

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.133 of 2017

1. Rukkammal
2. Thagadoor Arasu
3. Minor Vishalakshi
4. Sasi
(minor rep by her mother and
next friend Sasi

Vs.

1.Rajeswari ...1st Respondent/Petitioner

2. A. Amirtham

3. ICICI Lombard General Insurance Co.Ltd.,
No.33, 1st Floor, Swarnambigai Plaza,
Near New Bus Stand, Omalur Main Road,
Salem Town & District. ...Respondents2 & 3/Respondents1 &2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.11.2016 made in M.C.O.P.No. 5 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Judge), Dharmapuri.

For Appellant : M/s. Arun Dattar

for M/s..Munusamy

For Respondents : Mr. V.Sakkarapani -R1

M/s. R. Sree Vidhya -R3

(R2-Exparte) before Tribunal

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants seeking enhancement of compensation and to modify the apportionment made between the claimants by the Tribunal in the 02.11.2016 made in M.C.O.P.No. 5 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Judge), Dharmapuri.

2. Brief facts:

2.1 On 18.11.2008 at about 11.15 hrs, the deceased Rajasekaran travelled as pillion rider in TVS Suzuki bearing Reg. NO. TN29-B-4032 from workshop which is situated at trade centre to Dharmapuri when a speedy lorry bearing Reg.No.TN28-A-1122 driven by its driver in the opposite direction in a rash and negligent manner without following any traffic rules and dashed against the deceased Rajasekaran and one Kaviarasu. As a result of the said accident, the deceased Rajasekaran sustained very serious injuries all over his body and he died on the spot. The wife of the deceased has filed a claim petition claiming a sum of Rs.14,40,000/-.

2.2 The Insurance Company has filed the counter statement denying the mode of the accident and also negligence on the part of driver of the lorry. The sum claimed as compensation under various head was also denied as excessive.

2.3. It is seen from the records that for the death of the said deceased, two claim petitions have been filed in MCOP.No. 4 of 2015 and MCOP. No. 5 of 2014. The tribunal after analysing the evidence and pleadings, had passed a common award granting compensation to the claimant in MCOP. No. 5 of 2014 namely Rajeswari and respondents 3 to 5 in the same case namely Rukkammal, Thagadoor Arasu and Minor Visalatchi and dismissed the claim petition in respect of 6th respondent namely Sasi. Consequently the tribunal had dismissed the claim Petition in MCOP. No. 4 of 2014 in view of the fact that the claimants in the said claim petition were already been added as respondents in MCOP. No. 5 of 2014 and compensation was also granted to them. The Appeal under challenge is against the award passed in MCOP. No.5 of 2014.

3. Heard both sides and perused the documents available on record.

4. The learned counsel for the appellant has argued that the major portion of the award amount was awarded to the divorced wife and meagre amount granted to the other dependants. He has further argued that the tribunal has failed to consider the paramount interest of the dependant legal representatives of the deceased namely, second wife, mother, handicapped brother and minor daughter. The monthly income and the multiplier taken by the tribunal was also very much aggrieved by the appellants.

5. On the other hand the learned counsel for the

respondent /Insurance Company firmly contended that the sum awarded by the tribunal in all heads is excessive and the same was awarded without following the earlier decisions of the Supreme Court and by this Court. Hence he prayed to set aside the order of the tribunal.

6. It is seen from the records that the claimants in both the petitions are 2 wives, mother, handicapped brother and minor daughter. Among the claimants, the tribunal has granted compensation to the claimant in MCOP. No. 5 of 2014 namely Rajeswari and respondents 3 to 5 in the same case namely Rukkammal, Thagadoor Arasu and Minor Visalatchi and dismissed the claim petition in respect one Sasi, who claimed herself as legal wife to the deceased Rajasekaran.

7. On perusal of records, it is seen that Rajeswari and the deceased Rajasekaran were got married and lived only a short period of one month and they have been living separately till the death of her husband Rajasekaran. But there is no divorce between them as on date. The said fact has been discussed elaborately in the civil suit in O.S. No. 87 of 2009 which was filed by the Rajeswari claiming to declare herself and his mother-in-law as legal heirs of the deceased Rajasekaran. The trial Court has passed an order declaring Rajeswari, Rukkammal and Minor Visalakshi as legal heirs of the deceased. It is also seen that trial Court has also passed an order declaring the marriage between the deceased Rajasekar and Sasi as illegal. In view of the above, the decision of the tribunal in fixing the claimants is proper.

8. Now, coming to the determination of compensation, it is seen that the tribunal has very much observed the fact that no evidence has been placed to prove the salary drawn by the deceased as Manager in the said company except the salary certificate, which was marked as Ex.R1. Hence the tribunal without relying upon the said salary certificate, has fixed the monthly income at Rs.6,500/-, deducting 1/4 towards personal income, applying multiplier 16 has calculated loss of income at Rs.9,36,000/-, which is proper and reasonable.

9. Further, by considering the age of the claimant (Rajeswari) in MCOP.No. 5/2014, who was 25 years, the sum of Rs.1,00,000/- granted by the tribunal under the head Loss of consortium is also reasonable. Likewise, the sum awarded under other heads are reasonable and proper and does not require any interference by this Court. On the whole, the compensation awarded at Rs.11,86,000/- under various heads is proper and reasonable.

10. In view of the above discussion and also considering the fact that the claimants 1 to 3 are the mother, brother and minor daughter this Court is not inclined to modify the award and apportionment ordered by the tribunal. This Court finds no reason to interfere with the award and apportionment made by the tribunal and hence the same is confirmed.

11. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The compensation awarded by the Tribunal at Rs.11,86,000/- with interest at the rate of 7.5% per annum is confirmed.

(iii) The 3rd respondent / Insurance Company is directed to deposit the entire amount awarded by the tribunal with interest and costs, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon as per the apportionment ordered by the tribunal.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The Motor Accident Claims Tribunal
Special District Judge,
Dharmapuri.

+1 cc to M/s.C.Munusamy Advocate sr54257
+1 cc to Mrs.R.Sreevidhya Advocate sr53867
+1 cc to M/s.V.Sakkarapani Advocate sr53850

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