

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2528 of 2018

and

C.M.P.No.19280 of 2018

The Oriental Insurance Co., Ltd,
Motor Third Party Claims Hub,
Oriental House, 2nd Floor,
Old No.155, New No.216,
Prakasam Salai, Chennai. ... Appellant/2nd Respondent

Vs.

1. K.Sundrambal
2. E.Parameshwari
3. E.Ravichandran
4. N.Indra
5. K.Balasubramaniam ... Respondents 1 to 5/Petitioners
6. M.Shanthi ... 6/5 Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act 1988, against the award and decree dated 12.03.2018 made in M.C.O.P.No.3743 of 2016 on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

For R1 to R5 : Mr.C.Richard Suresh Kumar

R6 - Exparte

Judgment

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award dated 12.03.2018 passed in M.C.O.P.No.3743 of 2016 by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

2. The brief facts of the appellant is that on 23.04.2016 at about 17.30 hours, One Mr.R.Kabali Chettiyar (deceased) was standing in the left side of the Guduvanchery GST Road, Chengalpet to Tambaram side, near Guduvanchery Junction. At that time, a Lorry bearing Registration No.TCX-1616 driven by its driver, very rash and negligent manner hit against the Kabali Chettiyar. As a result, he sustained grievous injuries on his head and he died on the same day after the treatment at SKM Medical College Hospital & Research Center, Potheri.

3. The respondents 1 to 5 herein are the legal heirs of the deceased and since they have lost their head of the family, they filed a Claim Petition before the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, claiming a sum of Rs.20,00,000/- viz., Rs.1,00,000/- for Funeral Expenses, Rs.3,00,000/- for Loss of Love and Affection, Rs.12,00,000/- for Pecuniary Benefits and Rs.4,00,000/- for Non Pecuniary Benefits, as compensation.

4. Denying the allegations, the appellant insurance company has contended that the claimants have not produced any material to prove the income of the deceased, and further, at the time of accident, the driver of the lorry was not having any valid driving licence and therefore, the claimants are not entitled to claim any compensation from the Insurance Company.

5. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded a sum of Rs.4,45,000/- as compensation to the claimants under various heads.

6. Aggrieved by the award, the appellant insurance company has preferred this appeal before this Court by submitting that the amount awarded by the Tribunal as compensation is very much huge for the death of 80 years old man and the claimants could not be considered as dependants of the deceased. Further, no documents were filed before the Tribunal to prove the income of the deceased at Rs.7,500/- per month and the sum of Rs.2,25,000/- awarded by the Tribunal towards Loss of Contribution to the family is highly excessive. Hence, it has to be set aside.

7. On perusal of the award dated 12.03.2018 passed in M.C.O.P.No.3743 of 2016 by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, it is seen that the deceased was a proprietor of Ragul News Paper Mart, Guduvanchery and he was earning a sum of Rs.10,000/- per month. Considering the same, the Tribunal has fixed the notional income of the deceased as Rs.7,500/- per month and calculated the annual income at Rs.90,000/- (7500 x 12), which is not on the higher side. Considering the fact that the claimants were not depended of the income of the deceased, the Tribunal has deducted 50% of the annual income i.e. Rs.45,000/- for personal expenses of the deceased, which is very much reasonable. Since the deceased was aged 80 years at the time of accident, the Tribunal has taken the appropriate multiplier 5 and awarded a sum of Rs.2,25,000/- (45000 x 5) as compensation towards Loss of contribution to the family, which is not on the higher side. The sum of Rs.1,50,000/- awarded towards Loss of Love and Affection is very much higher and therefore, it is hereby modified as Rs.80,000/-. The sum awarded under all other heads viz., Rs.15,000/- for Loss of Estate, Rs.40,000/- for Loss of Consortium and Rs.15,000/- for

Funeral Expenses, is very much reasonable and it does not require any modification.

8. In view of the above, the sum of Rs.1,50,000/- awarded towards Loss of Love and Affection is alone reduced to Rs.80,000/- and the remaining sum awarded under other heads are hereby confirmed. Accordingly, the total compensation is fixed at Rs.3,75,000/- (4,45,000-70,000/-).

9. In the result, this Civil Miscellaneous Appeal is allowed. The appellant insurance company is directed to deposit the entire amount as fixed by this Court along with interest at the rate of 7.5% from the date of petition till the date of deposit, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same along with interest and costs as apportioned by the Tribunal, less the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

raja

To

The IV Judge,
The Motor Accidents Claims Tribunal
(IV Court of Small Causes),
Small Causes Court, Chennai.

2. The Section Officer,
VR Section, High Court, Madras (+2 copies)

+1cc to Mr.D.Bhaskaran, Advocate SR.No.57955

+1cc to Mr.C.Richard Suresh Kumar, Advocate SR.No.57833

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BR(CO)

GMV(09/12/2019)