

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2018

Delivered on : 02.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1535 of 2017

and

CMP.No.8128 of 2017

1.M.Nallammal

2.Sagunthala

3.Easwari

4.M.Shanmugavel

...

Appellants/Petitioners

Vs

1.S.Thiruselvam

2.M/s.United India Insurance Company Ltd.,

Branch Office,

7A, Westveli Street,

2nd Floor, Madurai.

...Respondents/Respondents

(The 1st respondent set ex-parte before the Tribunal,

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 30.04.2012 in M.C.O.P.No.626 of 2009 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Namakkal.

For Appellants : MA.P.Thangavel
for Mrs.Sankar

For Respondents: Mr.J.Chandran (for R2)
R1 - Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award dated 30.4.2012 passed in M.C.O.P.No.626 of 2009 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Namakkal.

2. Brief facts are that on 21.10.2009 at about 7.15 A.M., the deceased Muthan was travelling as pillion rider in a TVS 50 motorcycle bearing registration No.TN-28 6612 and when the motorcycle was nearing Meikalnaickenpatti bus stop on Trichy to Namakkal main road, a Tata Sumo car bearing registration No.TN-

63 U 6717 came on the same direction driven by its driver in a rash and negligent manner without blowing horn dashed behind the motorcycle and caused the accident. Due to the accident, the deceased sustained multiple grievous injuries. Immediately, the deceased was admitted in C.M. Hospital, Namakkal, where from he was transferred to the Government Hospital, Salem and thereafter, admitted in Vinayaga Hospital, Salem for better treatment and succumbed to injuries on 02.11.2009. Regarding the accident, a criminal case in Crime No.280 of 2009 under Section 279, 337 and 304(A) IPC was registered against the driver of Tata Sumo car. At the time of accident, the deceased was aged 55 years and was earning Rs.8,000/- per month by doing agriculture cum coolie work. Stating that the accident occurred due to rash and negligent driving of the driver of the Tata Sumo car, the claimants who are wife, daughters and son of the deceased have filed the claim petition claiming compensation of Rs.7,00,000/-.

3. Denying the manner of accident, the second respondent insurance company has filed counter stating that at the time of accident, the TVS 50 was driven by the deceased Muthan, who was not possessing valid driving licence and the claimants have purposely suppressed the said fact and stated that Kandan @ Kandasamy was the rider of the TVS 50. It is stated that the accident occurred due to rash and negligent driving of the rider of TVS 50 motorcycle by the deceased Muthan without having valid driving licence. The second respondent also denied the age, occupation and monthly income of the deceased and also stated that the compensation claimed by the claimants is highly excessive.

4. Before the Tribunal, M.C.O.P.No.626 of 2009 filed by the claimants herein and M.C.O.P.No.562 of 2009 filed by the one Kandan @ Kandasamy were tried together and common evidence was let in. The son of the deceased Muthan was examined as P.W.1 and the claimant in M.C.O.P.No.562 of 2009 was examined as P.W.2 and Dr.Sivalingam was examined as P.W.3. Exs.P1 to P8 were marked. On the side of the second respondent, R.W.1 and 2 were examined and Exs.R1 to R5 were marked.

5. Upon consideration of oral and documentary evidence, the Tribunal held that the accident was due to the negligence of the driver of the Tata Sumo car and at the time of accident, the offending vehicle was insured with the second respondent insurance company and therefore, the respondents 1 and 2 are jointly and severally liable to pay the compensation. As far as quantum of compensation is concerned, in M.C.O.P.No.626 of 2009, the Tribunal awarded total compensation of Rs.1,30,000/- and in M.C.O.P.No.562 of 2009, the Tribunal awarded Rs.2,75,000/- to the injured claimant. Being dissatisfied with the quantum of

compensation, the claimants in M.C.O.P.No.626 of 2009 have filed the present Civil Miscellaneous Appeal.

6. Assailing impugned award, the learned counsel for the appellants submitted that the compensation awarded by the Tribunal is very low and it has to be enhanced. He would submit that the Tribunal ought to have considered that at the time of accident, the deceased was aged only 55 years and agriculturist cum daily collie. Further, the Tribunal has mistakenly fixed the age of the deceased as 65 years. The learned counsel further submitted that as per Minimum Wages Act, Rs.6,500/- has to be taken as notional income of the deceased, but the Tribunal mechanically considered Rs.3,000/- per month, which is very low.

7. The learned counsel then submitted that the Tribunal ought to have deducted one-fourth towards personal expenses instead of one-third. As far as the conventional damages are concerned, the Tribunal awarded lesser amount and the same needs to be increased.

