IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2020

PRONOUNCED ON : 22.09.2020

CORAM:

THE HONOURALE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.266 OF 2016
AND
C.M.P.NO.2166 OF 2016

The Divisional Manager,
The Oriental Insurance Co.Ltd.,
Divisional Office,
No.60, Janpath, New Delhi-1. .. Appellant/ 2nd Respondent

/versus/

1.Pillappa
2.Gangamma
3.Guni Devi
4.Lakshmammal
5.Suseela .. Respondents/ Claimants

6.M/s Ahamedabad Bengal Roadways Private Ltd.,
1295/1-B Kapashera Village, opposite to D.C.Office,
Near Fukn'n Food Village,
New Delhi 110 037. ... Respondent/ 1st Respondent

Prayer:

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.A.C.T.O.P.No.496 of 2013 on the file of the Motor Accident Claims Tribunal(District Judge Special District Court for Motor Accident Claims Cases) at Krishnagiri dated 30.04.2015.

For Appellants :Mr.M.Krishnamoorthy

For Respondents :Mr.Mukund R.Pandian
for R2 to R5
R6-Exparte
R1-Not ready notice

JUDGMENT

(This case has been heard through Video Conference)

This appeal is preferred by the Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal at Krishnagiri. The parents and three sisters of the deceased Muniraj preferred a claim petition seeking compensation of Rs.10,00,000/- for the Motor Accident death of Muniraj.

2.On 21.11.2011 at about 4.30 p.m, in Hosur to Rayakottai road near petrol bunk junction while one Muni Ramappa was riding TVS XL Super moped bearing Reg.No.TN70/C1540 carrying Muniraj on the pillion , a tanker lorry of the first respondent bearing Reg.No.HR 55/K8419 came with rash and negligently and dashed against the two wheeler from behind. Muniraj the pillion rider was seriously injured. After first aid, he was shifted to Bangalore for better treatment. However, he died on the way. In the claim petition, it was stated that at the time of his death Muniraj was earning Rs.10,000/- per month by doing vegetable business. He was 45 years old and he supporting his aged parents and three sisters who are the claimants.

3.The Insurance Company contested the claim on the ground that the driver of the moped had no valid driving license. He was not driving the vehicle as per the traffic rules. The deceased was not carrying on any business and his income of Rs.10,000/- per month denied. Specifically in the counter, it has been contended that the deceased was a physically challenged person with both his legs deformed. He was 55 years old at the time of accident. He had no income of his own and he was depending of his relatives. The claimants 3 to 5 are sisters of the deceased who are already married and living separately and they are not the dependants. The Tribunal taking note of the evidence placed before it has awarded Rs.7,00,000/- as compensation, which is liable to be paid by the insured and the insurer jointly and severally with 7.5% p.a. Interest from the date of claim petition, till the date of realisation.

4.In the appeal, the Insurance Company-appellant contended that the deceased was 55 years at the time of accident and his parents were above 75 years old. The other claimants, who are the sisters of the deceased were not the dependants of the deceased. The post mortem certificate marked as Ex.P2 and the First Information Report Ex.P1 both show that the deceased had deformed legs. Hence, fixation of income as Rs.9,000/- per month without any basis is excessive. The learned counsel appearing for the appellant would submit that the multiplier applied by the Tribunal is also erroneous. Therefore, the award of the Tribunal has to be interfered.

5.The learned counsel appearing for the respondent would submit that though the deceased was physically challenged person he had sufficient income and the tribunal has rightly fixed his income as Rs.9,000/- per month and awarded a fair and just compensation. In fact, he should have taken note of the future prospects and awarded atleast 10% more towards loss of income as per the ruling of the Hon'ble Supreme Court in National Insurance Company v. Pranay Sethi and others reported in (2017 (2) TNMAC 609(SC)).

6.The accident occurred on 21.11.2011. Though the claimants have said that at the time of the accident, the deceased was only 45 years old, the First Information Report and the Post mortem report reveal that he was about 55 years old. He died unmarried. From the evidence of PW-1/father of the deceased, we come to know that the deceased had two brothers and three sisters which means the claimants 1 and 2 who are the parents of the deceased had two more sons to take care of them besides three married daughters. When there is no documents filed to prove the income of the deceased or any evidence to indicate the deceased had skill to earn, the Tribunal ought not to have notionally fixed the income of the deceased as high as Rs.9,000/- per month without any basis.

7.Therefore, the award warrants modification. The notional income of the deceased is fixed as Rs.6,000/-. 10% of the monthly income i.e. Rs.600/- is added towards future prospects. Being a bachelor, 50% of the monthly income deducted towards his personal expenditure. Thus, Rs. 4,35,600-00 [Rs. 6000 + 600 (FP) x1/2x12x11] is awarded for loss of dependency. Towards parental consortium a sum of Rs.80,000/-(Rs.40000x2) is awarded. Rs.30,000/- is awarded towards loss of love and affection to the claimants 3 to 5(Rs.10,000/- each). Rs.6,000-00 is awarded towards transportation to hospital. Rs.15,000/- is awarded under the head of funeral expenses and Rs.15,000/- is awarded under the head of loss of estate. In total Rs.5,81,600/- will be the right compensation.

8.The break up details of the modified award amount is as follows:-

Sl. No.	Particulars	The award amount of the Tribunal Rs.	Modified award of this Court Rs.
1.	Loss of income (6000 + 600(FP)=6600 6600x1/2x12x11)	5,94,000-00	4,35,600-00
2.	Loss of parental consortium (Rs.40,000 x 2)	------	80,000-00
3.	Transport to hospital	6,000-00	6,000-00
4.	Funeral expenses	20,000-00	15,000-00
5.	Loss of estate	------	15,000-00
6.	Loss of love and affection for the petitioners 1 and 2 who had lost their lovable son (25,000x2)	50,000-00	------
7.	Loss of love and affection for the petitioners 3 to 5 (10,000x3)	30,000-00	30,000-00
	Total		5,81,600-00

9.Therefore, the award of the Tribunal is reduced from Rs.7,00,000/- to Rs.5,81,600/- payable with interest at the rate of 7.5 % p.a from the date of petition till the date of deposit. The claimants 1 and 2, who are the parents of the deceased shall be entitled for Rs.2,00,000/- each. The balance of Rs.1,81,600/- shall be equally shared by the claimants 3 to 5 with proportionate interest .

10.From the records, this Court finds that on 17.02.2016 this Court in C.M.P.No.2166 of 2016 directed the appellant/ Insurance Company to deposit the entire award amount with accured interest to the credit of M.C.O.P.No.496 of 2013 on the file of the Motor Accident Claims Tribunal Special District Court for Motor Accident Claims Cases, Krishnagiri and permitted the respondents to withdraw 50% of their share amount from the amount deposited with proportionate interest. If the entire award amount is deposited, then the appellant shall be permitted to withdraw the balance amount, less the modified award passed by this Court in this appeal. The claimants are permitted to withdraw their respective share amount, less the amount already withdrawn by them.

11.In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
District Judge Special District Court
for Motor Accident Claims Cases),Krishnagiri

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.Mukund R.Pandian, Advocate, S.R.No.30930

C.M.A.No.266 of 2016
and
C.M.P.No.2166 of 2016

RSV(CO)
CS/30/04/2021