on record.

6. It is argued by the appellant/United India Insurance Company against the liability as well as the quantum awarded by the Tribunal. The grievance raised by the appellant is that the Tribunal went wrong in fixing entire negligence on the part of the driver of the tempo. It has been further stated that the claimant himself being the owner of the vehicle cannot seek compensation and the Tribunal also failed to note that the Insurance Company is not statutorily required to cover the liability in respect of additional spare driver. The Tribunal went wrong in appreciating the evidences and concluded that the driver of the Tempo is the cause for the accident and ultimately fixed the liability on the part of the driver.

7. The Tribunal after analysing the evidence and documents placed before it came to the conclusion that the accident occurred only due to the rash and negligent driving on the part of the driver of the tempo and the Tribunal has further given a finding, by observing the fact that the driver of the tempo drove the same without observing traffic rules and dashed against the lorry. In view of the entire evidence as well as the documents placed before the Tribunal, the compensation

awarded to the claimants is reasonable and does not require any interference by this Court.

8. While determining the compensation, the Tribunal has also observed the fact that the injured died due to the accident and at the time of the accident the deceased was 41 years and he was working as a driver and earning Rs.7,500/- per month. After deducting 1/4th towards personal expenses and appliying the multiplier '15' arrived Rs.8,50,500/- as compensation, which is calculated hereunder:

Monthly income	-	Rs.7,500/-
After deducting ¼th towards personal expenses	-	Rs.1,875/-
Annual Income(Rs.5,625x12)	-	Rs.67,500/-
Loss of income	-	Rs.8,50,500/-

(Rs.67,500 x 14 = Rs.9,45,000)

Rs.9,45,000 - 10%(Income Tax)

The Tribunal has also awarded Rs.25,000/- towards funeral expenses and Rs.50,000/- was awarded to each of the family members(2nd,3rd and 4th respondents) towards the head love and affection thus, totalling to Rs.10,50,500/- In view of the entire evidence as well as the documents placed before the Tribunal, the compensation awarded to the claimants are reasonable and does not require any interference by this Court.

9. In view of the above discussions, the award passed by the Tribunal is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition are closed.

10. The appellant/Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded by the 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 respondents/claimants are permitted to withdraw their respective share amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

11. At this juncture, it is submitted that the mother of the the minor claimants shall withdraw 25% of the award amount apportioned to the respondents 2 to 4/minor claimants, in order to meet the essential expenses, and the balance amount should be deposited into the Savings Bank Account of the minor claimants, in any one of the Nationalized Banks till they attain majority and the interest accrued thereon shall be withdrawn by the mother/guardian of the minor claimants, once in

three months, directly from the Bank, under intimation to the Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

smn

To

1.The Special District Judge,
Motor Accidents Claims Tribunal, Salem.

Copy TO

The Section Officer,
VR Section,
High Court,Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 66608
+1cc to Mr.T.M.Karthikeyan, Advocate, S.R.No. 66240
+1cc to Mr.Srinivasan Ramalingam, Advocate, S.R.No. 66511

C.M.A.No.1089 of 2016
and
C.M.P.Nos.8068 of 2016
and
and 2468 of 2017

RJI(CO)
GN(30/10/2019)