8. The learned counsel for the second respondent insurance company vehemently contended that as against the award passed in M.C.O.P.No.626 of 2009, the second respondent preferred appeal C.M.A.No.1219 of 2013. By a common judgment dated 24.8.2015, the learned Single Judge of this Court affirmed the award and therefore, the appellants are not entitled to maintain the present appeal and prayed for dismissal of the appeal. In support, the learned counsel relied upon the judgment passed in C.M.A.Nos.1218 and 1219 of 2013 dated 24.8.2015 of this Court and Shivawwa and another v. Branch Manager, National India Insurance Co. Ltd., and another, reported in 2018 (1) TN MAC 435 (SC).

9. I have heard Mr.Ma.P.Thangavel, learned counsel for the appellants and Mr.J.Chandran, learned counsel for the 1st respondent and also perused the materials available on record.

10. It appears that before the Tribunal M.C.O.P.No.562 and 626 of 2009 were tried together and by the common judgment dated 30.4.2012, the Tribunal awarded compensation. The present appeal relates to the award passed in M.C.O.P.No.626 of 2009.

11. Challenging the award passed by the Tribunal in the aforesaid two claim petitions, the second respondent insurance company filed C.M.A.Nos.1218 and 1219 of 2013. C.M.A.No.1219 of 2013 relates to M.C.O.P.No.626 of 2009 filed by the appellants herein.

12. In M.C.O.P.No.626 of 2009, the Tribunal awarded total compensation of Rs.1,30,000/- for the death of deceased Muthan

in the road accident. As stated supra, against the said award, the second respondent insurance company has filed C.M.A.No.1219 of 2013.

13. It is seen from the judgment of this Court in C.M.A.Nos.1218 and 1219 of 2013, the present appellants were represented by a learned counsel and only after hearing both sides, the learned Single Judge of this Court passed judgment in the appeals preferred by the second respondent insurance company.

14. While dealing with the quantum in C.M.A.No.1219 of 2013, the learned Single Judge held as under:

"11. Though the claimants in CMA.No.1219 of 2013 contended that the deceased was earning Rs.8,000/- by doing agricultural work, no proof having been produced, the Tribunal fixed the income of the deceased at Rs.3,000/-. After deducting one-third towards personal expenses, based on the post-mortem certificate, Ex.P-3, the Tribunal fixed the age of the deceased at 65 years and by adopting a multiplier of 5, arrived at the compensation at Rs.1,20,000/-. The Tribunal also awarded a sum of Rs.10,000/- towards funeral expenses. In all, the Tribunal awarded a total compensation of Rs.1,30,000/- with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit to be apportioned at the rate of Rs.1,00,000/- to the first claimant and Rs.10,000/- each to claimants 2 to 4."

15. Thus, it is clear that only after hearing both sides, this Court affirmed the award passed by the Tribunal in M.C.O.P.No.626 of 2009. It is not the case of the appellants that without hearing them, the learned Single Judge of this Court decided C.M.A.No.1219 of 2013, nor they have no knowledge about preferring of the appeal by the second respondent insurance company.

16. It is apposite to mention that the date of judgment in C.M.A.Nos.1218 and 1219 of 2013 is on 24.8.2015, whereas the appellants have preferred appeal only on 26.7.2016, after affirming the award. It cannot be possible for two judgment in one case. Having conveniently participated in the earlier appeal proceedings initiated by the insurance company and contested the matter, the appellants now cannot contend that the award passed by the Tribunal is very low.

17. It is also to be mentioned that in the earlier appeals preferred by the second respondent insurance company, the appellants have not filed any cross appeal seeking to enhance

the compensation. If really, the appellants were dissatisfied with the quantum of compensation, they would have filed appeal after the award or even they have a chance of questioning the quantum in the appeal preferred by the second respondent. But the appellants have failed to do so.

18. In *Shivawwa and another v. Branch Manager, National India Insurance Co. Ltd., and another*, supra, the Hon'ble Supreme Court held:

"13. Reverting to the argument of the Appellants that the Tribunal committed manifest error in computing the Compensation amount, we find that the Appellants (Claimants) did not file an Appeal for enhancement of Compensation amount against that part of the Award passed by the Tribunal nor chose to file any Cross Objection in the First Appeal filed by the Insurer before the High Court. Moreover, from the Judgment of the High Court there is no indication that any attempt was made on behalf of the Appellants to ask for enhanced Compensation amount on the grounds as would have been available to the Appellants in that behalf. Significantly, in the present Appeal also, the Appellants have not asked for any "relief" against that part of the Award passed by the Tribunal, regarding the quantum of Compensation. The relief claimed in this Appeal is only to set aside the decision of the High Court passed in the First Appeal preferred by the Insurer. In this backdrop, it will not be appropriate for this Court to consider the argument regarding the quantum of Compensation at the instance of the Appellants (Claimants)."

