

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2031 of 2018

United India Insurance Company Ltd.,
Having Micro Office No.133/24C Gandhi Nagar,
Behind Central Theatre, Krishnagiri,
Krishnagiri District. Appellant/Respondent 2

Vs.

1.Vijaya
2.Jayakumar
3.RajkumarRR1 to 3/Petitioners
Lakshmi @ Chinnapillaiammal(Died)
4.Contractor Mani Respondent 4/Respondent 1
5.Chandiran Respondent 5/Respondent 3

PRAYER : Appeal filed under Section 173 of Motor Vehicles Act,1988 against the award and decree dated 27.10.2017 made in M.C.O.P.No.1178 of 2013 on the file of Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur.

For Appellant : Mr.D.Bhaskaran

For Respondents : Ms.M.Malar
for Mr.Terry Chella Raja
for R1 to R3
: R4 - No Appearance
R5 - Unclaimed-Exparte before
Tribunal

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

The appellant, being the insurer of the vehicle involved in the accident that occurred on 27.05.2005, seeks to challenge the award passed by the Tribunal both on the question of liability

and quantum. Respondents 1 to 3 along with the deceased mother made a claim for a compensation of Rs.11,84,000/-. The Tribunal upon assessing the evidence was pleased to award Rs.17,74,665/- as compensation.

2. The learned counsel appearing for the appellant submitted that though the accident is stated to have occurred on 27.05.2005, the complaint has been given belatedly on 30.05.2005 which is marked under Ex.P1. The evidence of P.W.1 and P.W.2 is highly doubtful. There is no evidence to show the age of the deceased and the treatment undertaken by him between the date of accident and his death. On the question of quantum, the Tribunal has committed an error in awarding higher amount with respect to the loss of consortium and loss of love and affection. So is the case with respect to the funeral expenses. Thus, the appeal will have to be allowed.

3. The learned counsel appearing for respondents 1 to 3 would submit that though huge sum has been sought for by way of compensation, only a sum of Rs.17,74,665/- has been awarded by the Tribunal. The said amount being just and reasonable, particularly by taking into consideration the number of claimants, no interference is required.

4. On the question of liability, we find that the Tribunal has made reliance upon the evidence of P.W.1 and P.W.2 read with Ex.P1 and Ex.P9. P.W.1, who is the first claimant, is the wife of deceased. She is the author of F.I.R. under Ex.P1. Merely because the complaint has been given three days later, it cannot be doubted. After the complaint, the police conducted the investigation and filed charge sheet under Ex.P9. Therefore, Ex.P1 will have to be read along with Ex.P9. P.W.2 has deposed as eye witness. We do not find any material to contradict or disbelieve the evidence of P.W.2. Therefore, on the question of negligence and liability, the contention raised stands rejected.

5. Coming to the question of quantum, we do find some force in the submission made by the learned counsel appearing for the appellant. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium and Rs.2,00,000/- towards loss of love and affection. For both the heads, a sum of Rs.80,000/- each ought to have been awarded. Similarly, for the funeral expenses, a sum of Rs.25,000/- has to be awarded as against Rs.15,000/-.

6. In such view of the matter, without disturbing the loss of dependency, by making due deductions on the quantum, we arrive at the final compensation of Rs.16,24,665/- (Rs.

14,49,665/- + Rs. 80,000 +Rs.80,000/- +Rs.15,000), which is rounded off to Rs.16,25,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit.

7. Inasmuch as the appellant/Insurance Company has deposited the entire amount, the excess amount, if any, is permitted to be withdrawn. The first claimant is entitled to a sum of Rs.10,25,000/- and the second and the third claimants are entitled for a sum of Rs.3,00,000/- each.

8. We also direct the Tribunal to transfer the respective shares already deposited by way of RTGS to the bank account of the claimants within a period of three weeks from the date of receipt of a copy of this judgment. On such transfer, the claimants are entitled to withdraw the same, as indicated above, less the amount if any already withdrawn.

9. In view of the above, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected C.M.P.No.16126 of 2018 is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssm
To

1.The Motor Accident Claims Tribunal
(Special Subordinate Judge),
Tirupattur.

2.The Section Officer, सत्यमेव जयते
VR Section, High Court, Madras.

+lcc to M/s.M.Malar, Advocate Sr.272

+lcc to Mr.D.Bhaskaran, Advocate Sr.191

C.M.A.No. 2031 of 2018

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