IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-08-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2611 of 2019
And
C.M.P.No.12644 of 2019

The Branch Manager,
M/s.IFFCO-TOKIO General Insurance Co. Ltd.,
Shashi Kiran Building,
Shankarmutta Road,
Shimoga 577 201. .. Appellant/ 2nd respondent

vs.

1.Ramamani
2.Vijayalakshmi
3.Nandini
4.Manjunath ...Respondents/ Claimants

5.R.Janardhana Reddy ...Respondent/ I Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.09.2018 passed in M.C.O.P. No.291 of 2017 on the file of the learned Additional District Judge, Additional District Court-cum-Motor Accidents Claims Tribunal, Hosur.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 4 : Mr.Mukund R.Pandian

For Respondent-5 : Left

J U D G M E N T

The Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 28.09.2018 passed by the learned Additional District Judge, Additional District Court-cum-Motor Accidents Claims Tribunal, Hosur in M.C.O.P. No.291 of 2017.

2. The learned counsel appearing on behalf of the appellant-Insurance Company mainly contended that the Tribunal has committed an error in appreciating the evidence of RW-1 as well as Exs.P-4, P-5 and Exs.R-2 to R-4, so as to infer that the lorry driver had no valid driving license to drive the lorry involved in the accident.

3. The Tribunal has not considered the fact that except the first respondent, all other respondents are not dependents of the deceased and therefore, the deduction ought not to have exceeded one-third (1/3rd). The deduction made by the Tribunal is erroneous in view of the fact that the non-dependents of the deceased were also considered as dependents for the purpose of award of compensation. Further, the learned counsel for the appellant reiterated that the fixation of monthly income of Rs.11,000/- is exorbitant and grant of 25% towards future prospects is also improper. Taking note of all these reasons, the learned counsel for the appellant is of an opinion that the quantum of compensation awarded by the Tribunal deserves to be reduced, as the very award itself, regarding calculation of compensation, is erroneous.

4. The learned counsel appearing on behalf of the respondents 1 to 4 disputed the contentions raised by the learned counsel appearing on behalf of the appellant by stating that the Tribunal considered all these aspects with reference to the documents and evidences and accordingly, awarded a compensation of Rs.17,28,750/- along with interest at the rate of 7.5% per annum. There is no wrong calculation for future prospects as 25% was fixed based on the judgments of the Higher Courts. Thus, the present Civil Miscellaneous Appeal is to be dismissed.

5. The accident occurred on 23.02.2016 at about 07.30 P.M. at R.C. Church - ESI Ring Road, near Manjunatha Layout. The Traffic Investigation Wing Police, Hosur, Krishnagiri District registered a case in Crime No.55 of 2016 under Sections 279 and 337 of IPC. The deceased was travelling in TVS XL Moped and sustained head injuries and died on 29.02.2016 at Government Hospital, Hosur.

6. As per the facts established, the deceased was a Coolie by profession. He was doing building construction work in and around Hosur. He used to work on all days and he had regular work. The deceased was aged about 48 years at the time of accident and therefore, this Court is of an opinion that the deceased must be an experienced Coolie and was earning

regularly. The claimants had stated that the monthly income of the deceased was Rs.15,000/- and accordingly, filed the claim petition, seeking compensation of Rs.40 lakhs.

7. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. Ex.P-2 Registration Certificate of Goods Vehicle bearing Registration No.TN-28-AC-0345 and the Insurance Policy of the lorry Ex.P-3 were considered and the same would reveal that the vehicle was insured with the appellant-Insurance Company and policy coverage was also in force.

8. This apart, as per the evidence of RW-1, the driver of the offending vehicle, had no valid badge to drive the vehicle at the time of accident. Thus, the appellant-Insurance Company is not liable to pay compensation. However, Ex.P-1, FIR reveals that the accident occurred due to the negligent act of the driver of the lorry belonged to Mr.R.Janardhana Reddy and the said lorry was insured with the appellant-Insurance Company.

