

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.08.2020

Pronounced on: 06.08.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1896 of 2016

and

C.M.P.No.13903 of 2016

M/s HDFC-ERGO General Insurance
Company Limited,
No.70, 4th Floor,
Rajanarayanan Towers,
Race Course Road,
Gopalapuram,
Coimbatore.

.. Appellant

/versus/

1.Mrs.Sivabakkiyam

2.Mrs.Jeevitha

3.Miss.Nithya

4.Mr.T.Rajesh Kumar

5.Mr.G.Kanagaraj

.. Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 31st March, 2016, passed in M.C.O.P.No.740 of 2014 by the Motor Accidents Claims Tribunal(II Additional District Judge) at Tiruppur.

For Appellant : Mr.J.Michael Visuvasam

For R1 to R3 : Mr.S.Nagarajan

For R4 and R5 : No appearance

J U D G M E N T

(The case has been heard through video conference)

The Insurance company is the appellant.

2. The award passed by the Motor Accidents Claims Tribunal, II Additional District Judge, Tiruppur in M.C.O.P.No.740/2014 dated 31/03/2016 is challenged in this appeal on the following grounds :-

- a) The Tribunal grossly erred in not considering the negligence conduct of the deceased and apportion the liability. The deceased did not possess valid driving license and due to his incompetence to drive the vehicle, the accident occurred.
- b) The claimants failed to prove the income of the deceased through documentary evidence, however, the Tribunal erroneously fixed the income of the deceased at the rate of Rs.10,000/- and added 30% to it

towards future prospect. It ought to have fixed the income at the rate of Rs.6,500/- notionally and

c) the Tribunal failed to consider the fact that the second claimant was the married daughter of the deceased and she was not dependant on the deceased.

d) In any event, the award of Rs.14,69,400/- is excessive , unjust and against the law laid down by the Higher Courts.

3. The cause for filing the claim petition arose in the following manner:-

On 03/06/2014 at about 7.15 p.m. near 'Srilankan Refuge Camp Pirvu' on Karanampettai to Paruvai Road, the deceased Ramasamy (aged 50 years) proceeding from NORTH to SOUTH in his TVS-XL-Super Scooter bearing Registration No.TN-37-AM-5178 was hit by Hero Honda Splendor Pro bike bearing Registration No.TN-37-BP 8931 while the deceased turning to the right after proper indication. For the injuries sustained, Ramasamy was admitted in the hospital but he died on 04/06/2014. Criminal case was registered against Rajesh Kumar, the driver of the motor cycle Hero Honda Splendor Pro bearing

registration No. TN -37-BP 8931 for causing death of Ramasamy by rash and negligent driving.

4. Petition filed by his wife (44 years) and two daughters aged about 19 years and 18 years. They based their claim on the ground that the deceased was hale and healthy about 50 years old. He was painter by profession earning Rs.25,000 /- per month. For the loss of income, love and affection, consortium, mental agony, damages to clothing and articles they estimate the loss a sum of Rs.57,80,000/- but restricting it to Rs.30,00,000/-.

5. Tribunal finding:

To substantiate their claim, the claimants examined 3 witnesses and marked 11 exhibits. The owner of the offending vehicle Hero Honda Splendor Pro bearing Registration No.TN -37-BP 8931 remained ex-parte. The Insurance company Hero Honda Splendor Pro bearing Registration No.TN -37-BP 8931 filed counter but no witness or document filed on its behalf.

6. Relying upon the evidence of PW-2, the eye witness to the accident and

the Ex.P-1 (First Information Report), the Tribunal held that the accident occurred only due to the negligence of the motor cyclist who is facing criminal prosecution. Based on the oral evidence of PW-1 wife of the deceased and PW-3 a co-worker of the deceased, the monthly income of the deceased fixed at Rs.10,000/- with 30% future prospect. Applying the multiplier “13” based on the age of the deceased, the Tribunal arrived at a sum of Rs.14,69,400/-.

7. The break of details of the award is under:

Loss of earning power	Rs.13,49,400-00
Loss of love and affection for the 1 st claimant	Rs. 50,000-00
Loss of love and affection for claimants 2 and 3 (each Rs.25,000/-)	Rs. 50,000-00
Loss of funeral expenses	Rs. 10,000-00
Loss of transportation charges	Rs. 10,000-00
Total	Rs.14,69,400-00

The compensation rounded off to Rs.14,50,000/- to be apportioned by the claimants as below:

1st claimant (wife)	:Rs.7,50,000/-
2 nd claimant(daughter)	:Rs.3,50,000/-
3 rd claimant(daughter)	:Rs.3,50,000/-

8. In this appeal, the insurance company re-agitate the defence such as contributory negligence, lack of proof for income and dependency. However, this Court finds that the reasoning given by the Tribunal for rejecting the said contention is un-impeachable. Marginal error in fixation of loss of income and compensation under other conventional heads does not alter much the quantum of compensation awarded by the Tribunal. Hence, this Court is not inclined to interfere with the award passed by the Tribunal.

9. In the result, **this Civil Miscellaneous Appeal is dismissed.** The judgment and decree passed by the Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur made in M.C.O.P.No.740 of 2014 dated 31.03.2016 is confirmed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

06.08.2020

Index : Yes/No

Internet : Yes/No

ari

To:

- 1.The Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur.
- 2.The Section Officer, VR Section, Madras High Court.

Dr.G.JAYACHANDRAN,J.

ari



Pre-delivery Judgment made in
C.M.A.No.1896 of 2016
and
C.M.P.No.13903 of 2016

WEB COPY

06.08.2020