

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.655 of 2010

and

M.P.No.1 of 2010

The Oriental Insurance Co Ltd.,
By its Branch Manager,
No.90-A, Thuraiyur Road,
Namakkal. ... Appellant/3rd Respondent

Vs.

1.Parimala Devi @ Parameswari
2.Gomathi
3.Sellammal
4.Maraapa Gounder ... Respondents 1 to 4/Petitioners
5.C.Balasubramanian
6.R.Kalaimani ... Respondents 5 & 6/Respondents 1&2
(respondents 5 & 6 ex-parte
before the Lower Court and
hence, notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2008 made in M.C.O.P.No.708 of 2004 dated 30.09.2008 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellant : Mr.B.Gopalan

For R1, 2, 3 & 4: Notice served- No appearance

For R5 & R6 : Ex-parte

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J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant-Insurance Company questioning the quantum of compensation awarded to the claimants of the deceased Chinnusamy in M.C.O.P.No.708 of 2004 by the Motor Accident Claims Tribunal, Principal District Court, Namakkal, dated 30.09.2008.

2. The respondents 1 to 4 filed the claim petition in M.C.O.P.No.708 of 2004 before the Motor Accident Claims Tribunal, Principal District Judge, Namakkal, claiming a compensation of Rs.3,00,000/- on account of the death of one Chinnusamy.

3. It is the case of the claimant that between the night and dawn on 28.03.2001 and 29.03.2001, the deceased Chinnusamy was travelling in the lorry bearing Registration No.TDL 8954 proceeding from Hyderabad to Madurai. It is the case of the claimant that the driver of the lorry drove the vehicle in a rash and negligent manner and suddenly applied the break. Due to which, the deceased was thrown out of the cabin. As a result, he sustained head injuries and he succumbed to the injuries. The death was instant in his instantaneous. According to the claimants, the deceased was aged about 55 years and at the time of the accident, he was earning a sum of Rs.7,500/- per month.

4. The claimants have filed the claim petition seeking a compensation of Rs.3,00,000/-. The Insurance Company opposed the claim petition and disputed the manner of accident, the salary of the deceased and they are liable to pay the compensation.

5. The Tribunal, in an analysis of both oral and documentary evidence, arrived at a compensation of Rs.2,71,000/-. Challenging the quantum of compensation, the Insurance Company has filed the Civil Miscellaneous Appeal before this Court.

6. The learned counsel for the appellant contested that the Tribunal has failed to appreciate the fact that the policy only covered owner's liability to third party or the employees and not the owner himself. The Tribunal ought not to have entertained the claim made by the claimants and the Tribunal should have dismissed the claim petition. The learned counsel submitted that the compensation awarded towards loss of income is on the higher side and the deceased was only working as a cleaner in the lorry and his monthly salary would certify to be less and not to be Rs.3,000/- as fixed by the Tribunal. The learned counsel also submitted that the driver of the lorry, who

met with an accident on the fateful day, did not possess valid driving license, which is mandatory for claiming compensation. Breach of the said policy condition would not attract the compensation to be paid by the Insurance Company. In this case, the owner of the lorry himself has died and therefore, the policy does not cover the owner but only third parties. The learned counsel prayed that the Tribunal ought to have rejected the claim petition and sought for rejection of the compensation award.

7. I have heard the learned counsel appearing for the appellant and perused the materials available on record. Though notice has been served on the respondents, none appeared on their behalf.

8. The deceased, Chinnusamy was working as a cleaner of the lorry and on account of application of sudden break by the driver of the lorry, he was thrown out of the cabin. Due to which, the deceased sustained grievous injuries all over his body and succumbed to the injuries and died. The Tribunal on appreciation of the evidence and records perused and has awarded a total compensation of Rs.2,71,000/-. The Tribunal has awarded compensation only under three heads, namely loss of income, loss of consortium for the wife and towards funeral expenses. The Tribunal has taken a salary of Rs.3,000/- per month and by deducting 1/3 towards his expenses, fixed the monthly salary at Rs.2,000/- and arrived at an annual compensation of Rs.24,000/- adopting multiplier of 11 and awarded Rs.2,64,000/- toward loss of income. The Tribunal has awarded a sum of Rs.5,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses. The learned counsel for the appellant vehemently argued that the Tribunal ought not to have fixed a sum of Rs.3,000/- as monthly salary and disputed that the deceased was working as a cleaner.

09 This Court is not in agreement with the argument of the learned counsel for the appellant. The Tribunal has rightly awarded compensation under three heads and this Court is not inclined to interfere with the award passed by the Tribunal

10. In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sbn

To

1.The Motor Accident Claim Tribunal,
The Principal District Court,
Namakkal.

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

+1 cc to Mr.M.B.Gopalan Advocate sr7349

C.M.A.No.655 of 2010
and
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