9. The Postmortem Report Ex.P-6 reveals that the age of the deceased was 47 years at the time of accident. This being the factum established before the Tribunal, this Court is of the considered opinion that there is no perversity regarding fixation of liability on the part of the appellant-Insurance Company. Regarding the quantum of compensation, the Tribunal considered the age of the deceased as per the Postmortem Report and fixed the monthly income of the deceased as Rs.11,000/-. Accordingly, loss of dependency was calculated by the Tribunal as Rs.11,000/- x 1/4 = Rs.2,750/- and Rs.2,750/- deducted towards personal expenses of the deceased. Thus, the monthly income of the deceased was derived by the Tribunal as Rs.8,250/-.

10. As far as the deduction of one-fourth (1/4th) income towards personal expense is improper in view of the fact that respondents 2 and 3 are concerned, they are all married and living separately with their family. Therefore, the married daughters living separately with their family cannot be construed as dependants.

11. Thus, the Tribunal has committed an error regarding deduction of personal expenses. In fact, the children of the deceased are married and not dependants and therefore, the personal expenses to be applied is one-third (1/3rd) and not one-fourth (1/4th). Accordingly, the award of compensation is to be modified to such an extent.

12. The Tribunal has committed an error in deducting the personal expenses and therefore, this Court is inclined to modify the award as detailed hereunder:-

	Rs.
1.Loss of dependency (Rs.11,000/-+25%x12x13 minus (-) 1/3rd of income)	14,30,000/-
2. Loss of love and affection	40,000/-
3. Transport and Funeral Expenses	15,000/-
4. Loss of Estate	15,000/-
5. Loss of Consortium	40,000/-
	15,40,000/-

Therefore, the total award to be granted is Rs.15,40,000/- along with interest at the rate of 7.5% per annum.

13. As far as the grounds raised by the appellant that the driver of the lorry was not possessing a valid driving license at the time of accident, the Tribunal ought to have granted pay and recovery in view of the fact that the appellant could able to establish that there was no badge at the time of accident. Thus, the appellant-Insurance Company is entitled for the relief of pay and recovery as per the judgment of the Hon'ble Supreme Court of India in the case of Oriental Insurance Co. Ltd vs. Shri Nanjappan And Others [2004 (13) SCC 224].

14. In view of the reasons stated in the aforementioned paragraphs, this Court is inclined to modify the award from Rs.17,28,750/- to Rs.15,40,000/- along with interest at the rate of 7.5% per annum. Further, the appellant-Insurance Company is directed to pay the modified award amount of Rs.15,40,000/- along with interest at the rate of 7.5% per annum to the claimants and recover the same from the owner of the vehicle by following the procedures contemplated under law.

15. The learned counsel for the appellant-Insurance Company contends that the appellant-Insurance Company had already deposited the awarded amount and therefore, they may be permitted to withdraw the excess amount already deposited. Accordingly, the respondents-claimants are permitted to withdraw the modified award of compensation of Rs.15,40,000/- along with interest at the rate of 7.5% per annum and the balance amount, if any, shall be returned to the appellant-Insurance Company and the appellant-Insurance Company is permitted to file appropriate

application before the Tribunal for reimbursement. The payments are to be made only through RTGS.

16. Accordingly, the judgment and decree dated 28.09.2018 passed by the learned Additional District Judge, Additional District Court-cum-Motor Accidents Claims Tribunal, Hosur in M.C.O.P. No.291 of 2017 stands modified to the above extent and consequently, CMA 2611 of 2019 stands allowed in part. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant registrar (AR CO)

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Sub Assistant Registrar

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To

1. The Additional District Judge,
Additional District Court-cum-Motor Accident Claims Tribunal,
Hosur,
Krishnagiri District.

2. The Section Officer
VR Section
High Court, Madras

CMA No.2611 of 2019

RSV (CO)
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