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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3606 of 2013
and M.P. No.1 of 2013

The Branch Manager,
The New India Assurance Co. Ltd.,
No.47, Kumaran Shopping Complex,
Kumaran Road, Tirupur.

...Appellant

Vs

Kala (Died)
1.Ganga

2.Minor Deivanai

3.Minor Jothika
(Minor respondents 2 and 3 represented
by their mother/next friend, Kala)

4.Bangaruammal

5.Radhakrishnan

6.Sri Balaji Riders,
Office: 102- C, New Extension Street,
Palladam.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2012, made in M.C.O.P. No.1402 of 2010, on the file of the II Additional District and Sessions Court, (Motor Accident Claims Tribunal), Tiruppur.

For Appellant : Mr. J. Michael Visuvasam

For Respondents : Mr. M. Lokesh (For R1 to R4)
for M/s. Ma.P. Thangavel

No appearance (For R5 & R6)



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 challenging the quantum of compensation granted by the Tribunal in award dated 31.10.2012, made in M.C.O.P. No.1402 of 2010, on the file of the II Additional District and Sessions Court, (Motor Accident Claims Tribunal), Tiruppur.

2. The appellant is the 3rd respondent in M.C.O.P. No.1402 of 2010, on the file of the II Additional District and Sessions Court, (Motor Accident Claims Tribunal), Tiruppur. The deceased Kala along with respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Shanmugam who died in the accident that took place on 19.11.2010.

3. According to the respondents 1 to 4 and the deceased Kala, on the date of accident, when the deceased was riding his Motorcycle bearing Registration No.TN-49-8795 on the left hand side of the road near Bharathi Hotel in the Mahalakshmi Nagar, Tiruppur road, Palladam, slowly and carefully, the 5th respondent, driver of the Bus bearing Registration No. TN-42-C-0048, belonging to the 6th respondent drove the Bus in a rash and negligent manner and dashed against the Motorcycle driven by the deceased and caused the accident. In the accident, the deceased succumbed to fatal injuries. The accident occurred due to rash and negligent driving by the 5th respondent, driver of the Bus belonging to the 6th respondent. Hence, the respondents 1 to 4 along with deceased Kala/1st claimant claimed compensation against the respondents 5 and 6 and appellant, as driver, owner and insurer of the offending vehicle respectively. Pending claim petition, the 1st claimant/Kala deceased.

4. The respondents 5 and 6 remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant, the accident occurred only due to rash and negligent riding of Motorcycle by the deceased. The respondents 1 to 4 has to prove that the deceased and the 5th respondent had valid driving license to drive their respective vehicles at the time of accident. The respondents 1 to 4 have to prove the age, avocation and income and treatment taken by the deceased, to claim compensation. In any event, the total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.



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6. Before the Tribunal, the 1st respondent examined herself as P.W.1, examined Selvaraj, eye-witness as P.W.2 and marked 5 documents as Exs.P1 to P5. The appellant did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence in favour of the respondents 1 to 4, directed the appellant as insurer of the Bus belonging to the 6th respondent to pay a sum of Rs.12,86,000/- as compensation to the respondents 1 to 4.

8. Challenging the quantum of compensation granted by the Tribunal by the award dated 31.10.2012, made in M.C.O.P. No.1402 of 2010, 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 without considering the judgment of the Hon'ble Apex Court, has awarded compensation excessively. The respondents 1 to 4 did not establish the age, avocation, income and proved that they are the dependents of the deceased. The 1st respondent is a married daughter and she is not dependent on the deceased. In the claim petition, the respondents 1 to 4 and deceased 1st claimant made contradictory claim with regard to avocation of the deceased. In column no.4 of the claim petition, it has been claimed that the deceased was a Mason, while in column no.23, it has been claimed that he was a Power Loom Worker. This creates bonafide suspicion about the avocation of the deceased. The Tribunal ought to have fixed the notional income of the deceased at Rs.4,500/- per month, instead of fixing Rs.8,000/- per month, in the absence of any evidence. The Tribunal ought not to have relied on Ex.P5 - Family Card to decide the number of dependents. The amount of Rs.2,00,000/- granted by the Tribunal towards loss of love and affection to the respondents 1 to 4 is excessive and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the respondents 1 to 4 made submissions in support of the award passed by the Tribunal.

11. Though notice has been served on the respondents 5 and 6 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

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



13. It is the contention of the respondents 1 to 4 and the deceased 1st claimant that the deceased was working as a Mason and was earning a sum of Rs.10,000/- per month. The 1st respondent herein, the 1st daughter of the deceased examined herself as P.W.1 and spoke to that effect. The appellant has not let in any evidence to disprove the contention of the respondents 1 to 4 and evidence of 1st respondent as P.W.1. The contradictory averments in the claim petition with regard to avocation of the deceased cannot be taken advantage by the appellant when P.W.1 has deposed about the avocation of the deceased. The Tribunal considering the evidence of 1st respondent as P.W.1, accepted the contention of the respondents 1 to 4 that the deceased was a Mason at the time of accident and considering the place where the deceased was working, fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2010. The notional income fixed by the Tribunal is not excessive. The respondents 1 to 4 have produced Family Card and marked the same as Ex.P5 to show that they are dependents of the deceased. The contention of the learned counsel appearing for the appellant that the 1st respondent is a married daughter and therefore, she is not dependent on the deceased is contrary to the well settled judicial pronouncements. Now it is well settled that even a married daughter is entitled to get compensation for the death of her parents. Further, the contention of the learned counsel appearing for the appellant that the Tribunal has granted excessive amounts towards loss of avocation to the respondents 1 to 4 is concerned, the deceased was aged 40 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The Tribunal also has not awarded any amount for loss of estate. The respondents 2 and 3 were minors at the time of accident and 4th respondent is aged mother of the deceased. Pending claim petition, the wife of the deceased/1st claimant also died. Considering the above materials, this Court is not inclined to interfere with the amount of Rs.2,00,000/- awarded by the Tribunal towards loss of love and affection to the respondents 1 to 4.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.12,86,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, 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.1402 of 2010. On such deposit, the respondents 1 and 4 are permitted to withdraw their share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing



necessary applications before the Tribunal. The shares of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

gsa

To

The II Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Tiruppur.

Copy to

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

+1cc to M/s.Ma.P.Thangavel, Advocate. SR.No.37832

C.M.A. No.3606 of 2013

CNR(CO)
RVM(13/08/2021)