

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No. 2903 of 2013

and

M.P.No.1 of 2013

National Insurance Company Limited
Tiruchengode Taluk
Namakkal District.

... Appellant/3rd respondent

Vs.

1. Ramathal
2. Gomathi
3. Kokila
4. Maheswari
5. Sidhapandaram
6. Lakshmi
7. Eswari
8. Angappan
9. Rathinam
10. S.Sampathkumar
11. S.C.P.Elangovan
12. The Branch Manager

... Respondents/ Petitioners

National Insurance Co.Ltd.

Ist Floor, Karthikeya Complex,
403, B-10, Mettur Main Road

Bhavani, Erode District.

... Respondents/ Respondents 1,2&4
(Respondents 10 to 12 are not exparte in Lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.01.2012 made in M.C.O.P.No. 9 of 2010 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Bhavani.

For Appellant : M/s.R.Sree Vidhya

For Respondents: Mr.C.Kulanthaivel
for R1 to R9
R10 to R12- Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the Judgment and Decree dated 23.01.2012 made in M.C.O.P.No. 9 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Bhavani.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal and at appropriate places their ranks in the present appeal would be indicated, if necessary.

3. The case in brief, is as follows:

On the fateful day, ie. on 17.11.2009, around 06.25 pm, the deceased was standing before Sakthi Foundary, Pallagoundanpalayam on Kovai - Perundurai NH 47 main road. At that time, a bus bearing Registration No.TN 38 AR 5335 driven by the first respondent in a rash and negligent manner without following rules and regulations hit against him. Due to the said accident, the deceased Loganathan sustained grievous injuries all over his body and was immediately rushed to the Government Hospital, Perundurai. However, he succumbed to the injuries. According to the claimant, the rash and negligent driving of the driver of the bus was the cause of the accident. Hence, the claimants filed a claim petition before the Tribunal.

4. The Tribunal considering the pleadings, oral and documentary evidence, awarded a sum of Rs.14,19,000/- to the claimants together with interest at the rate of 7.5% per annum as compensation.

5. Challenging the said order dated 23.01.2012 in M.C.O.P.No. 9 of 2010 on the file of the learned Subordinate Court, Bhavani, the appellant/Insurance Company has come out with this appeal.

6. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in accepting that the deceased was earning a sum of Rs.6,000/- per month and was receiving Rs.200/- as batta per day. Therefore, she would contend that the Tribunal ought to have fixed the alleged earnings of the deceased as Rs.4,500/- per month. The learned counsel also contended that claimants 2 to 4 were married / major daughters and so deceased Loganathan's wife and mother should alone be considered as dependents, 1/3rd should be deducted towards the personal expenses of the deceased. She therefore prayed for scaling down the compensation awarded by the Tribunal.

7. Per Contra, the learned counsel appearing for the claimants contended that due to the said accident, deceased Loganathan sustained grievous injuries all over his body. He was aged about 47 years on the date of the accident. He would contend that the deceased was a Heavy Vehicle driver, earning

not less than Rs.6,000/- on the date of the accident. He would therefore contend that the Tribunal, after analysing all the aspects of the case, awarded a sum of Rs.14,19,000/- to the claimants together with interest at the rate of 7.5% per annum. The learned counsel prayed that the same need not be disturbed at this stage.

8. Heard the learned counsel for the appellant as well as the respondents and also perused the materials available on record.

9. The appellant is the Insurance Company. Admittedly, on 17.11.2009, at about 6.25 P.M, the deceased Loganathan was standing before Sakthi Foundary, Pallagoundanpalayam on Kovai - Perundurai NH 47 main road. At that time, a bus bearing Registration No.TN 38 AR 5335 driven by the first respondent in a rash and negligent manner without following rules and regulations, hit against the deceased and due to the said accident, the deceased sustained grievous injuries all over his body and died. The manner of the accident is not disputed by either parties.

10. From the materials on record, the claimants produced Salary Certificate (Ex.P4) to prove the income of the deceased. Ex.P4 shows that the deceased Loganathan was earning a sum of Rs.12,000/- per month. The Tribunal also rightly appreciated the evidence and fixed his earning as Rs.6,000/- per month together with Rs.200/- as batta per day. Since there are 6 persons depending on the income of the deceased, the Tribunal deducted 1/4th towards the personal expenses of the deceased, which cannot be found fault with. The Tribunal also applied proper multiplier '13' and awarded a sum of Rs.14,04,000/- towards compensation. The Tribunal awarded a meagre sum of Rs.2,500/-, Rs.2,500/-, Rs.5,000/- and Rs.5,000/- towards funeral expenses, loss of estate, loss of love and affection and consortium respectively, which cannot also said to be excessive. In the facts and circumstances, this Court is of the opinion that there is no reason to interfere with the findings given by the Tribunal. The orders passed by the Tribunal is upheld.

11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

kmm

To
The Motor Accident Claims Tribunal (Subordinate Judge),
Bhavani.

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

+1cc to M/s.R.Sree Vidhya , Advocate SR.No. 104452

+1cc to Mr.C.Kulathaivel, Advocate SR.No. 103583

C.M.A.No. 2903 of 2013
and

M.P.No.1 of 2013

A.SK(03/09/2020)



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