

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1715 of 2018

M/s. ICICI Lombard General
Insurance Co. Ltd.,
Swarnambiga Plaza
Omalur Main Road,
Salem - 9.

..Appellant/2nd Respondent

Vs.

1.K. Ganesan
2.G. Boopathi Rajan
3.G. Vimal Kumar
4.Minor G. Revathi
(Minor rep. By her next friend ..Respondents1-4/Petitioner1-4
guardian/ father Ganesan)
5.M/s. Hastham Investment & Trading (P) Ltd.,
No. 13-H, Sarjapur Road,
Doddakkanahalli Village 560 035,
Bangalore City,
Karnataka State. .5th Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 22.09.2017, made in M.C.O.P. No. 1917 of 2015, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Salem.

For Appellant : Mrs. R. Sree Vidhya

For Respondents: Mr. K. Varadhakamaraj (for R1 to R4)
for Mr. R. Thirunavukkarasu
R5 - Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 22.09.2017, made in M.C.O.P. No. 1917 of 2015, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Salem.

2.The appellant is the 2nd respondent in M.C.O.P. No. 1917 of 2015 on the file of the I Additional District Court (Motor Accidents Claims Tribunal), Salem. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Poongodai, who died in the accident that took place on 17.04.2015.

3.According to the respondents 1 to 4, on the date of accident, viz., on 17.04.2015, while the deceased was walking on the side of the Bangalore bye pass road, the driver of the Car bearing Registration No. KA 01 MH 6097, belonging to the 5th respondent, drove the same in a rash and negligent manner and hit behind the deceased. The said Poongodai succumbed to injuries. The respondents 1 to 4 who are the husband and children of the deceased filed the said claim petition, claiming compensation against the 5th respondent and appellant, owner and insurer of the offending vehicle respectively.

4.The 5th respondent 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. According to the appellant, the driver of the Car belonging to the 5th respondent drove the vehicle in a careful manner, following traffic rules. The deceased, suddenly crossed the road and invited the accident. The accident occurred due to negligence on the part of the deceased and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and one eye-witness as P.W.2 and marked 14 documents as Exs.P1 to P14. No oral and documentary evidence was let in on the side of the appellant.

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 5th respondent and directed the appellant-Insurance Company to pay a sum of Rs.26,25,000/- as compensation to the respondents 1 to 4.

8. Against the said award dated 22.09.2017 made in M.C.O.P. No. 1917 of 2015, the appellant-Insurance Company has come out with the present appeal.

9. Learned counsel appearing for the appellant-Insurance Company contended that the respondents 1 to 4 claimed that the deceased was working as LIC Agent and earning a sum of Rs.25,000/- per month. They failed to prove the said contention with documentary evidence such as Pan card, IT return or certificate of T.D.S. Income, except producing Ex.P14 - Certificate issued by LIC. In any event, the total compensation granted by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 to 4 contended that at the time of accident, the deceased was working as LIC Agent and was earning a sum of Rs.25,000/- per month. They filed Ex.P14 - certificate issued by the LIC to prove the same. The Tribunal has fixed a meagre sum of Rs.15,000/- per month as notional income of the deceased and granted only Rs.25,20,000/- towards loss of dependency. The Tribunal has not awarded any amount towards loss of estate. In any event, the total compensation awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

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

12. It is the contention of the respondents 1 to 4 that the deceased was working as LIC Agent and was earning a sum of Rs.25,000/- per month. Except filing Ex.P14 - certificate issued by LIC to prove the avocation of the deceased, the respondents 1 to 4 have not filed any document to prove her income. In the absence of any documentary evidence to prove the income of the deceased, fixed a meagre sum of Rs.15,000/- per month as notional income of the deceased. The accident is of the year 2015. Considering the year of accident and avocation of the deceased, a sum of Rs.17,000/- per month is fixed as notional income of the deceased. The deceased was aged 45 years at the time of accident. The Tribunal rightly applied the multiplier '14' but erroneously granted 50% enhancement towards future prospects of the deceased. Considering the age of the deceased, the respondents 1 to 4 are entitled to only 25% enhancement towards future prospects of the deceased. There are four dependants of the deceased. The Tribunal has deducted 1/3rd towards personal expenses of the deceased, instead of 1/4th. Hence, the amounts awarded by the Tribunal towards loss of

dependency is modified to Rs.26,77,500/- {[Rs.17,000/- + Rs.4,250/-(25% of Rs.17,000/-)] x 12 x 14 x $\frac{3}{4}$ }. The Tribunal has awarded excess amount of Rs.20,000/- towards funeral expenses. The respondents 1 to 4 are entitled to only Rs.15,000/- towards funeral expenses. The sum of Rs.20,000/- awarded by the Tribunal towards loss of consortium to the 1st appellant is meagre. Hence, the same is enhanced to Rs.40,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate to the respondents 1 to 4. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	25,20,000/-	26,77,500/-	Enhanced
2.	Funeral expenses	20,000/-	15,000/-	Reduced
3.	Transportation charges	5,000/-	5,000/-	Confirmed
4.	Loss of consortium to the 1 st respondent	20,000/-	40,000/-	Enhanced
5.	Loss of love and affection to the respondents 2 to 4	60,000/-	60,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	26,25,000/-	28,12,500/-	Enhanced by Rs.1,87,500/-

13. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.26,25,000/- is enhanced to Rs.28,12,500/- along with interest and costs. The appellant is directed to deposit the enhanced award amount along with interest and costs, now determined by this Court, less the amount already deposited, 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. 1917 of 2015. On such deposit, the respondents 1 to 3 are permitted to withdraw the enhanced award amount, as per

their ratio of apportionment, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 4th respondent is directed to be deposited in any one of the Nationalized Banks, till the minor attains majority. The 1st respondent, father of the minor 4th respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 4th respondent. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge,
(Motor Accident Claims Tribunal),
Salem.

+1 cc to Mr. R. Thirunavukkarasu, Advocate Sr.No. 5455

+1 cc to M/s.R.Sreevidhya, Advocate Sr.No. 6304

C.M.A. No. 1715 of 2018

AD(CO)
RMP(26/04/2021)

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