

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2020

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1829 OF 2013

The Branch Manager,
National Insurance Company Ltd.,
No.58, Rajaji Street,
Kangayem.

... Appellant/
2nd Respondent

vs.

1. Alagamoopan
2. Athayi

... Respondents 1 & 2/
Petitioners

3. Duraiswamy

... 3rd Respondent/
1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated in M.C.O.P. No. 1424 of 2010, dated 30.03.2012 on the file of the Motor Accident Claims Tribunal, Additional District Court and Sessions Court, Fast Track Court No.5, Coimbatore at Tiruppur.

For Appellant : Ms.N.B.Surekha

For Respondents : Mr.Ma.Pa.Thangavel
for R1 & R2
Not ready in notice reg R3

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 30.03.2012 passed by the Motor Accidents Claims Tribunal, (Additional District and sessions Judge Fast Track Court - V, Coimbatore, Tiruppur in MCOP No.1424 of 2010.

Brief facts leading to the filing of the Civil Miscellaneous Appeal

2. On 15.10.2010, a person by name A. Kaliappan was travelling as a pillion rider in a TVS Super XL motor vehicle bearing Registration No.TN-39 - AA - 4249 and due to rash and negligent driving by the Driver of the lorry bearing Registration No.TAP 2499, it dashed against the said motor vehicle. As a result of the accident, it caused the death of A.Kaliappan.

3. The claimants are the legal representatives and the dependants of the deceased and they are his parents. They preferred a claim before the Motor Accidents Claims Tribunal, (Additional District and sessions Judge Fast Track Court - V, Coimbatore, Tiruppur against the owner of the lorry as well as the Appellant/Insurance Company, who is the insurer for the said Lorry bearing Registration No.TAP 2499 seeking a compensation of Rs.20,00,000/-.

4. The Motor Accidents Claims Tribunal (Additional District and sessions Judge Fast Track Court - V, Coimbatore, Tiruppur by its award dated 30.03.2012 passed in M.C.O.P. No.1424 of 2010, directed the Appellant/Insurance Company to pay the claimants a sum of Rs.9,16,200/- together with interest at 7.5% per annum from the date of claim till the date of realization. Out of the total compensation, the Tribunal determined the amount payable equally to the respondents 1 and 2/claimants.

5. The details of the compensation awarded to the claimant are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency Rs.9400 x 12 = Rs.1,12,800/- - 1/3 = 75200 x 11	8,27,200
Loss of love and affection for Rs.40,000/- each	80,000
Funeral expenses	9,000
Total	9,16,200

6. Aggrieved by the award dated 30.03.2012 passed by the Additional District and sessions Judge Fast Track Court - V, Coimbatore, Tiruppur in M.C.O.P. No.1424 of 2010, this appeal has been filed by the Appellant / Insurance Company.

7. The Appellant / Insurance company has challenged the award on the ground that the notional monthly income of the deceased fixed by the Tribunal at Rs.9,400/- is excessive. It is also their contention that the compensation awarded by the Tribunal under various other heads is also excessive.

8. Heard Ms.N.B.Surekha, learned counsel for the appellant and Mr.MA.Pa.Thangavel, learned counsel for the first and second respondents.

9. This Court has perused and examined the impugned award.

10. Before the Tribunal, the first and second respondents/claimants have filed 13 documents which were marked as Exs.P1 to P13 and two witnesses were examined on his side viz., the first respondent, who is the father of the deceased as PW1 and an eye witness to the accident viz., Ramraj as PW2. On the side of the appellant/Insurance Company neither any document was filed nor any witness was examined before the Tribunal.

Discussion :

11. In the claim petition, the first and second respondents/claimants have pleaded that the deceased Kaliappan was aged 29 years and was a service Engineer at Sigma Telecom Services, Tirupur earning Rs.9,480 p.m. In support of the same, they have also filed the salary certificate of the deceased, which was marked as Ex.P10. before the Tribunal. The Tribunal after giving due consideration to Ex.P10 has fixed the monthly income of the deceased at Rs.9,400/-. No contra evidence has been produced by the appellant/Insurance company to disprove the contention of the first and second respondents/claimants that the deceased was earning Rs.9480/- p.m. This Court is of the considered opinion that the assessment of the monthly income of the deceased at Rs.9480/- is a correct assessment and does not call for any interference. The deceased was aged 29 years at the time of the accident. The age of the deceased has also not been disputed by the appellant/Insurance Company before the Tribunal. For a person aged 29 years, the correct multiplier to be adopted is 17, whereas the Tribunal under the impugned award has erroneously adopted 11 multiplier. However, the Tribunal has erroneously deducted 1/3rd towards the personal expenses of the deceased but the correct deduction is 50% since the deceased was a Bachelor at the time of the accident. If the correct multiplier as well as the correct deduction towards personal expenses of the deceased was taken into consideration by the Tribunal, the overall compensation awarded by the Tribunal at Rs.9,16,200/- will be more or less a correct assessment.

12. For the foregoing reasons this Court is of considered view that the compensation awarded by the Tribunal cannot be considered to be excessive and it has to be confirmed by this Court.

Conclusion :

13. In the result, there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14. The Appellant/Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No. 1424 of 2010, on the file of the Motor Accident Claims Tribunal, Additional District Court and Sessions Court, Fast Track Court No.5, Coimbatore at Tiruppur, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first and second respondents /claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Additional District and Sessions Court,
Fast Track Court No.5,
(Motor Accidents Claims Tribunal)
Tiruppur.

Copy To

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

+1cc to M/s.N.B.Surekha, Advocate, S.R.NO.30223

C.M.A.No.1829 of 2013

SJ(CO)
CS/23/04/2021