

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1389 of 2015

and

M.P.No.1 of 2015

M/s.ICICI Lombard General
Insurance Company Ltd.
'Swarnambigai plaza'
S.F.No.6/5, Block No.7
Ward-C, near bus stand
Omalar main road
Salem-636 009.

... Appellant/2nd Respondent

Vs

1.P.Suganya
2.Sampoornam
3.R.Duraisamy
4.S.Rathinam

...Respondetns 1 to 3/Petitioner
...4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.11.2013 made in M.C.O.P.No.214 of 2008 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Salem.

For Appellant : Mrs.R.Sreevidhya

R4 सत्यमेव जयते : Exparte

R1-R3 : No Such address

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 21.11.2013 made in M.C.O.P.No.214 of 2008 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Salem.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.214 of 2008 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Salem. The respondents 1

to 3 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Prabakaran, who died in the accident that took place on 11.01.2007.

3. According to the respondents 1 to 3, on the date of accident, i.e., on 11.01.2007 at 12.40 noon, while the deceased was riding in his motorcycle on Sankari to Erode main road, opposite to Vani Vidhyalaya school, Uppupalayam, from East to West direction, the lorry belonging to the 4th respondent, which came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the deceased and caused the accident. Due to the accident, the deceased succumbed to his injuries on 15.01.2007. Therefore, the respondents 1 to 3 filed the above claim petition claiming compensation.

4. The 4th respondent, owner of the lorry remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 to 3 and contended that the deceased alone hit the lorry without noticing the same in the Highways while overtaking another vehicle. Therefore, the deceased was responsible for the accident. The claim petition is bad for non-joinder of owner and insurer of the motorcycle driven by the deceased. Hence, the appellant/Insurance Company is not liable to pay any compensation.

6. Before the Tribunal, the 3rd respondent, father of the deceased examined himself as P.W.1 and one Krishnamoorthy, eye-witness was examined as P.W.2 and marked fourteen documents as Exs.P1 to P14. On the side of the appellant/Insurance Company, no oral and documentary evidence was let in.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 4th respondent and directed both the 4th respondent as well as the appellant/Insurance Company being insurer of the said lorry to pay jointly and severally a sum of Rs.10,16,346/- as compensation to the respondents 1 to 3.

8. Against the said award dated 21.11.2013 made in M.C.O.P.No.214 of 2008, granting compensation to the respondents 1 to 3, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent has got remarried subsequent to the demise of the deceased Prabakaran, her first

husband and she will not be entitled to claim any compensation as a dependant of the deceased. She is entitled to claim compensation only for the loss of love and affection. The Tribunal has failed to appreciate the said legal position. The respondents 2 and 3, parents of the deceased alone are the only dependants of the deceased. The Tribunal ought to have applied multiplier on the basis of age of the parents of the deceased. In any event, the compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Though notice has been sent to the respondents 1 to 3, it has been returned with an endorsement as 'no such address'.

11. Heard the learned counsel appearing for the appellant/Insurance Company and perused all the materials available on record.

12. It is the contention of the learned counsel appearing for the appellant/Insurance Company that the 1st respondent got remarried subsequent to the demise of her first husband, the deceased Prabakaran and she will not be entitled to claim any compensation as a dependant of the deceased. As far as the contention of the appellant that age of the mother of the deceased has to be taken into account for applying multiplier, as per the judgment of the Hon'ble Apex Court, the age of the deceased is basis for applying multiplier. Hence, the Tribunal has rightly applied multiplier 17 taking into account the age of the deceased and the same does not warrant any interference by this Court. From the award of the Tribunal, it is seen that the counsel for the respondents 1 to 3 has filed a memo before the Tribunal stating that the 1st respondent has got remarried with some other person and she is not willing to claim compensation for the death of the deceased, her first husband and she has no objection to hand over the compensation to the respondents 2 and 3, parents of the deceased. She has also not pressed the claim petition against her. The Tribunal considering the memo filed by the counsel for the respondents 1 to 3, held that if the 1st respondent does not come forward to receive her award within six months, the respondents 2 & 3 are each entitled to the compensation awarded to the 1st respondent. The appellant/Insurance Company has not let in any oral and documentary evidence to disprove the claim of the respondents 1 to 3. The Tribunal considering the age, avocation and income of the deceased along with the evidence let in by the respondents 1 to 3, awarded a sum of Rs.10,16,346/- as compensation, which is just and reasonable and does not warrant any interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.10,16,346/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants, along with interest and costs is confirmed. Both the 4th respondent as well as the appellant/Insurance Company are directed to deposit the entire award amount along with interest and costs jointly and severally, 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 respondents 1 to 3/claimants are permitted to withdraw their respective share as per the apportionment made by the Tribunal along with interest and costs, less the amount if any, already withdrawn. If the 1st respondent does not come forward to receive her share of the award amount within six months from the date of the receipt of copy of this judgment, the respondents 2 and 3 are permitted to withdraw the share of the 1st respondent equally among themselves. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The I Additional District Judge
Motor Accident Claims Tribunal
Salem.

2.The Section Officer
VR Section
High Court
Madras.

+1 CC to M/s.R. Sreevidya, Advocate sr 2579.

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AD(CO)
SP(01/09/2020)