

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2723 of 2012

The Divisional Manager,
United India Insurance Company Ltd.,
Katpadi Road,
Vellore.

... Appellant/2nd Respondent

...Vs...

1. K.Thamarai Selvi
2. K.Dharani
3. K.Devagi
4. K.Mayuri ... Respondents 1 to 4/Petitioners
5. B.S.Selvam ... 5th Respondent/1st Respondent
6. The Divisional Manager,
Oriental Insurance Co. Ltd.,
Arcot Road, Vellore-4. ... 6th Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 27.09.2011 made in MCOP. No.698 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.C.Chokkalingam - R1 to R4
Mr.K.Vinod - R6
No appearance - R5

JUDGMENT

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the Insurance company challenging the impugned award dated 27.09.2011 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Vellore in MCOP.No.698 of 2008.

2. The appellant/Insurance Company has challenged the impugned award on the ground that they are not liable to compensate the claimants for the death of Kuppusamy, since the deceased was himself a tortfeasor. They have also challenged the

award questioning the quantum of compensation awarded by the Tribunal to the claimants under the impugned award.

3. The dependents of the deceased Kuppusamy have preferred a claim before the Motor Accidents Claims Tribunal seeking compensation of Rs.10,00,000/- for the death of Kuppusamy.

4. The Motor Accidents Claims Tribunal, under the impugned award, has awarded a compensation of Rs.3,78,000/- together with interest and costs to the claimants, who are the respondents Nos.1 to 4 in this appeal, as detailed hereunder:

Head	Award passed by the Tribunal (Rs.)
Loss of income	2,88,000/-
Funeral expenses	10,000/-
Loss of love and affection	80,000/- (4 Nos.X20,000/-)
Total	3,78,000/-

5. Heard Mr.S.Arunkumar, learned counsel for the appellant/Insurance company and Mr.C.Chokkalingam, learned counsel for the respondents 1 to 4 and Mr.K.Vinod, learned counsel for the 6th respondent.

6. A person by name Kuppusamy died on 07.07.2007 as a result of an accident between his two wheeler viz., Bajaj Kalier bearing Registration No.TN 23 L 7781 in which he was traveling as a pillion rider and a bus bearing Registration No.TN 23 H 7789, which was also proceeding on the same direction. The bus is owned by the fifth respondent and insured with the sixth respondent.

7. The Motor Accident Claims Tribunal, under the impugned award, has held that the bus owned by the fifth respondent and insured with the sixth respondent are alone responsible for the cause of the accident, which resulted in the death of Kuppusamy. Before the Tribunal, the claimants, in their claim petition, have pleaded that the deceased Kuppusamy was aged 55 years and was an agriculturist, earning a monthly income of Rs.10,000/-.

8. Before the Tribunal, the claimants have filed nine documents, which were marked as Ex.P1 to Ex.P9 and two witnesses were examined on their side, namely, PW1 - K.Tamarai selvi, the wife of the deceased, and PW2 - Mr.Vinayagam, an eyewitness to the accident. On the side of the respondents, two witnesses were examined and six documents were filed.

9. The documents filed by the claimants included a patta pass book standing in the name of Kuppusamy, which was marked as Ex.P7, which reveals that Kuppusamy was owning around nine acres of punja land. However, considering the fact that the claimants have not produced any other evidence to show that the deceased was earning Rs.10,000/- per month, the Tribunal, after considering the age of the deceased, who was 55 years old and his occupation (Agriculturist), has assessed the monthly income of the deceased at Rs.3,000/- per month on notional basis. The age of the deceased is also proved through the post-mortem certificate, which was marked as Ex.P5 before the Tribunal. The particulars of the legal heirs of the deceased has also been proved through the legal heirship certificate, which was marked as Ex.P6. Since the deceased was aged 55 years, the Tribunal has applied the correct multiplier of '13' for arriving at the loss of earning power. Since the claimants are four in number, the Tribunal has rightly deducted 1/3rd share towards personal expenses of the deceased while assessing the total compensation. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, Rs.20,000/- towards loss of love and affection to each of the claimants, totally amounting to Rs.80,000/- In all put together, a total compensation of Rs.3,78,000/- has been awarded to the claimants by the Tribunal, under the impugned award. This Court is of the considered view that the compensation awarded by the Tribunal to the claimants is a just compensation.

10. With regard to the second contention raised by the appellant as regards its liability, the same has been duly considered by the Tribunal under the impugned award. The deceased Kuppusamy was traveling in a motor-cycle bearing Registration No.TN 23 L 7781 as pillion rider. It is the consistent stand of the claimants that the driver of the bus, owned by the fifth respondent and insured with the sixth respondent, has suddenly applied the brake, as a result of his negligence, the two wheeler in which the deceased was traveling as a pillion rider, dashed against the bus, which resulted in Kuppusamy's death. The Motor Vehicle Inspector's report, a copy of which has been marked as Ex.P9, will show absence of any mechanical defect in the motor cycle, in which the deceased was travelling.

11. The Tribunal has taken note of the fact that the complaint, which resulted in the registration of FIR was given by one Vijayakumar, S/o.Manickam, whose status was not explained by the owner of the vehicle. Further, RW1 and RW2 are not eyewitnesses to the accident. However, PW2 is an eyewitness to the accident and he has deposed that only due to the sudden applying of brakes by the driver of the bus which was proceeding in front of the motor-cycle, in which the deceased was traveling

as a pillion rider, the motor-cycle dashed against the said bus. No contra evidence has been produced by the appellant/Insurance Company to disprove the contention of the claimants that only due to the rash and negligent driving by the driver of the bus, the accident had happened. The preponderance of probability based on the evidence available on record will conclusively establish that only due to the fault of the driver of the insured bus, the accident had happened, which resulted in the death of Kuppusamy. The Tribunal has rightly appreciated the evidence available on record, and has come to the right conclusion that the appellant along with the owner of the vehicle are liable to compensate the claimants for the death of Kuppusamy. This Court does not find any infirmity in the findings of the Tribunal and there is no merit in this appeal.

Conclusion:

12. In the result, this Appeal shall stand dismissed. No costs.

13. The Appellant/Insurance Company is directed to deposit the Award amount together with interest from the date of claim petition till the date of deposit and costs as assessed by the Tribunal, after deducting the amount, if any, already deposited to the credit of MCOP.No.698 of 2008, 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 amount to the bank account of the respondents 1 to 4 / claimants through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar (Insp.Cell)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Vellore.
2. The Section Officer
V.R.Section, High Court of Madras.

+1cc to Mr.S.Arunkumar, Advocate SR.No.26543

C.M.A.No.2723 of 2012

KJ(CO)
GMY(19/11/2020)