

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3390 of 2013

and

M.P.No.1 of 2013

The Manager
United India Insurance Company Ltd.
Katpadi road, Vellore ... Appellant/2nd Respondent

Vs.

1.Arokiya Merry
2.Velangani
3.Prakash
4.Sheela Rani
5.Mohan Dass
6.The Proprietor
M/s.Ragavendra Tours and Travels(R6 remained set exparte
No.130/5, 8th main before the Tribunal)
17th cross, Malleshwaram West
Bangalore. ...6th Respondents/
Petitioners 1 to 5/
1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.06.2013 made in M.C.O.P.No.825 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Court, Vellore.

For Appellant: Mr.M.Krishnamoorthy
For R1 to R5 : Mr.C.Prabhakaran

J U D G M E N T

The matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 20.06.2013 made in M.C.O.P.No.825 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Court, Vellore.

2.The appellant is 2nd respondent/Insurance Company in M.C.O.P.No.825 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Court, Vellore. The respondents 1 to 5 filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Amala Dass, who died in the accident that took place on 13.09.2011.

3.According to the respondents 1 to 5, on the date of accident i.e., on 13.09.2011 at about 2.45 a.m., while the deceased Amala Dass was travelling in the car bearing Registration No.KA-04-B-9690 belonging to the 6th respondent, which was proceeding as escort security for the lorries bearing Registration Nos.KA-01-D-1054 and KA-01-D-1058, the driver of the car bearing Registration No.KA-04-B-9690 drove the same in a rash and negligent manner and caused the accident. In the accident, the deceased sustained grievous injuries and died. Therefore, the respondents 1 to 5 filed the above claim petition claiming compensation against the 6th respondent and the appellant/Insurance Company.

4.The 6th respondent, owner of the car, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that as per F.I.R. and Investigation report, while the vehicles were proceeding from Bangalore to Chennai, near LKM shed and Bangalore new bye-pass, the accident has occurred since an unknown vehicle hit the same. There was no negligence on the part of the driver of the car belonging to the 6th respondent and therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 5. The said unknown vehicle was not traced. In any event, the compensation claimed by the respondents 1 to 5 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent, wife of the deceased, examined herself as P.W.1 and one Vinayagam, eye-witness to the accident, was examined as P.W.2 and marked seven documents as Exs.P1 to P7. On the side of the appellant/Insurance Company, one Kumar, driver of the offending vehicle, was examined as R.W.1 and one Ramakrishnan, Insurance Claim Investigator, was examined as R.W.2 and two documents were marked as Exs.R1 and R2.

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 car belonging to

the 6th respondent and directed both the 6th respondent as well as the appellant/Insurance Company, being insurer of the said car, to jointly and severally pay a sum of Rs.16,86,400/- as compensation to the respondents 1 to 5.

8. Against the said award dated 20.06.2013 made in M.C.O.P.No.825 of 2011, granting compensation to the respondents 1 to 5, the appellant/Insurance Company has come out with the present appeal challenging only the quantum of compensation granted by the Tribunal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the total compensation awarded by the Tribunal is excessive for the death of a Head Constable, aged about 53 years. The deceased was having only five years of service. After his retirement, the deceased would not have earned full salary. The Tribunal erred in taking entire monthly income of the deceased and applied multiplier 11 instead of applying split multiplier. The Tribunal without deducting statutory deduction for the Income Tax erred in taking entire amount for awarding compensation and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the respondents 1 to 5 made his submissions in support of the award passed by the Tribunal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and perused the entire materials on record.

12. The issue to be decided in this appeal is whether the Tribunal ought to have awarded compensation by adopting split multiplier instead of multiplier '11' for the age of the deceased at the time of accident.

13. From the materials on record, it seen that admittedly the deceased was aged 53 years and was working as a Head Constable at the time of accident. The retirement age of the deceased is 58 years. The multiplier for the age group between 51 to 55 years is 11. It is the contention of the learned counsel appearing for the appellant that the Tribunal ought to have adopted multiplier '5' for the full salary, 50% for remaining 6 years and granted less compensation. The said contention is not acceptable. The deceased was a Head Constable working in the Police Department and had experience with regard to security matters. Even after the retirement, the deceased would have obtained an appointment in any of the Private

Security Agencies and would have earned salary in addition to his pension. In view of the above, multiplier '11' adopted by the Tribunal is not interfered with.

14. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.16,86,400/- awarded by the Tribunal as compensation to the respondents 1 to 5, along with interest and costs is confirmed. Both the 6th respondent as well as the appellant/Insurance Company are jointly and severally directed to deposit the entire amount awarded by the Tribunal 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. On such deposit, the respondents 1 to 5 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge
Motor Accidents Claims Tribunal
Vellore.

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

+1 cc to Mr.C.Prabakaran Advocate sr33728

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