

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED.21.09.2020
CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.1811 of 2013 &
M.P.No.1 of 2013

The Divisional Manager,
The Oriental Insurance Co. Ltd.,
Rep. by its Manager, Division No.6,
Srinivasa Mansion, No.364/1, 10B, Main 3rd Block,
Jainagar, Bangalore - 560 011.

: Appellant/2nd Respondent

vs.

1.Santhamma
2.Dhanalakshmi
3.Pushpa
4.Chandrakala
5.Rathina

: RR1 to 5/Petitioners

6.Kavitha

: 6th Respondent/1st Respondent

(6th respondent remained exparte and notice dispensed with for her)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in MACTOP.No.639 of 2009 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Krishnagiri dated 01.03.2012.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Addressee left

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the Appellant insurance company challenging the award dated 01.03.2012 passed by the Motor Accident Claims Tribunal (Principal District Judge, Krishnagiri) in MCOP.No.639 of 2009.

2. The Appellant Insurance company has challenged the award on the following grounds namely (a) the claimants have not

established before the Tribunal that they are the legal heirs of the deceased Venkatesh Achari who died as a result of an accident on 18.09.2006 caused by a vehicle insured with the Appellant and (b) the quantum of compensation awarded by the Tribunal is excessive.

3. The Tribunal under the impugned award has directed the Appellant insurance company to pay the claimants a compensation of Rs.5,96,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of dependency	5,76,000/- (4000 x 12 = 48000 - 1/3 = 32000 x 18)
Loss of estate	15,000/-
Funeral Expenses	5,000/-
Total	5,96,000/-

4 Before the Tribunal, the claimants have filed documents which were marked as Exhibits and one witness was examined as a witness before the Tribunal(PW1). On the side of the Appellant/Insurance Company neither any document was filed nor any witness examined before the Tribunal.

5. Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant. Notice sent to the respondents have returned with the endorsement "Addressee left". Since this Court is going to confirm the Award, notice to the respondents is dispensed with.

6. The impugned common award pertains to two fatal accident claims namely MCOP.Nos.639 & 645 of 2009. The instant appeal pertains to MCOP.No.639 of 2009. Insofar as MCOP.No.645 of 2009 is concerned, the claimants have produced the legal heirship certificate of the deceased Manickam which was marked as Ex.A7. However, the claimants in MCOP.No.639 of 2009 have not produced the legal heirship certificate of the deceased Purushothaman. Even before the Tribunal, the Appellant insurance company has taken a consistent stand that the claimants in MCOP.No.639 of 2009 are not the legal heirs of the deceased Purushothaman. While that be so, the Tribunal ought to have directed the claimants to produce the legal heirship certificate for the deceased Purushothaman. However, this is not a sufficient ground to set aside the award. The only condition that can be imposed by this Court in this Appeal is that the claimants before receiving the compensation are directed to produce the legal

heirship certificate for the deceased Purushothaman to enable them to claim the compensation for his death.

7. With regard to the second contention raised by the Appellant Insurance company that the quantum of compensation awarded by the Tribunal is excessive is concerned, the same cannot be accepted by this Court for the following reasons:

(a) The deceased Purushothaman was doing Goldsmith and real estate business and was aged 23 years at the time of the accident. In the claim petition, the claimants have pleaded that the deceased Purushothaman was earning Rs.10,000/- per month at the time of the accident. However, the Tribunal has fixed the notional monthly income of the deceased at Rs.4,000/-. The accident happened in the year 2006. This Court after giving due consideration to the year of the accident as well as the age and avocation of the deceased is of the considered view that the assessment of notional monthly income of the deceased at Rs.4,000/- per month cannot be considered to be excessive as alleged by the Appellant.

(b) The Tribunal has rightly adopted 18 multiplier for calculating the loss of dependency in accordance with the Judgment of the Hon'ble Supreme Court in the case of Sarla Verma vs. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 SC.

(c) Considering the fact that the deceased left behind the widow mother and large number of legal heirs, deduction by the Tribunal towards personal expenses of the deceased of 1/3rd cannot be considered to be erroneous as alleged by the Appellant.

(d) The Tribunal has also failed to award any compensation towards loss of future prospects to the claimants which they are legally entitled to in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC). However, the same cannot be considered by this court, since no appeal has been filed by the claimants aggrieved by the same under the impugned award.

(e) However, taking an overall perspective of the matter, this Court is of the considered view that the quantum of compensation awarded by the Tribunal under the impugned award cannot be considered to be excessive as alleged by the Appellant.

Conclusion:

8. For the foregoing reasons, both the contentions raised by the Appellant does not deserve any merit and the same is rejected by this Court. Accordingly, both the Appeals are dismissed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The Appellant Insurance company is directed to deposit the award amount along with interest from the date of claim till the date of deposit and cost after deducting the amount already deposited if any, to the credit of MCOP.No.639 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount along with interest lying to the credit of MCOP.No.639 of 2009 to the bank account of the claimants through RTGS as per the ratio apportioned by the Tribunal only after the claimants produce the legal heirship certificate of the deceased Purushothaman. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
VR Section, High Court,
Chennai.

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C.M.A.No.1811 of 2013

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