19. As stated supra, having gainfully participated in the appeal preferred by the second respondent insurance company and not made enhancement of the compensation, after disposal of the said appeals, the appellants cannot question the quantum which was affirmed by the learned Single Judge of this Court once again in the present appeal. On a perusal of the judgment of this Court in C.M.A.Nos.1218 and 1219 of 2013, there is no indication that any attempt was made by the appellants to ask for enhanced compensation amount on the grounds as would have been available to them in that behalf. Only after, disposal of the appeals preferred by the second respondent, as an afterthought, the appellants have preferred the present appeal, which cannot be entertained, as the same would create a bad precedent.

20. In fact, in C.M.A.Nos.1218 and 1219 of 2013, the learned Single Judge of this Court observed as under:

"13. this Court, on a consideration of the entire gamut of facts, is of the considered view that there appears to be no infirmity in the quantum of compensation granted by the Tribunal and the rate of interest granted also is not excessive as the accident happened in the year 2009. Further, it is evident from the records that insofar as CMA No.1219/13 is concerned, no amount was granted towards mental shock and agony to the claimants, who are the wife and children of the deceased. Further, no amount has also been awarded towards "loss of love and affection", "pain and suffering" and "transportation expenses". However, the claimants/respondents 1 to 4 in CMA No.1219/13 have not filed any appeal claiming enhancement of the award. In the above background, this Court is of the considered opinion that there is no reason to interfere with the amount awarded by the Tribunal."

21. Though the appellants have grievance over the quantum of compensation awarded by the Tribunal, the same cannot be decided in the present appeal as the appellants have not sought enhancement of compensation in the earlier appeal filed by the second respondent insurance company. Thus, the present appeal filed after the affirmation of the award in the earlier appeal preferred by the second respondent insurance company cannot be re-opened. If this type of appeals are entertained, as stated supra, it would set a bad precedent in the motor accident cases and all claimants would adopt the practice of filing appeal after the disposal of the appeal preferred by the insurance companies by saying that they are aggrieved by the award passed by the Tribunal. The present appeal filed by the appellants is clearly abuse of process of law and same cannot be entertained. The appellants are not entitled to seek enhancement in the present appeal.

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

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

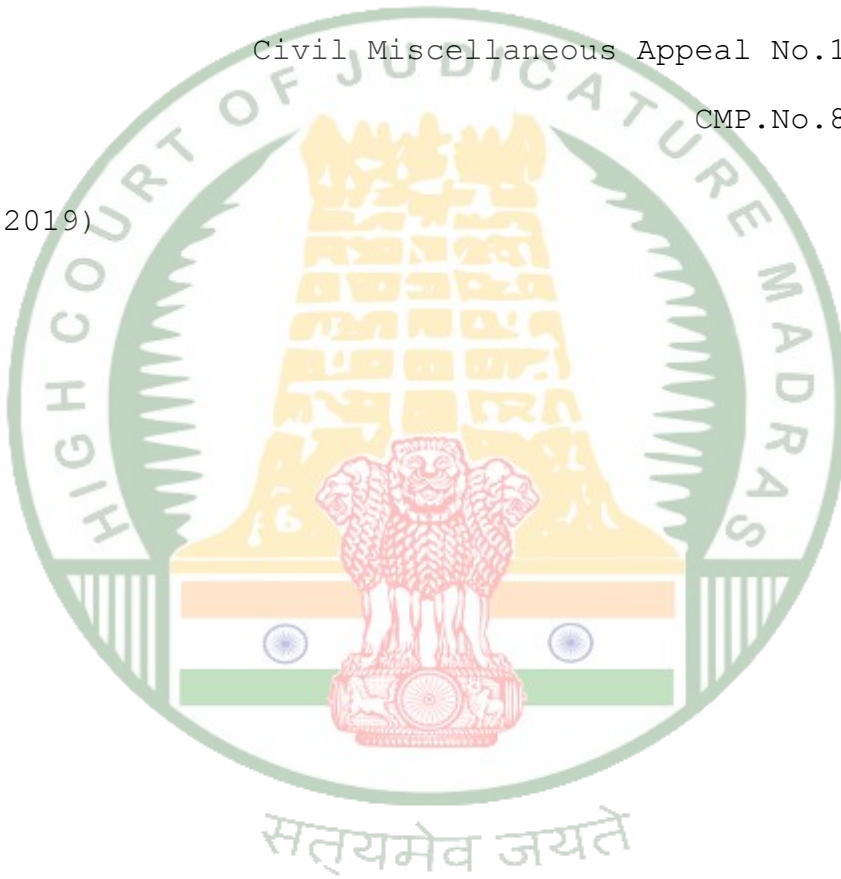
1.The Principal District Judge,
The Motor Accidents Claims Tribunal,
Namakkal.

2.The Section Officer,
VR Section, High Court,
Madras.-104 (2Copies)

+1cc to Mr.J.Chandran, Advocate, S.R.No.91

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