IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2390 of 2017 and
C.M.P.Nos.10959 and 12919 of 2017

The Chief Manager,
The Oriental Insurance Company Ltd,
Third Party Hub,
Regional Office, 216, Prakasam Salai,
Chennai - 108. ... Appellant/2nd Respondent

Vs.

1.Gengamma

2.Lakshmi
Suvetha (died) ..1st& 2nd Respondents/Claimants

3.A.Ravi .. 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.02.2017 made in M.C.O.P.No.438 of 2014, on the file of Motor Accident Claims Tribunal (Principal Sub-Court), Tindivanam.

For Appellant : Mr.D.Bhaskaran

For R1 & R2 : Mr.K.Subburam

For R3 : Exparte

J U D G M E N T

The Criminal Miscellaneous Appeal has been preferred against the judgment and decree dated 10.02.2017 made in M.C.O.P.No.438 of 2014, on the file of Motor Accident Claims Tribunal (Principal Sub-Court), Tindivanam.

2.The brief facts is as follows:

On 18.06.2011, the deceased Sivaraman was travelling in the 3rd respondent vehicle bearing Registration No.KA-04-B-5905 as a load man, from Bangalore to Tharapuram, via Krishnagiri - Dharmapuri Road (NH7). When the vehicle was nearing Kariamangalam bye pass road, near Namakkal Hotel, by 19.06.2011 at about 02.15 a.m., the 3rd respondent, who was driving the said vehicle, drove it in a rash and negligent manner and suddenly applied brake, due to which, the deceased fell down from the vehicle and died on the spot. A FIR was also registered by the concerned police on 19.06.2011. A claim petition in M.C.O.P.No.438 of 2014 was filed by the petitioners therein, claiming a compensation of Rs.25,00,000/-. The Tribunal, on analysis of evidence on record, passed a judgment dated 10.02.2017, awarding a sum of Rs.16,37,000/- with interest @ 7.5% p.a. from the date of claim petition.

3.This Civil Miscellaneous Appeal has been preferred by the Insurance Company aggrieved against the judgment made by the Tribunal on 10.02.2017. The appellant is very much aggrieved by the sum awarded by the Tribunal, as the compensation amount is very high. Further, the involvement of the vehicle in question in the alleged incident is not properly assessed by the Tribunal. The FIR is also registered, however, there is no mention about the vehicle in question and simply, it has been stated as unknown vehicle. The possession of valid driving license by the driver of the said vehicle is also not properly assessed by the Tribunal. Hence, there are no reliable documents placed before the Tribunal. When the owner of the vehicle did not appear before the Tribunal inspite of summons, the Tribunal ought to have taken adverse inference in the said case. Further, the deceased was traveling in the said vehicle as an unauthorized person and hence, the Insurance Company cannot be made liable. The seating capacity of the vehicle and the nature of contract are not properly considered by the Tribunal. The monthly income as well as avocation of the deceased and future prospects at 50% are all assessed by the Tribunal without any evidence and basis. Hence, on the whole, the liability fixed by the Tribunal is erroneous, as well as the compensation awarded by the Tribunal is high, excessive and arbitrary.

4.Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant and Mr.K.Subbunam, learned counsel appearing for the first and second respondent and perused all the materials available on record.

5.On perusal of records, the deceased met with an accident on 18.06.2011. The respondent Insurance Company totally denied the mode of accident as well as the submission made in the FIR that the deceased was hit by a unknown vehicle and hence involvement of the vehicle which is very much belated by the respondent in the counter statement. Further, the aspect regarding the claim other various, extorbitant and ordinary one. The Tribunal observing the evidence as well as documents of establishing the FIR and one witnesses who examined has witnesses of P.W.1 have submission before the Court on the accident occurred only due to negligent and the driver on the part of the first respondent vehicle. Ex.P.4 is the Charge sheet was also laid against the driver of the first respondent. Hence, the Tribunal in the absence of any other contra evidence placed by the respondent by way of assessing the negligence aspect. The Tribunal has made a findings that the first respondent is responsible for rash and negligent driving and hence the second respondent Insurance Company was stated that the said vehicle is insurer and not compensation of valid license insures very much offering was not contradictory submission and any evidence was laid in by the respondent Insurance Company, the liability has fixed on the respondent Insurance Company by the Tribunal. Hence the assessment of the Tribunal by fixing negligence of the driver of the first respondent vehicle and also the liability of the appellant Insurance Company are very much reasonable. The other grievance raised by the appellant Insurance Company. The deceased has a load man is not drew and hence in that aspect also. The liability which is very much objected by the Insurance company that he was a driver in the said vehicle has unauthorized passenger.

6.While determining the compensation the Tribunal has taken monthly income of the deceased as a load man at Rs.7,000. The age of the deceased was 23 years at the time of accident which is very much placed, by way of Ex.P.2 and he was a bachelor at the time of the accident. The Tribunal has deducted 1/3 towards personal expenses which is very much aggrieved by the appellant/ Insurance Company. Hence, this Court by taking the monthly income of Rs.7,000/- and adding 40% towards future prospects deducting 50% towards funeral expenses adopting proper multiplier of 18, determined the loss of income at Rs.10,58,400, which is very much reasonable. (7,000+40%X1/2X12X18). Considering the claimants, who are the mother and one married son depending upon income of the deceased for their livelihood. The amount awarded by the Tribunal under the heads funeral expenses and loss of love and affection does not require any modification. Hence, the same are confirmed. Thus the compensation awarded by the Tribunal is modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Income	15,12,000/-	10,58,400/-
2.	Funeral Expenses	25,000/-	25,000/-
3.	Love and Affection	1,00,000/-	1,00,000/-
	Total	Rs.16,37,000	Rs.11,83,400

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,37,000/- is hereby reduced to Rs.11,83,400/-. No Costs. Consequently the connected Miscellaneous petitions are closed.

8.The appellant/claimant Insurance Company have deposited 50%. In view of the said modification the appellant is directed to deposit the said amount is at 50% with interest and the same is observed by the Tribunal and the respondent is directed to withdrawn the same 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. On such deposit, the appellant is permitted to withdraw his share from the reduced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

jas

To

1.The Principal Subordinate Judge,
The Motor Accident Claims Tribunal,
Tindivanam.

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

+1cc to Mr.K.Subburam, Advocate SR.No.67385

C.M.A.No.2390 of 2017 and
C.M.P.Nos.10959 and 12919 of 2017

SJ(CO)
GMY(29/11/2019)