

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2689 of 2011

and

M.P.No.1 of 2011

and

M.P.No.1 of 2015

Cholamandalam MS General Insurance Company Limited,
Dare House, 2nd Floor,
NSC Bose Road, Chennai - 600 001.

.. Appellant/2nd Respondent

Vs.

1.Jagadha

2.Minor Pavithra

3.Minor Sharmila

4.Minor Dhelliganesh

(Minors 2 to 4 represented by their next
Friend and Mother, 1st respondent)

.. Respondents 1 to 4/Petitioners

5.R.Nirmala

(5th respondent exparte in lower Court)

.. 5th Respondent/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the Judgment and Decree dated
30.03.2011 made in M.C.O.P.No.286 of 2008 on the file of the
Motor Accidents Claims Tribunal, Subordinate Judge, Gudiyattam,
Vellore District.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.T.Dhanyakumar

For R5 : Exparte before the Tribunal

JUDGMENT

The 2nd respondent before the Tribunal, is the appellant herein.

2. This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 30.03.2011 made in M.C.O.P.No.286 of 2008 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Gudiyattam, Vellore District.

3. The learned counsel for the appellant/Cholamandalam Insurance Company has submitted that this appeal has been filed both against the liability as well as the quantum of compensation awarded by the Tribunal. The learned counsel has drawn my attention to Column No.4 of the claim petition, wherein the occupation of the deceased is mentioned as Coolie. However, in the description of the claim, he was described as if the deceased was travelling as a cleaner. Consequently, he has also contended on the point of quantum of compensation said to have been received after the accident.

4. Heard the learned counsel for the respondents 1 to 4/claimants and perused the materials available on record.

5. The learned counsel for the respondents 1 to 4/claimants has submitted that the compensation awarded by the Sub-Judge in M.C.O.P.No.286 of 2008, on the file of the Motor Accidents Claims Tribunal, Gudiyattam, Vellore District is just and proper and it does not call for any interference.

6. After hearing both the parties and also taking note of the fact the finding of the Tribunal that the accident has taken place due to rash and negligent of the driver of the vehicle and the learned counsel for the respondents 1 to 4 has not disputed the same now and the Tribunal has come to the conclusion that the Insurance Company is liable to pay the compensation, in view of the character of the person said to have travelled in the vehicle. As per the evidence of P.W.1, the widow of the deceased, she has categorically stated that her husband was a cleaner in the said lorry and he received the amount as salary from the owner of the lorry and there was no positive evidence to dispute the fact.

7. Taking into consideration that P.W.1's evidence is said to be in corroboration with the statement made in the claim petition, it appears that the Tribunal has come to the conclusion that he was working as a cleaner and when once the character of the person who died in the accident and he is said to have been cleaner, it is coming within the ambit of cleaner which is covered by the policy.

8. Considering the evidence of P.W.1, the Tribunal has rightly come to the conclusion that the deceased was a cleaner and taking into account the entirety of the facts and circumstances of the case, I am not inclined to interfere with the findings of the Tribunal on the liability aspect.

9. On the point of quantum of compensation, Rs.6,000/- has been arrived per month as income of the deceased and also taking note of the amount awarded by the Tribunal under various heads, this court is of the considered view that the quantum awarded by the Tribunal is just and proper by considering the date of the accident.

10. In the above view of this matter, this Civil Miscellaneous Appeal is dismissed. The learned counsel for the appellant/Insurance Company has submitted that the entire amount has already been deposited. It is open to the claimant to file appropriate petition before the Tribunal for withdrawal of the compensation amount. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Subordinate Judge, Gudiyattam, Vellore District.
2. The Section Officer,
VR Section, High Court, Madras-104

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.13644

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.13119

C.M.A.No.2689 of 2011 and
M.P.No.1 of 2011 and
M.P.No.1 of 2015

MR (CO)
CS/06/05/2019