

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.417 of 2012

and

M.P.No.1 of 2012

M/s.United India Insurance Co.Ltd.,
Rep., by its Manager,
11/2 K.T.Complex,
New Scheme Road,
Pollachi- 642 002. ... Appellant/3rd respondent

Vs.

1.Vellaiammal @ Valliammal ...1st Respondent/ Petitioner

2.N.Kandhan

3.M/s.Guhan Transport Pvt., Ltd.,
No.191, P.S.G.Mills Premises,
Kovai Main Road,
Perundurai,
Erode- 638 052.

4.United India Insurance Co.Ltd.,
Rep., by its Manager,
S.R.S.Towers, Mettur Main Road,
Bhavani- 638 301.

.. Respondents2 to 4/
Respondents1,2 & 4

(Respondents 2 & 3 are set ex-parte
before the lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.06.2011 made in M.C.O.P.No.261 of 2010 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Bhavani.

For Appellant : Mrs.R.Sreevidhya
For Respondents : Mr.C.Kulanthaivel for R1
R2 & R3 - Ex parte

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 08.06.2011 made in M.C.O.P.No.261 of 2010, on the file of Motor Accidents Claims Tribunal, Subordinate Court, Bhavani.

2. The appellant-Insurance Company is the third respondent in M.C.O.P.No.261 of 2010, on the file of Motor Accidents Claims Tribunal, Subordinate Court, Bhavani. The first respondent had filed the above claim petition claiming a sum of Rs.20,00,000/- as compensation for the death her son, viz., Kumar, who died in the accident that took place on 01.04.2010.

3. The case of the first respondent is that on 01.04.2010 at about 09.00 PM., while her son Kumar was riding his TVS 50 from Komarapalayam to Devur Pullakoundampatti near Eari Thottam, the bus bearing Regn. No. TN-59-W-8080 being driven by the second respondent herein in a rash and negligent manner, dashed against the deceased, who died on the spot. The accident has happened due to the rash and negligent driving of the driver of the third respondent bus. According to the first respondent, prior to the accident, he son was working as weaver and was earning Rs.6,000/- per month. Therefore, she filed the claim petition before the Tribunal.

4. Per contra, the appellant has filed detailed counter denying the averments of the claimant before the Tribunal and submitted that the negligent act committed by the deceased, the Insurance Company cannot be held liable to pay compensation and claim of compensation is also exorbitant.

5. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus, the second respondent herein, and directed the appellant-Insurance Company to pay a sum of Rs.6,26,000/- as compensation to the first respondent. Challenging the said award dated 08.06.2011 made in M.C.O.P.No.261 of 2010, the appellant-Insurance Company has come out with the present appeal.

6. Heard the learned counsel for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

7. From the materials on record, it is seen that the first respondent has contended that the accident occurred only due to rash and negligent driving by the driver of the bus. In order to establish the same, the first respondent has marked the FIR/Ex.P1, the same, corroborates with the evidence of P.W.1, viz., first respondent and P.W.2, eye witness to the accident.

Hence, the Tribunal rightly fixed the negligence on the part of the driver of the bus. However, the appellant has not let in any evidence to rebut the same.

8. Further, the Tribunal taking shelter of Ex.P2, post mortem certificate, has rightly fixed the age of the deceased as 25. Though P.W.1 has stated in her evidence that the deceased, viz her son was a weaver and earning a sum of Rs.5,000/- at the time of accident, she has not produced any documentary evidence to support the same, the Tribunal by taking note of various decisions rendered by the Hon'ble Supreme Court as well as this Court, has correctly fixed a sum of Rs.4,500/- on notional basis and rightly applied multiplier method also. That apart, the amount awarded under other heads, viz, towards funeral expenses, loss of love and affection and loss of estate are found to be just and reasonable. Therefore, this Court is of the view that the award passed by the Tribunal does not warrant any interference.

9. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.6,26,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is 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.261 of 2010. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal,
Subordinate Court,Bhavani.

2.The Section Officer,
V.R Section,High Court, Madras.

+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 14851

+1cc to Mrs.R.Sreevidhya, Advocate SR.No. 15324

C.M.A.No.417 of 2012
and

M.P.No.1 of 2012

A.SK(27/11/2020)