

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1733 OF 2016

AND

C.M.P.NO.13068 OF 2016

The Manager

ICICI Lombard General Insurance
Company Limited, ICICI Lombard House
414, Veer Savarka Marg
Near: Sidhivinayak Temple,
Prabhadevi, Mumbai-400 025.

.. Appellant/Respondent 2

Vs.

1.Sasikala

(Exparte before the Tribunal)

2.Minor S.Gokul

3.Minor Swathi

... Respondents 1-3/

Respondents 1-3

(Minor 2nd & 3rd respondents are represented by their mother
and natural guardian, the first respondent herein)

4.M/s. Iskon Traders

3/391, Near Murugan Koil,
Kattinayanapalli Post,
Krishnagiri Taluk & District.

..4th Respondents/
1st Respondent

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of
Motor Vehicles Act, 1988, against the judgment and decree dated
27.02.2015 made in M.C.O.P.No.6 of 2014 on the file of the Motor
Accident Claims Tribunal, District Judge, Krishnagiri.

For Appellant : Mrs.R.Sree Vidhya

For R1 & R4 : No Appearance

R2 & R3 : Minor Rep.by R1

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 27.02.2015 in M.C.O.P.No.6 of 2014 on the file of the Motor Accident Claims Tribunal, District Court, Krishnagiri.

2.The appellant is second respondent in M.C.O.P.No.6 of 2014 on the file of the Motor Accident Claims Tribunal, District Judge, Krishnagiri. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one G.Sampath, who died in the accident that took place on 16.05.2013.

3.According to the respondents 1 to 3, while the deceased was riding in his bicycle from Kattinayanapalli Temple towards Government Polytechnic side of the road in Krishnagiri to Chennai National Highways, the driver of the Mahindra Genio Light Goods Vehicle bearing Regn.No.TN-24-M-6869 belonging to the 4th respondent and insured with the appellant drove the same in a rash and negligent manner without blowing horn and without minding the rules of the road came from behind, knocked on the cyclist Sampath and caused the accident. Due to the said impact, the said Sampath sustained head injury and other fatal injuries to his vital organs. Immediately, he was taken to Government Hospital, Krishnagiri and after first aid treatment, he was taken to Government Hospital, Dharmapuri and then to Government Hospital, Salem for further treatment. He was given treatment in the emergency ward of the said hospital. In spite of the best treatment, he died at 05.15 hours on 23.06.2013. Therefore, the respondents 1 to 3 have filed the above claim petition claiming compensation.

4.The 4th 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 negligent act of the deceased who suddenly hit against the left body of the goods vehicle. The respondents 1 to 3 have to prove that the 4th respondent, driver of the Mahindra Genio Light Goods Vehicle was possessing valid driving license at the time of accident and the Mahindra Genio Light Goods Vehicle was insured with the appellant/Insurance Company.

6.Before the Tribunal, the 1st respondent, wife of the deceased, examined herself as P.W.1 and one Mr.Sudarsanam, eye-witness was examined as P.W.2 and marked five documents as Exs.P1 to P5. No oral or 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 due to rash and negligent driving by the driver of the Mahindra Genio Light Goods Vehicle belonging to the fourth respondent and directed the appellant/Insurance Company to pay a sum of Rs.17,08,000/- as compensation to the respondents 1 to 3.

8.Questioning the quantum of compensation awarded by the Tribunal in the award dated 27.02.2015 made in M.C.O.P.No.6 of 2014 granting compensation to the respondents 1 to 3, the appellant-Insurance Company has come out with the present appeal.

9.The contention of the learned counsel appearing for the appellant-Insurance Company is that the Tribunal erred in fixing the monthly income of the deceased at Rs.12,000/-p.m. in the absence of any material evidence to prove the avocation and income. The deceased was aged 45 years at the time of accident and the correct multiplier applicable is 13. The Tribunal erroneously applied multiplier '14' and hence prayed for setting aside the award of the Tribunal.

10.Though notice has been served on the respondents 1 to 4 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

11.Heard the learned counsel appearing for the appellant and perused the materials available on record.

12.The respondents 1 to 3 have contended that the deceased was a Dobi & running a dry cleaning and was earning a sum of Rs.20,000/- per month. The deceased was working from 08.00 a.m. to 09.00 p.m. daily. They have not substantiated their contention with regard to income of the deceased. Hence, the Tribunal fixed the notional income of the deceased at Rs.12,000/- per month. The accident is of the year 2013. The notional income fixed by the Tribunal is not excessive. The Tribunal has given valid reason for fixing the notional income of the deceased. The deceased was aged 45 years at the time of accident. In fact, as per the dictum of the Hon'ble Apex Court, the Tribunal ought to have granted 25% enhancement towards future prospects while awarding the compensation towards future loss of income. The Tribunal considering the age of the deceased as 45 years, applied multiplier '14' as per the judgment of the Hon'ble Apex Court reported in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 and granted just compensation under conventional heads. In view of the same, the compensation granted by the Tribunal does not warrant any interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.17,08,000/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants, along with interest and costs is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount along 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 judgment to the credit of M.C.O.P.No.6 of 2014. On such deposit, the first respondent is permitted to withdraw her share of the award amount on the basis of apportionment fixed by the Tribunal along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The award amount of the minors second and third respondents are directed to be deposited in any one of the Nationalized Bank, till they attain majority. The first respondent, being the mother of the second and third respondents is permitted to withdraw the accrued interest on the deposit amount, once in three months for the welfare of the minor respondents. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

2. The Section Officer, सत्यमेव जयते
V.R.Section,
High Court of Madras.

+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.887

C.M.A.No.1733 of 2016
and C.M.P.No.13068 of 2016

PP(CO)
CS/09/02/2021