IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2487 of 2015
and M.P.No.1 of 2015

United India Insurance Co. Ltd.,
Udagamandalam - 643 001. .. Appellant

Vs.

1.Bharathi

2.Minor. Sangeetha

3.Minor. Sree Devi
(Minors rep. by their next friend & mother Bharathi)

4.Kannan .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2014 made in M.C.O.P.No.112 of 2013 (Kallakurichi Sub Court M.C.O.P.No.27 of 2012) on the file of Motor Accident Claims Tribunal, III Additional District and Sessions Court, Kallakurichi.

For Appellant : Mr.S.Arunkumar
For RR1 to 3 : Mr.R.Nalliyappan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 22.07.2014 made in M.C.O.P.No.112 of 2013 (Kallakurichi Sub Court M.C.O.P.No.27 of 2012) on the file of Motor Accident Claims Tribunal, III Additional District and Sessions Court, Kallakurichi.

2.The appellant/Insurance Company is the 2nd respondent in made in M.C.O.P.No.112 of 2013 (Kallakurichi Sub Court M.C.O.P.No.27 of 2012) on the file of Motor Accident Claims Tribunal, III Additional District and Sessions Court, Kallakurichi. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.62,00,000/- as compensation for the death of one Ramesh, who died in the accident that took place on 19.12.2011.

3.According to the respondents 1 to 3, while the deceased was riding in his motorcycle bearing Registration No. TN 32 U 6583 on Chennai to Salem Highway Road near Ammaiyagaram bus stop, a speeding Mahindra Maxx Vehicle bearing Registration No. TN 45 AC 8723 driven by its driver in a rash and negligent manner, dashed against the motorcycle driven by the deceased and caused the accident. In the accident, the deceased died on the way to hospital. The 4^{th} respondent is the owner of the Mahindra Maxx Vehicle and the appellant is the insurer of the Mahindra Maxx Vehicle. Therefore, the respondents 1 to 3 have filed the above claim petition claiming compensation against the 4^{th} Respondent and the appellant.

4.The 4^{th} respondent remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident occurred solely due to rash and negligent riding of the motorcycle by the deceased. The offending vehicle was not insured with the appellant and therefore, the appellant / Insurance Company is not liable to pay any compensation to the respondents 1 to 3.

6.Before the Tribunal, the 1^{st} respondent, wife of the deceased, examined herself as P.W.1, one Saravanakumar, eye-witness, was examined as P.W.2 and one Sugumaran, Headmaster, was examined as P.W.3 and marked eight documents as Exs.P1 to P8. No oral and documentary evidence was let in on the side of the appellant.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of Mahindra Maxx vehicle belonging to the 4^{th} respondent and directed the appellant/Insurance Company being the insurer of the said Mahindra Maxx vehicle to pay a sum of Rs.45,32,000/- as compensation to the respondents 1 to 3/claimants.

8.Against the said award dated 22.07.2014 made in M.C.O.P.No.112 of 2013, granting compensation to the respondents 1 to 3, the appellant/Insurance Company has come out with the present appeal with regard to quantum of compensation.

9.The learned counsel appearing for the appellant/Insurance Company contended that the accident has occurred near the junction of the Highway and deceased should have been cautious enough in riding the vehicle. Hence, the Tribunal ought to have fixed contributory negligence on the part of the deceased. The Tribunal erred in awarding a huge amount of Rs.45,32,000/- as compensation without any basis. The Tribunal ought to have deducted a sum of Rs.5,19,480/- towards Income Tax. The Tribunal also failed to note that the deceased was left with about 10 years of unexpired service and ought not to have taken the salary source for entire 13 years. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 to 3/claimants contended that P.W.2, eye-witness to the accident, was examined to prove that the accident has occurred only due to rash and negligent driving by the driver of the Mahindra Maxx vehicle belonging to the 4th respondent. The appellant has not let in any contra evidence to disprove the case of the respondents 1 to 3. The learned counsel contended that at the time of accident the deceased was working in Government High School, Ammaiyagaram as P.G. Assistant and was earning a sum of Rs.33,324/- per month. To prove the same, the respondents 1 to 3 have examined P.W.3/Headmaster of the Government High School, Ammaiyagaram and marked Ex.P6/salary certificate. The Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused all the materials available on record.

12.It is the contention of the respondents 1 to 3/claimants that at the time of accident, the deceased was aged 46 years working as P.G. Assistant in Government High School, Ammaiyagaram and was earning a sum of Rs.33,324/- per month. To prove the income of the deceased, the appellants have examined P.W.3, Headmaster of the school, where the deceased was working. The Tribunal has fixed a sum of Rs.33,300/- as monthly income of the deceased, which is not proper. Considering the evidence of P.W.3, a sum of Rs.33,324/- is fixed as monthly income of the deceased. The Tribunal fixed the age of the deceased as 47 years, applied multiplier '13', deducted 1/3rd towards personal expenses and awarded 30% enhancement towards future prospects, which are in order. The compensation awarded by the Tribunal towards loss of dependency is modified to Rs.45,05,405/- (Rs.33,324/- + 9,997.2 [Rs.33,324/- X 30%] x 12 x 13 x 2/3). The appellant has pointed out that the Tribunal failed to deduct the Income Tax. The learned counsel appearing for the respondents 1 to 3 also accepted the same. In view of the same, the loss of dependency is re-calculated as Rs.40,54,865/- (45,05,405 - 4,50,540) after deducting 10% Income Tax from the amount awarded towards loss of dependency. The Tribunal has awarded a sum of Rs.9,840/-, Rs.10,000/- and Rs.10,000/- towards loss of love & affection, loss of consortium and funeral expenses respectively, which are meagre and hence the same are hereby enhanced to Rs.50,000/-, Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

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 dependency	45,02,160	40,54,865	Reduced
2.	Loss of love and affection	9,840	50,000	Enhanced
3.	Loss of consortium	10,000	40,000	Enhanced
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	Rs. 45,32,000/-	Rs.41,74,865/-	Reduced by Rs.3,57,135/-

13.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.45,32,000/- awarded by the Tribunal is hereby reduced to Rs.41,74,865/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit the modified award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent is permitted to withdraw her respective share from the modified award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st respondent being the mother of the respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.112 of 2013, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The III Additional District and Sessions Judge,
The Motor Accident Claims Tribunal
Kallakurichi.

Copy to : The Section Officer, V.R.Section
High Court, Chennai.

+1cc to Mr.S.Arun Kumar, Advocate SR.NO.2305
+1cc to Mr.R.Nalliyappan, Advocate SR.NO..1237

AKM/16.03.21/ 5P- 5C/

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