



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2392 OF 2013

M/s.Cholamandalam MS General Insurance Co. Ltd.,
2nd Floor, Alankar Building,
No.551, D.B. Road, R.S.Puram,
Coimbatore.

.. Appellant/5th Respondent

Vs.

1.Chandrakala

2.Kavinkumar (minor)

(2nd Respondent Minor Rep.by mother and NF 1st respondent)

3.Karuppathal

... 1 to 3 Respondents/Claimants 1 to 3

4.Velusamy

5.Deivasigamani

6.M/s.ICICI Lombard General Insurance Co. Ltd.,
ICICI Bank Towers, Bandra - Kurla Complex,
Mumbai - 400 051.

Mr.Subramanian (Died) S/o.Murugasan
(4th Respondent before Tribunal)

7.Mr.Jothimani

(Respondents 4, 5 and 7 exparte before trial court)

.. 4 to 7th Respondents/
1 to 3 and 6th Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP No.779 of 2008 dated 18.07.2011, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tiruppur.



WEB COPY

For Appellant : Mr.E.Rajadurai for Mr.M.B.Gopalan
For RR1 to 3 : Ma.Pa.Thangavel
For RR4,5 and 7 : Ex-parte (vide EB)
For R6 : Mrs.R.Sreevidhya

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/ Insurance Company against the Judgment and decree made in MCOP No.779 of 2008 dated 18.07.2011, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tiruppur.

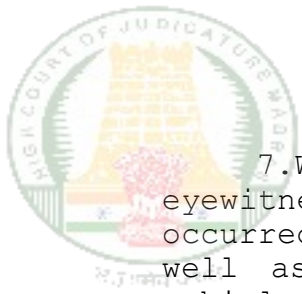
2.The case of the claimants is that at about 5.00 p.m when the deceased(Palanisamy) was travelling in a auto bearing Registration No: TN-39-AQ-2260, the driver of the auto hit against a lorry bearing Registration no: TN-41-R-6793 which was parked on the road. In the result, the said Palanisamy sustained serious injuries and succumbed to the injuries sustained in the accident. Hence, the legal heirs of the deceased filed a claim petition before the Tribunal seeking Rs.15,00,000/- as compensation. The Tribunal after analyzing the materials available on record awarded Rs.6,31,000/- as compensation with 7.5% p.a from the date of petition till the date of realization.

3.Challenging the award passed by the Tribunal, the appellant has come up with this present appeal.

4.The learned counsel for the appellant/Insurance company submitted that the vehicle involved in the accident is a goods carrying vehicle and it intends to carry goods alone and the deceased travelled in that vehicle is violation of policy and permit conditions. He further submitted that the FIR clearly reveals that the offending vehicle is permitted only to carry goods. In any event, the Tribunal ought to have dismissed the claim petition as it is not maintainable.

5.The learned counsel for the claimants submitted that the deceased was 36 years old at the time of accident and he is the sole bread winner of the family. Due to the sudden demise of the sole bread winner of the family, the other family members of the deceased are put to indigent circumstances. Hence, he prays to enhance the compensation.

6.Heard the learned counsel for the appellant and the respondents and perused the materials available on record.



7. With regard to negligence aspect P.W.2 is the only eyewitness before the Tribunal, who deposed that the accident occurred due to the negligent attitude of the auto driver as well as the driver of the lorry. Considering Ex.Rw. 2/Motor vehicle Inspector's report for lorry and Ex.R3/Motor Vehicle Inspector's report for auto and also the evidence of P.W.2 the Tribunal determined the negligence aspect on the part of the auto driver as 70% and on the part of the driver of the lorry as 30%. This Court finds no reason to interfere with such a finding since, as there is no iota of evidence adduced by either of the parties to take a different view than the one arrived by the Tribunal.

8. With regard to quantum of compensation arrived by the Tribunal, there was no documentary proof regarding the income of the Tribunal. Hence, the Tribunal fixed the notional income of the deceased as Rs.3,000/- and calculated Rs.36,000/- (Rs.3,000x12) as annual income. considering the age of the deceased applied 16 as multiplier and arrived Rs.5,76,000/- (Rs.36,000 x 16) as loss of income. The first respondent has lost his companion in the young age hence, Rs.20,000/- was awarded towards loss of consortium. As there were totally 3 family members Rs.10,000/- each was awarded towards loss and affection and thereby quantified Rs.30,000/- towards loss of love and affection. The Tribunal further awarded Rs.5,000/- towards funeral expenses. Thus, the amount awarded by the Tribunal is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of income	5,76,000/-
2.	Funeral Expenses	5,000/-
3.	Loss of consortium	20,000/-
4.	Loss of love and affection	30,000/-
	Total	Rs.6,31,000/-

9. This Court is of the view that the amount awarded by the Tribunal under the above heads are very reasonable, weightage of evidence, probabilities of case and settled principles of law and hence the same are confirmed.

10. Thus, affirming the award passed by the Tribunal, this Civil Miscellaneous Appeal stands dismissed. No costs. The appellant/Insurance Company is directed to deposit the compensation amount within a period of 8 weeks from the date of receipt of a copy of this Judgment. On such deposit, the



claimants are permitted to withdraw the entire award amount along with interest and costs, less the amount already withdrawn. The claimants are further directed to disburse their share amount as per the ratio of apportionment fixed by the Tribunal. The amount apportioned to the minor (second respondent) shall be deposited in any one of the Nationalised Banks and the 1st respondent is entitled to withdraw the interest once in three months, till the second respondent attain majority. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

smn

To

1. The Motor Accident Claims Tribunal,
Principle Subordinate Court,
Tiruppur.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate S.R.No.6903
+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.7348
+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.7715

C.M.A.No.2392 of 2013

VBA(CO)
CS/10/05/2021
CS/24/08/2021