

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.892 of 2012

and

MP No.1 of 2012

ICICI Lombard,
General Insurance Co. Ltd.,
No.140, Chottabai Centre,
Nungambakkam High Road,
Chennai - 34.Appellant/2nd Respondent

Versus

1. Penci Kala
 2. Srinivasalu (Minor)
 3. Dharun (Minor)
 4. Swathy (Minor)
(Minor respondents 2 to 4
are represented by their
Mother Pencikala as
natural guardian and
next friend to the Minor
 5. Easwarraiyya
 6. Pencilamma
 7. S. Ayyasamy
-1 to 6 Respondents/Claimants
...7th Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2010 made in MCOP No.165 of 2006 on the file of the Motor Accident Claims Tribunal (II Court of Small causes), Chennai.

For Appellant : Ms.R.Sreevidhya
for
M/s.K.S.Narasimhan
For Respondents : Mr.S.Parthasarathy
for R1, R5 and R6
R7 - Exparte
R2 to R4 Minors represented by R1

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 30.07.2010 passed by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai in MCOP No.165 of 2006.

2. The appellant / Insurance Company has challenged the award mainly on the ground that they are not liable to compensate the claimants, since the deceased was travelling as a gratuitous passenger in the insured Tempo Minidoor vehicle bearing Registration No.TN-07-AE-5998. Even though the appellant has also challenged the quantum of compensation awarded by the Tribunal, the same is not seriously disputed by the learned counsel for the appellant.

3.The details of the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
pecuniary loss Rs.3000/- x 12 x 18	6,48,000
Love and affection (Rs.15,000 x 6)	90,000/-
Funeral expenses	5,000/-
Loss of consortium	25,000/-
Total	7,68,000/-

4. Heard Ms. R.Sreevidhya, learned counsel for the appellant and Mr.S.Parthasarathy, learned counsel for the first, fifth and sixth respondents.

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. Admittedly, as seen from the FIR, which has been marked as Ex.P1 before the Tribunal, only two persons were travelling in the goods vehicle(insured vehicle).

7. Before the Tribunal, the wife of the deceased viz., Pencikala was examined as PW1, one A.Elumalai, an Eye witness to the accident was examined as PW2 and the employer of the

deceased B.Sankaraiya (Building Contractor) was examined as PW3, on the side of the claimants. The oral evidence of PW1 and PW2 adduced before the Tribunal also supports the contents of the FIR (Ex.P1) that only two persons were travelling in the insured vehicle and the said vehicle was the cause for the accident. The oral evidence of RW1, Vijayakarathi also does not disprove the contention of the claimants before the Tribunal that only two persons were travelling in the insured vehicle. The Insurance Policy (Ex.R1) also permits two persons to travel in the insured vehicle and gives coverage for two persons. No contra evidence has been produced by the appellant / Insurance Company to disprove the contention of the claimants that only two persons travelled in the Insured vehicle at the time of the accident. This being the case, the Tribunal has rightly rejected the contention of the appellant and has awarded the compensation to the claimants payable by the appellant / Insurance Company.

8. The deceased was employed by the working Building as a Mason. A building contractor by name D.Sankaraiya, employed the deceased. In the claim petition, it is claimed that the deceased was earning Rs.10,000/-p.m. at the time of the accident. Since, there was no documentary evidence, the Tribunal has fixed the monthly notional income of the deceased at Rs.3,000/-, which in the considered view of this Court is a reasonable and a just sum.

9. The deceased was aged 25 years old, which is proved through Postmortem Certificate (Ex.P2). Considering the age of the deceased, the pecuniary loss calculated by the Tribunal at Rs.6,48,000/- by applying the correct multiplier of 18 is a reasonable sum and there is no scope for interference by this Court, as claimed by the appellant in this appeal.

10. Since the goods vehicle (insured vehicle) carried only two persons including the Driver, there is no policy violation committed by the owner of the insured vehicle. Hence, the appellant is also not entitled for pay and recovery rights.

11. With regard to the compensation awarded under various other heads viz., Rs.90,000/- (Rs.15,000 x 6) towards Love and Affection; Rs.25,000/- towards Loss of Consortium and Rs.5,000/- towards funeral expenses the same is a just compensation.

12. For the foregoing reasons this Court does not find any merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.165 of 2006, on the file of the Motor Accidents Claims Tribunal, (II Court of Small Causes, Chennai), 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 award amount directly to the bank accounts of the first, fifth and sixth respondents / claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. Insofar as the share of the second to fourth respondents / minor claimants are concerned, the same shall be deposited in Fixed deposit in any one of the Nationalized Banks, till they attain the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank. If the second to fourth respondents / minor claimants have attained the age of majority, it is open to them to file formal petition before the Tribunal to get their share of apportionment.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The II Judge,
Motor Accidents Claims Tribunal,
Small Causes Court at Chennai
- 2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

C.M.A.No.892 of 2012

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