

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4853 of 2019

and

C.M.P.No.27947 of 2019

M/s.Cholamandalam MS General Insurance
Company Limited,
13-(1), AB Towers, II Floor,
Behind Axis Bank,
Valipalayam, Tirupur. Appellant/2nd Respondent

Vs.

1.Periyanayaki
2.Karunambigai
3.Srinivasan Respondents 1 to 3/Claimants
4.Umarani 4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.09.2018 made in M.C.O.P.No.2212 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore.

For Appellant : Ms.C.Harini for
M/s.M.B. Gopalan Associates

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed against the award dated 17.09.2018 made in M.C.O.P.No.2212 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore.

2.The appellant is the second respondent in M.C.O.P.No.2212 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one R.Sudharsan, who died in the accident that took place on 04.06.2014.

3. According to the respondents 1 to 3/claimants, on 04.06.2014, while the deceased was travelling in a Tata LMV Van bearing Registration No. TN 42 E 9913 belonging to the fourth respondent herein, on Virudhunagar to Sathur main road, the driver of the van drove the same in a rash and negligent manner, lost his control and hence the van rolled down on the west side of the road. Due to the said accident, the deceased succumbed to injuries on the same day and thus the respondents 1 to 3/claimants filed claim petition claiming compensation against the 4th respondent and appellant/Insurance Company being the owner and insurer of the van respectively.

4. The fourth respondent remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident occurred solely due to rash and negligent driving by the driver of the van belonging to the first respondent. At the time of accident, the driver of the vehicle did not possess a valid driving license. Hence, the appellant is not liable to pay the compensation to the respondents 1 to 3 and prayed for dismissal of the claim petition.

6. Before the Tribunal, on behalf of the respondents 1 to 3/claimants, three witnesses were examined as P.W.1 to P.W.3 and 7 documents were marked as Exs.P1 to P7. The appellant has not let in any oral or documentary evidence.

7. The Tribunal, considering the pleadings, oral and documentary evidence adduced by the respondents 1 to 3, held that the accident occurred due to rash and negligent driving by the driver of the van belonging to the fourth respondent and directed the appellant-Insurance Company to pay a sum of Rs.15,42,000/- as compensation to the respondent 1 to 3 / claimants.

8. Challenging the said award dated 17.09.2018 made in M.C.O.P.No.2212 of 2014 granting compensation to the respondents 1 to 3/claimants, 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 erred in fixing the monthly income of the deceased at Rs.12,000/-, in the absence of any document with regard to avocation and income of the deceased. Further, the Tribunal erred in awarding 40% enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are excessive and prayed for allowing this appeal.

10.Heard the learned counsel appearing for the appellant/ Insurance Company and perused the entire materials on record.

11.From the materials available on record, it is seen that the respondents 1 to 3/ claimants have contended that the deceased was a vegetable seller and was earning a sum of Rs.15,000/- per month. To substantiate the same, the respondents 1 to 3 have examined PW.2 Sakthivel, who has deposed that the monthly income of the deceased was Rs.15,000/- and marked Ex.P5/copy of statement of accounts. Though the appellant/ Insurance Company contended that the Tribunal has fixed a sum of Rs.12,000/- as monthly income of the deceased, without any basis, they have not let in any contra evidence to disprove the contention of the respondents 1 to 3 with regard to the avocation and income of the deceased. The accident is of the year 2014 and the sum of Rs.12,000/- fixed by the Tribunal as monthly income of the deceased is not excessive. The deceased was aged about 36 years as per Ex.P2/Post Mortem Certificate and hence the Tribunal has awarded 40% enhancement towards future prospects. The deceased being a bachelor, after deducting 50% towards personal expenses and applying multiplier '15', the Tribunal has awarded a sum of Rs.15,42,000/- $[(12,000/- \times 40\%) \times 12 \times 15 \times 1/2]$ as compensation towards loss of dependency, which is proper. The Tribunal, after considering the oral and documentary evidence let in by the respondents 1 to 3, has awarded a sum of Rs.15,42,000/- as compensation, which is just and reasonable and the same does not warrant any interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.15,42,000/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants, along with interest and costs is confirmed.The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2212 of 2014 on the

file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment made by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

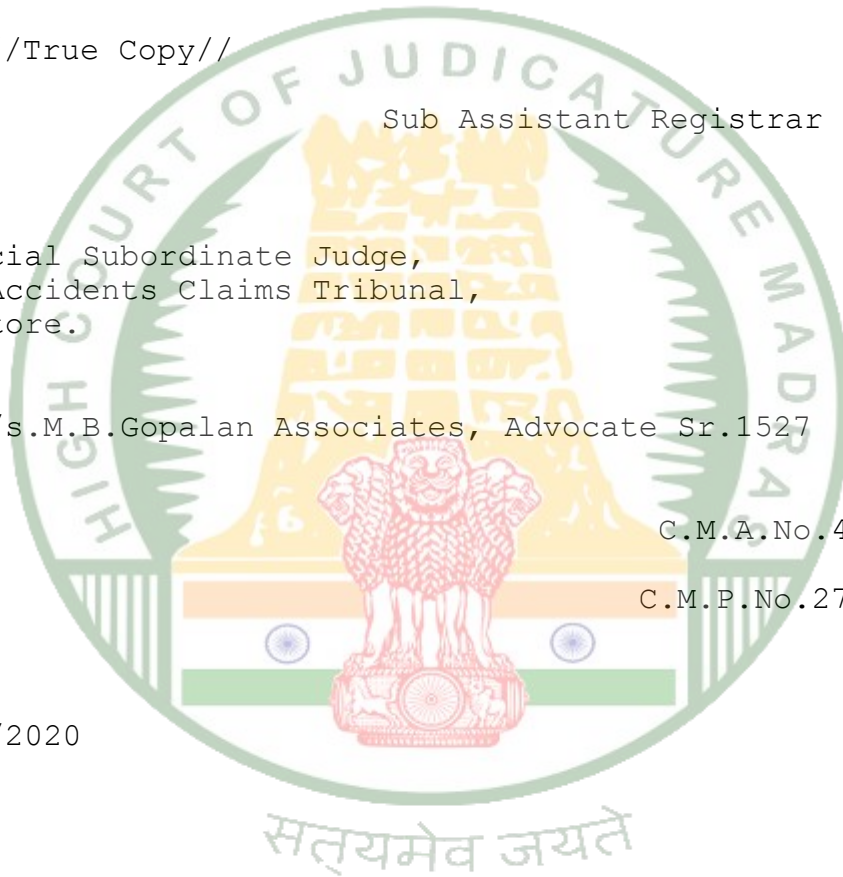
To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

+1cc to M/s.M.B.Gopalan Associates, Advocate Sr.1527

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