

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.462 of 2015

and

M.P.No.1 of 2015

M/s.The National Insurance Company Limited,
DAB-1, Murugesu Naicker Officer Complex,
66, Greaves Road,
Chennai - 600 006. ... Appellant/2nd Respondent

Vs.

1.Sambandhan

2.Malathi ...Respondents 1 & 2/Claimants 1 & 2

3.G.Sumathi ... 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.06.2014 made in M.C.O.P.No.127 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee.

For Appellant : Mr.R.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 25.06.2014 made in M.C.O.P.No.127 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee.

2.The appellant is the second respondent in M.C.O.P.No.127 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the death of one Karpagam, who died in the accident that took place on 04.11.2010.

3. According to the respondents 1 and 2/claimants, on 04.11.2010 at 11.00 P.M., while the deceased was travelling as a pillion rider in a motorcycle ridden by one Rajesh on Kundrathur - Porur Road, the rider of the motorcycle rode the same in a rash and negligent manner and lost his control and caused the accident. Due to the said accident, the deceased succumbed to injuries. The respondents 1 and 2 filed claim petition claiming compensation against the third respondent and appellant/Insurance Company being the owner and insurer of the motorcycle.

4. The appellant/Insurance Company filed counter statement and denied all the averments made by the respondents 1 and 2. According to appellant/Insurance Company, the deceased travelled in the motorcycle rode by her own son. In fact the rider of the motorcycle, in order to avoid from dashing against the pedestrian, who was crossing the road, applied brake and due to the same, the vehicle got overturned. Hence, the alleged accident has become an inevitable one for which the rider of the motorcycle is no way has to be blamed. At the time of accident, the rider of the motorcycle did not possess valid driving license and hence, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 and 2/claimants. The respondents 1 and 2/claimants have not produced any document to prove the avocation and income of the deceased. The compensation claimed by the respondents 1 and 2/claimants are highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, on behalf of the respondents 1 and 2 /claimants, two witnesses were examined and 5 documents were marked as Exs.P1 to P5. The third respondent and appellant/Insurance Company did not let in any oral or documentary evidence before the Tribunal.

6. The Tribunal, considering the pleadings, oral and documentary evidence let in by respondents 1 and 2, held that the accident has occurred due to rash and negligent riding by the rider of the motorcycle belonging to the third respondent and directed the appellant-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.7,01,104/- as compensation to the respondents 1 and 2/claimants.

7. Challenging the said award dated 25.06.2014 made in M.C.O.P.No.127 of 2011 granting compensation to the respondents 1 and 2/claimants, the appellant-Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant-Insurance Company contended that the offending vehicle is owned by the third respondent, who is one of the daughters of the deceased and driven by Rajesh, who is the son of the deceased. The rider of the motorcycle is responsible for the accident and third respondent as owner of the motorcycle is vicariously responsible for the accident. Son and daughter of the deceased are tort-feasors and respondents 1 and 2, who are the husband and another daughter of the deceased are not entitled to maintain the claim petition under Section 166 of the Motor Vehicles Act, 1988 and prayed for setting aside the award passed by the Tribunal.

9.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

10.From the materials available on record and the contention made by the learned counsel for the appellant, it is seen that the above contentions made by the learned counsel for the appellant/Insurance Company are without merits. As per Section 166 of the Motor Vehicles Act, 1988, the legal heirs of the deceased can file claim petition for compensation for the death of a person in the accident and therefore the claim petition filed by the respondents 1 and 2, even though the rider of the motorcycle is the son of the first respondent and brother of the second respondent is maintainable against the insurer of the motorcycle, who is the appellant herein.

11.As far as quantum of compensation is concerned, the respondents 1 and 2/claimants claimed that the deceased was a vegetable vendor and was earning a sum of Rs.500/- per day. Except oral evidence, they have not let in any document to substantiate the said claim. The accident occurred in the year 2010. The Tribunal fixed the notional income of the deceased at Rs.6,500/- per month and the same is not excessive. The further contention of the learned counsel for the appellant/Insurance Company is that the respondents 1 and 2 have restricted their claim of compensation for only Rs.3,00,000/-, while the Tribunal erroneously awarded a sum of Rs.7,01,104/- without any basis. The said contention is without merits.

12.It is well settled that Tribunal and Courts have power to award just compensation even more than what is claimed by the claimants. In the present case, the Tribunal considering the contentions of the respondents 1 and 2/claimants that the deceased was a vegetable vendor and was earning a sum of Rs.500/- per day, fixed notional monthly income of the deceased at Rs.6,500/-. The Tribunal has not granted any amount towards future prospects and the amounts awarded by the Tribunal under other heads are meager. In such circumstances, a sum of

Rs.6,500/- fixed by the Tribunal as monthly income of the deceased is not meager. Considering all the materials in entirety, the total compensation awarded by the Tribunal is not excessive and the same is just compensation.

13.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.7,01,104/- awarded by the Tribunal as compensation to the respondents 1 and 2/claimants, along with interest and costs 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 to the credit of M.C.O.P.No.127 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The II Additional District Judge,
Motor Accidents Claims Tribunal,
Poonamallee .

2.The Section Officer, सत्यमेव जयते
VR Section,
High Court,
Madras.

+1cc to Mr.R.Ravichandran, Advocate Sr.103341

C.M.A.No.462 of 2015

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