

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2176 of 2015

M/s. New India Assurance Co. Ltd,
Branch Office,
5, Raja Mill Road,
Pollachi - 642 001.

...Appellant /2nd Respondent
Vs.

Balasubramaniam (deceased)
1.Bhagavathi
(Amended as per order in
I.A.No.1313 of 2012
dated 03.10.2012)

...1st Respondent/Petitioner

2.M.Jegadeesh

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 20.01.2015 made in M.C.O.P.No.566 of 2011 on the file of the (Motor Accident Claims Tribunal), Additional District Court - 3 at Dharapuram.

For appellant: Mr.J.Chandran

For R1 : Mr.R.Nalliappan

For R2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 20.01.2015 made in M.C.O.P.No.566 of 2011 on the file of the Additional District Court - 3, (Motor Accident Claims Tribunal) at Dharapuram.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.566 of 2011, on the file of the Additional District Court - 3, (Motor Accident Claims Tribunal) at Dharapuram. Initially the deceased Balasubramaniam filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on

16.10.2009. Pending claim petition, Balasubramaniam/the claimant died and the 1st respondent, his mother was impleaded as his legal heir vide order dated 03.10.2012 made in I.A.No.1313 of 2012.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tata ACE belonging to the 2nd respondent and directed the appellant-Insurance Company as the insurer of the vehicle to pay a sum of Rs.5,00,880/- as compensation to the 1st respondent/claimant.

4.Challenging the said award dated 20.01.2015 made in M.C.O.P.No.566 of 2011, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that the death is not due to the injuries sustained by the deceased in the accident. The accident took place on 16.10.2009 and the deceased died on 11.06.2011. The 1st respondent failed to prove that the death occurred only due to the injuries sustained by him and P.W.3-Doctor has stated that the deceased did not suffer any heart problems due to the injuries and his heart was in a good condition. In view of the same, the 1st respondent is entitled to only loss of estate, medical expenses and other amounts spent for the treatment. The Tribunal erred in awarding huge amounts to the 1st respondent/mother of the deceased, which is excessive.

6.Per contra, the learned counsel appearing for the 1st respondent contended that the deceased was taking treatment continuously from the date of accident and P.W.3-Doctor has stated that the deceased has taken treatment for the heart problem during the said period. The Tribunal held that the death is only due to the injuries sustained by the deceased in the accident, based on the evidence and the amounts awarded by the Tribunal are not excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

8.From the materials on record, it is seen that originally the deceased Balasubramaniam filed the claim petition for the injuries sustained by him in the accident. Pending claim petition, he died on 11.06.2011 and the 1st respondent, his mother was impleaded as 2nd respondent in the claim petition. The 1st respondent has examined P.W.3-Doctor and marked Ex.P11. From the evidence of P.W.3-Doctor as well as Ex.P3, it is seen that

the deceased was taking treatment continuously from the date of accident and P.W.3 has stated that due to the injuries, his heart was affected and was taking treatment for the heart problem. From the above, it is seen that the deceased died only due to the injuries suffered by him in the accident, even though he was not taking treatment continuously. The findings of the Tribunal that the deceased died only due to the injuries is valid and there is no reason warranting interference by this Court in the said finding.

9.As far as the quantum of compensation is concerned, the Tribunal considering the age and avocation, awarded compensation under different heads, which is not excessive. Hence, the same does not warrant interference by this Court.

10.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.5,00,880/- awarded by the Tribunal as compensation to the 1st respondent/claimant is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs.

gsa

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The Additional District Judge No.3,
(The Motor Accident Claims Tribunal),
Dharapuram.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.J.Chandran, Advocate, SR.No.7493

+1cc to Mr.R.Nalliyappan, Advocate, SR.No.7136

C.M.A.No.2176 of 2015

Kak (24/05/2019)