

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2015 of 2013
and
M.P.No.1 of 2013

United India Insurance Co. Ltd.,
Regional Officer,
Dr.Nanjappa Road,
Coimbatore

...Appellant/2nd Respondent

Vs.

1.S.Rathinam

2.S.Muthukumar ...1 & 2 Respondents/Petitioners

3.C.Varadharajan ... 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.11.2011 made in M.C.O.P.No.620/2010, on the file of Motor Accidents Claims Tribunal (ADJ-FTC-II), Coimbatore.

For Appellant : Mrs.I.Malar

For Respondents : Mr.M.Jai Kumar for R2
No appearance for R1 and R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company against the award dated 30.11.2011 made in M.C.O.P.No.620/2010, on the file of Motor Accidents Claims Tribunal, (ADJ-FTA-II) at Coimbatore for reduction of the compensation.

2.Brief facts which are necessary for disposal of this appeal are as follows:-

On 30.10.2008, when the deceased viz., Solavannan was standing at Siruvani Main Road, near Vignesh Trader,

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Kalampalayam, the third respondent who was coming from west to east direction on the Siruvani Main Road in a UNO FIAT Car bearing registration No.TN 37P 7900, hit against the deceased. Due to the accident the deceased Solavannan sustained grievous injuries all over the body and died on the spot. The accident occurred only due to the rash and negligent driving of the third respondent. The respondents 1 and 2/claimants have filed a claim Petition before the Motor Accidents Claims Tribunal, Coimbatore under Section 166 M.V.Act, claiming compensation of Rs.8,20,000/- and the same was taken on file in MCOP. No.620 of 2010.

3. Before the Tribunal, during trial, in order to prove the case of the claimants, they have examined one witness and marked 9 documents viz., Exs.P1 to P9. On the side of the respondents, they have examined two witness and marked 4 documents viz., Exs.R1 to R4. The Tribunal, after hearing the arguments on either side and after considering the oral and documentary evidences, has come to the conclusion that the accident occurred only due to negligent driving of the third respondent. As the third respondent's car was insured with the Appellant insurance company, the Tribunal held that the appellant and third respondent are liable to compensate the claimants/Respondents 1 and 2. After considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs.2,30,000/- as

compensation to the claimants with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

4. Aggrieved by the said award dated 30.11.2011, the appellant Insurance Company has filed this appeal before this Court for reduction of the compensation.

5.The learned counsel appearing for the appellant-Insurance Company would submit that as per the post mortem report Ex.P6, the multiplier of '5' applied by the Tribunal is correct. The Tribunal has failed to consider that the deceased was 70 years at the time of accident and the Dependents of the deceased have attained majority and got married, therefore the award amount passed by the Tribunal is unfair. Tribunal awarded a sum of Rs.1,00,000/- to the wife and the children towards love and affection, which is very high. Therefore the award amount passed by the tribunal is unfair and prayed for setting aside the award of the Tribunal.

6. The learned counsel for the respondents would submit that the Tribunal awarded a sum of Rs.1,00,000/- to the wife

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and the children towards love and affection is very meager. The award amounts passed towards funeral expenses and loss of income are too low. He further submitted that the tribunal has not awarded any amount towards pain and suffering. The deceased is a sole breadwinner of the family. Hence, the learned counsel prays to enhance the amount awarded by the Tribunal.

7. Heard the learned counsel for the appellant Insurance Company as well as the learned counsel for the respondents and also perused the materials available on record.

8. From the materials on record, it is seen that the third respondent driven the same in a rash and negligent manner and dashed against the deceased. Due to which, the accident occurred. As a result of which, the deceased sustained injuries and thereafter, he died on the spot.

9. It is the contention of the respondents 1 and 2 that the deceased was doing agriculture at the time of accident and was earning a sum of Rs.1,00,000/- per annum. To prove the said contention the 2nd respondent/2nd respondent herein, was examined as P.W.1 and marked Ex.P9/land measuring report. The respondents 1 and 2 failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the deceased as claimed by the respondents 1 and 2. The Tribunal deducted 1/3rd towards his personal expenses and taking into consideration the age of the deceased, applied multiplier '5' granted a sum of Rs.1,20,000/- (Rs.3,000/- X 12 X 5 X 2/3) towards loss of income, which is not excessive. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses which is proper and the same is confirmed by this Court. A sum of Rs.1,00,000/- towards loss of love and affection to the respondents 1 and 2 is excessive and the same is reduced to a sum of Rs.70,000/-.

10. The amount of compensation of Rs.2,30,000/- is reduced to Rs.2,00,000/- under the following heads :-

Sl.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Income	1,20,000/-	1,20,000/-
2.	Funeral Expenses	10,000/-	10,000/-

3.	Loss of love and affection to respondents 1 and 2	1,00,000/-	70,000/-
	Total	2,30,000/-	2,00,000/-

11. With the above modification, the appeal is allowed in part and the compensation awarded by the Tribunal at Rs.2,30,000/- is hereby reduced to Rs.2,00,000/-, with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant and the third respondent are directed to deposit the entire award amount with interest, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order.

12. On such deposit, the respondents 1 and 2 are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, by filing necessary applications before the Tribunal. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//
Sub Assistant Registrar

tta

To

1. The Additional District Judge,
The II Fast Track Court,
(Motor Accidents Claims Tribunal), Coimbatore.

2. The Section Officer,
V.R. Section,
High Court, Madras-104.

+1cc to M/s. I. Malar, Advocate SR.12503

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