

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.722 of 2015

and

M.P.No.1 of 2015

M/s.New India Assurance Co.Ltd.,

No.863, Big Bazaar Street,

Coimbatore-641 001.

... Appellant/2nd Respondent

Vs.

1.T.Veeralakshmi

2.T.Sathish

3.T.Ragul

4.Minor. T.Naveen ... Respondents 1 to 4/Claimants 1 to 4
(Minor rep. By mother and N.F. 1st respondent)

5.T.Sivabaskar ... 5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.03.2014 made in M.C.O.P.No.155 of 2012 on the file of Motor Accident Claims Tribunal, (Chief Judge) Small Causes Court, Chennai.

For Appellant : Mr.J.Chandran

For R1 to R4 : Mr.P.Thirupathi Raj

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 27.03.2014 made in M.C.O.P.No.155 of 2012 on the file of Motor Accident Claims Tribunal, (Chief Judge) Small Causes Court, Chennai.

2.The appellant is the second respondent in M.C.O.P.No.155 of 2012 on the file of Motor Accident Claims Tribunal, (Chief Judge) Small Causes Court, Chennai. The respondents 1 to 4 herein filed the said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one T.Thangavel, who died in the accident that took place on 03.03.2011.

3. According to the respondents 1 to 4, on 03.03.2011 at 7.00 a.m, while the deceased T.Thangavel was travelling in a Toyota Innova-2009 LMV Car Sedan bearing Registration No.TN 45 AM 5005 from Chinnaperi village, Sedapatti to Trichy, the driver-cum-owner of the vehicle, 5th respondent drove the same in a rash and negligent manner and caused the accident, due to which the deceased sustained multiple grievous injuries and subsequently died on 01.04.2011. Therefore, the respondents 1 to 4 filed claim petition claiming compensation against the 5th respondent as well as the appellant.

4. The 5th respondent, owner-cum-rider of the car filed counter statement stating that the 5th respondent has valid driving license to drive the car and the said vehicle is insured with the appellant/ Insurance company.

5. The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 to 4 in the claim petition and contended that the accident has occurred not due to the negligence on the part of the driver of the car. When the driver of the car was proceeding in a normal speed, the car tyre suddenly burst and as a result, the driver of the car lost control, car capsized and the accident has occurred. The driver of the car was not at all responsible for the alleged accident. The appellant denied the age, occupation and income of the deceased. The death of the deceased was not due to the injuries sustained by him in the said accident. In any event, the compensation claimed by the respondents 1 to 4 is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, 3rd respondent, son of the deceased examined himself as P.W.1, one Nandagopal, eye-witness to the accident was examined as P.W.2 and marked eleven documents as Exs.P1 to P11. The appellant did not let in any oral and documentary evidence.

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 Toyota car belonging to the 5th respondent and directed the 5th respondent as well as the appellant/Insurance Company being insurer of the said Toyota car to jointly and severally pay a sum of Rs.27,73,000/- as compensation to the respondents 1 to 4.

8. Challenging the quantum of compensation awarded by the Tribunal in the award dated 27.03.2014 made in M.C.O.P.No.155 of

2012, granting compensation to the respondents 1 to 4, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fixing Rs. 27,000/- as monthly income of the deceased. The respondents 1 to 4 have not substantiated the avocation and income of the deceased. The Tribunal failed to see except Income Tax returns for the Assessment Year 2009 - 2010 and 2010 - 2011, the deceased has shown only lesser income in the Income Tax returns from 2002-2003, 2003-2004, 2004-2005 and 2008-2009. In any event, the total compensation amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the Tribunal, after considering the materials available on record, has rightly come to the conclusion that the appellant/Insurance Company is liable to pay compensation and the amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 to 4 and perused the materials available on record.

12.From the materials available on record, it is seen that the respondents 1 to 4, have claimed that the deceased was a business man and was earning a sum of Rs.40,000/- per month. To substantiate their claim, the respondents 1 to 4 have filed Income Tax returns, which were marked as Ex.P7 and Ex.P8. From the Income Tax returns for the Assessment Year 2009 - 2010, it is seen that the deceased has declared his income as Rs.3,98,057/- and for the Assessment Year 2010-2011, the deceased has declared his income as Rs.3,51,910/-. The Tribunal has taken lesser amount declared in the Assessment Year 2010-2011, deducted Income Tax and fixed monthly income of the deceased at Rs.27,000/- per month. The Tribunal has properly considered the income as per Ex.P7 and Ex.P8, Income Tax returns filed by the respondents 1 to 4 and fixed monthly income of the deceased at Rs.27,000/- and awarded compensation under different heads, which are not excessive warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.27,73,000/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. Both the 5th respondent/owner of the car as well as the appellant-Insurance Company are directed to jointly and severally 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.155 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor/4th respondent is directed to be deposited in any one of the Nationalized Banks, till the minor/4th respondent attains majority. The 1st respondent/mother of the minor/4th respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor/4th respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsn

To

1. The Motor Accidents Claims Tribunal
(Chief Judge) Small Causes Court, Chennai.

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

+1 CC to Mr.J.Chandran, Advocate sr 9974

C.M.A.No.722 of 2015
and
C.M.P.No.1 of 2015

VBA (CO)
SP(02/12/2020)