

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1587 of 2013

and

M.P.No.1 of 2013

ICICI Lombard Motor Insurance

Company Limited.,

rep by its the Manager,

"Zenith House"

Mahalakshmi, Mumbai.

...Appellant/3rd Respondent

Vs.

1.Saroja

2.R.Kumar @ R.Selvakumar

3.Sasikala

... Respondents 1 to 3/Claimants

4.P.Munuswamy

5.K.Pichandi

6.R.Dharmalingam

...Respondents 4 to 6/

Respondents 1, 2 & 4

(Respondents 4 to 6 are set ex-parte in the lower Court)

7.United India Insurance Company Limited,

rep by its Divisional Manager,

'Chisto Building'

Bark Road,

Udhagamandalam,

The District of Nilgiris.

... 7th Respondent/5th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.12.2011 made in M.C.O.P.No.73 of 2009 on the file of Motor Accident Claims Tribunal, District Judge, The Nilgiris at Udhagamandalam.

For Appellant

: Mrs.R.Sreevidhya

For R1to R3

: Mr.S.K.Rakhenathan

For R4to R6

: Ex-parte

for R7

: Mrs.I.Malar

J U D G M E N T

The appellant is the ICICI Lombard Motor Insurance Company Limited. The first respondent/claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 in

M.C.O.P.No.73 of 2009 before the Motor Accidents Claims Tribunal, The District Court, Nilgiris at Udhagamandalam, seeking compensation of Rs.10,00,000/- for the death of one Thiagarajan in a road accident that took place on 27.09.2008.

2.The brief case of the first respondent/claimant is as follows:

The deceased Thiyagu @ Thiagarajan is the son of the first respondent herein and brother of the second and third respondents herein. The deceased was working as a driver and he was driving the lorry bearing Regn.No.TN-37-W-0940 with carrot load from Udhagamandalam to Chennai on 27.09.2008 and when the lorry was moving near Calcutta Kali Temple at Kaveripakkam in Bangalore-Chennai Highways, a lorry bearing Registration No.TN-30-Y-5879 loaded with bricks driven by the fourth respondent, which was going in front of the lorry driven by the deceased, suddenly stopped in the middle of the road without any signal light. Though the deceased was driving his vehicle in a normal speed, he could not control his vehicle and as such, the said lorry bearing Regn.No.TN-3-W-0940 hit against the lorry bearing Regn.No.TN-30-Y-587 and due to the said impact, the deceased died on the spot.

3. The respondents four to six remained absent before the Tribunal and therefore, they were set exparte. The ICICI Lombard Motor Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Principal District Judgssse / Motor Accident Claims Tribunal, Nilgiris, after analysing the evidence on record, awarded a compensation of Rs.8,51,000/- together with interest at the rate of 7.5% per annum to the claimants. The Tribunal further directed the Insurance Company to pay the compensation amount. Aggrieved over the orders passed by the Tribunal, the ICICI Lombard Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard the learned counsel appearing for the appellant and the learned counsels appearing on behalf of the respondents 1 to 3 and 7 and perused the materials available on record.

5. In the decisions in (i) Oriental Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award passed by the trial Court. In fact, the decision in National Insurance Company Limited Vs.

Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

6. It is seen that the deceased was working as a driver and was earning a sum of RS.6,000/- per month. Hence, by deducting 1/3 income of the deceased for his personal expenses, a sum of Rs.4,000/- is fixed as loss of monthly income of the claimants. Hence, the loss of annual income of the claimants is fixed at Rs.4,000/- X 12 = Rs.48,000/-. Since the age of the deceased was 21 years at the time of accident, by applying multiplier 17, the total loss of income for the claimants is fixed at Rs.48,000/- X 17= Rs.8,16,000/-, which is just and reasonable. The tribunal has awarded a sum of Rs.25,000/- towards "Loss of love and affection" and Rs.10,000/- towards "funeral expenses" which is also just and reasonable. Hence, this Court is not inclined to interfere with the same. The award passed by the Tribunal is confirmed hereby and extracted here under:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	8,16,000/-	8,16,000/-	confirmed
2.	Loss of love and affection	25,000/-	25,000/-	confirmed
3.	Funeral Expenses	10,000/-	10,000/-	Confirmed
	Total	Rs.8,51,000/-	Rs.8,51,000/-	confirmed

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The appellant / National Insurance Company Limited is directed to deposit the compensation awarded by the Tribunal i.e., Rs.8,51,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.73 of 2009 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Nilgiris within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents / claimants are at liberty to withdraw the same as per the orders

passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Sbn

To

1.Motor Accident Claims Tribunal
District Judge,
Nilgiris at Udhagamandalam.

+1cc to Mr.R.Sree Vidhya, Advocate, S.R.No. 5183

+1cc to Mr.T.Ravichandran, Advocate, S.R.No. 4795

C.M.A.No.1587 of 2013
and
M.P.No.1 of 2013

VD(CO)
GN(25/03/2021)



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