



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2841 of 2013
and M.P.No.1 of 2013

United India Insurance Co. Ltd.,
Represented by its Branch Manager,
Branch Office, No.11A,
M.C. Road, Ambur,
Vellore District - 635 802.

...Appellant/2nd Respondent

vs.

1.Deivanai

2.Minor Seetha

3.Minor Kaviarasu

4.Minor Kaviya

(2 to 4 minors are rep. by next friend and mother Deivanai)

5.Rajammal

... Respondents 1 to 5/Claimants 1 to 5

6.R.Natarajan

...6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 20.04.2012 made in M.C.O.P.No.1272 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.M.Siva Kumar for R1 to R4
R5 - died
R6 - no such address

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 20.04.2012 passed by the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri in MCOP.No.1272 of 2008.

2.Heard Mr.S.Arun Kumar, learned counsel for the Appellant and Mr.M.Siva Kumar, learned counsel for the respondents 1 to 4.



3.The Appellant Insurance Company has challenged the Award primarily on the ground that there is contributory negligence on the part of the deceased also since the deceased had parked his lorry in the middle of the road in the middle of the night.

4.It is their case that the insured lorry which was coming from behind was forced to dash against the lorry which was driven by the deceased since it was parked in the middle of the road in the middle of the night. It is their contention that the Tribunal has failed to consider the oral evidence adduced by RW1, the Sub Inspector of Police, who had deposed that there was contributory negligence on the part of the deceased also.

5.The Appellant Insurance Company has filed two documents which were marked as R1 (observation magazar) and R2 (rough sketch). According to the Appellant, the said documents revealed that the deceased was also equally responsible for the cause of the accident.

6.The Tribunal under the impugned Award has awarded a sum of Rs.6,82,000/- to the respondents 1 to 5, who are the claimants as detailed hereunder:

Loss of dependency	-	Rs.6,30,000/-
Loss of consortium	-	Rs.15,000/-
Loss of love & affection	-	Rs.32,000/-
Funeral expenses	-	Rs.5,000/-

Total		Rs.6,82,000/-

7.The claimants are entitled for loss of future prospects in accordance with the decision of Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in (2017) 16 SCC 680. However, the Tribunal has not awarded any compensation towards the said head.

8.As rightly contended by the learned counsel for the Appellant, the Tribunal has not properly considered the evidence adduced by RW1 and RW2 as well as exhibits R1 and R2. This Court has perused and examined the exhibits R1 and R2 which will reveal that the lorry which was driven by the deceased was parked in the middle of the road as seen from Ex.R2 - rough



sketch which is also supported by the oral evidence adduced by the Sub Inspector of Police (RW1).

9.The respondents 1 to 5, who are the claimants have however, examined Mr.Chinnasamy, the cleaner of the insured lorry as PW2 who has however, deposed that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened which resulted in the death of Mr.Thirupathi. Even though, the statement of PW2 contradicts the statement of RW1, Exs.R1 and R2 conclusively reveal that there is some amount of contributory negligence on the part of the deceased also. However, the Tribunal has failed to take note of this fact and has mulcted the entire liability on the Appellant Insurance Company.

10.The Tribunal under the impugned Award has erroneously failed to award any compensation to the appellants towards loss of future prospects which they are legally entitled to as per Pranay Sethi judgment of Hon'ble Supreme Court referred to supra. But considering the fact that there is contributory negligence on the part of the deceased also, the same can be set off and adjusted towards non assessment of any compensation by the Tribunal under the head "loss of future prospects". Even if loss of future prospects is awarded to the claimant by this court, in view of the contributory negligence of the deceased, the amount of compensation assessed by the Tribunal under the impugned Award will not vary significantly. Therefore, this Court after taking an overall perspective of the matter is of the considered view that the compensation awarded by the Tribunal is a just compensation.

11.For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal.

12.Accordingly, the appeal shall stand dismissed. Since the 5th respondent, namely, Rajammal, has passed away during the pendency of this appeal, her share of award amount shall be distributed in the following manner: (1)Deivanai - 40%; (2)Minor Seetha-20%; (3)Minor Kaviarasu-20%; and (4)Minor Kaviya-20%. The Appellant Insurance Company and the sixth respondent jointly and severally are directed to deposit the entire amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 6% from the date of the claim till the date of realization to the credit of M.C.O.P.No.1272 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri, 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 determined share of the award amount directly to the first claimant through RTGS, within a period of two weeks thereafter. The respondents 2 to 4 being minors, their respective shares of Award amount shall be deposited in any Nationalized Bank, till they attain majority and the first respondent, who is the guardian/mother of the minors is permitted to withdraw the interest once in six months. No cost. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pam

To

The Motor Accidents Claims Tribunal,
Additional District Judge, Krishnagiri.

Copy to:

The Section Officer,
Vernacular Section,
Madras High Court.

+1CC to Mr.S.Arunkumar, Advocate, Sr.No.26442
+1CC to Mr.C.Prabakaran, Advocate, Sr.No.26410

C.M.A.No.2841 of 2013

NR (CO)
B.VC (17.08.2021)