

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.410 of 2014

M/s.United India Insurance Co. Ltd.,
Rept. By its Branch Manager,
No.235, Gandhi Market Road,
Arni Town, Thiruvannamalai District.... Appellant/2nd Respondent

Vs.

1. Mrs.Easwari
 2. Mr.Harikumar
 3. Thenmozhi
 4. Bakkiaraj
 5. P.T.Sambandam
- Respondents/Petitioners/
1st Respondent
(5th Respondent Exparte in Lower Court)

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree in M.C.O.P.No.226 of 2009 dated 18.04.2013 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Arani, Thiruvannamalai District.

For Appellant : Mr.N.Vijayaraghavan
For R1 to R4 : Mr.P.Satheesh Kumar
R5 - Exparte-Lower Court

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree in M.C.O.P.No.226 of 2009 dated 18.04.2013 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Arani, Thiruvannamalai District.

2. The case of the appellant is that on 26.11.2009 at about 3.00 p.m., the first respondent's husband, namely, Muthu (deceased) was standing and talking with some other persons on the left side of Devikapuram Main Road, Opposite to Parthiban's House, Chetput. At that time, the fifth respondent who drove the car bearing Registration No.TN-25-T-5727 insured with the appellant insurance company, came in a rash and negligent manner and hit against Muthu and other persons. Due to which, the Muthu

was thrown out and sustained fatal injuries. Immediately, he was taken to the Government Hospital, Polur, and then he was taken to the Government Medical College Hospital, Vellore, but, he died on the way. Prior to the accident, he was earning more than Rs.10,000/- per month as a Salesman in Tamil Nadu Co-operative Society and as a Agriculturist. Since he died in the accident, his wife and children had filed a Claim Petition in M.C.O.P.No.226 of 2009 under Section 166 of Motor Vehicles Act, claiming Rs.8,00,000/- as compensation under various heads, before the Motor Accidents Claims Tribunal, Subordinate Court, Arani, Thiruvannamalai District.

3. Denying the averments of the claimants, the appellant insurance company filed a counter affidavit before the Tribunal, wherein, it has been submitted that the claimants have not produced any document to prove the age and monthly income of the deceased, and they have also not produced any documentary evidence to prove their relationship with the deceased. Further, it has been submitted that the accident happened only due to the negligence of the deceased and there is no fault on the part of the driver of the car. Hence, they sought for dismissal of the petition filed by the claimants.

4. During the trial before the Tribunal, on the side of the claimants, the first respondent herself examined as P.W.1 and marked certain documents. One Mr.Velakannan was examined as P.W.2 on the side of the claimants. On the side of the respondents, no one was examined and no documents were marked.

5. The Tribunal, after considering the oral and documentary evidences, has come to the conclusion that the accident occurred only due to negligence of the fifth respondent. As the fifth respondent's car was insured with the appellant insurance company, the Tribunal held that the fifth respondent and appellant insurance company are liable to compensate the claimants. The claimants have not produced any proof before the Tribunal to prove that the deceased had earned Rs.10,000 per month. However, considering the document i.e. Ex.5 filed by the claimants, the Tribunal has come to the conclusion that the deceased would have earned Rs.9538/- per month, in which, 1/4 of the shares he would have taken for his personal expenses and the remaining 3/4 of the shares i.e. Rs.85,842/- he would have given to his family per annum. As per which, the Tribunal has fixed the annual income of the deceased as Rs.85,842/- and has calculated the same with the multiplication of 14 considering the age of the first respondent who is the wife of the deceased. Thereafter, the Tribunal has come to the conclusion that the claimants have lost an income of Rs.12,01,788/- due to the death of the person Muthu. Besides, the Tribunal has awarded Rs.20,000/- to the first respondent as she has lost her husband

and Rs.10,000/- to the other respondents as they have lost their father. Moreover, the Tribunal has awarded Rs.5000/- towards Funeral expenses and Rs.2000/- towards Transportation expenses. So totally, the Tribunal has awarded a sum of Rs.12,58,788/- as compensation to the claimants with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Aggrieved by the award, the appellant/insurance company has filed this appeal before this Court.

6. The learned counsel for the appellant/insurance company would submit that the amount fixed as basic salary of the deceased is without any basis and the compensation awarded by the Tribunal is very excessive.

7. Though it has been stated by the learned counsel for the appellant/insurance company that the Tribunal, without any basis, has fixed the basic salary of the deceased, they have not produced any document or brought any witnesses to that effect to refute the same. Therefore, this Court is not inclined to interfere with the award passed by the Tribunal.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed and the Judgment dated 18.04.2013 passed by the Tribunal in M.C.O.P.No.226 of 2009 is confirmed. No costs.

9. The learned counsel for the appellant insurance company would submit that they have already deposited the entire compensation amount awarded by the Tribunal. Hence, the respondents/claimants are directed to file a formal petition and withdraw the amount, less the amount if any, already withdrawn. No costs.

Sd/-
Asst.Registrar (CS)

/true copy/

Sub Asst. Registrar

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal
Arani, Thiruvannamalai District.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.MB.Gopalan, Advocate,sr.48808
+1 cc to Mr.P.Satheeshkumar, Advocate,sr.48425

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