

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1647 of 2014
and M.P.No.1 of 2014

M/s.United India Insurance Co. Ltd.,
Rep. By its Branch Manager,
No.11/2, K.T. Complex,
New Scheme Road,
Pollachi.Appellant/3rd Respondent

vs.

1. S.Sarathi
2.Minor R.Arundass
3. Minor R. Kaneeshwari
4. T.Rajamani
5. P. ThangavelRespondent 1 to 5/Claimant1 to 5
(Minors 2 and 3rd respondents are
represented by their mother Sarathi as Guardian)
6.Rameshkumar
7. S.Rajeshwari6th & 7th Respondents/
1st & 2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.97 of 2011 on 29.11.2013 on the file of the learned Motor Accident Claims Tribunal (Subordinate Judge) at Pollachi District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.M.Lokesh for
M/s.Ma.P.Thangavel for RR1-5
R6 - Served - No appearance
R7 - Left

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 29.11.2013 passed by the Motor Accidents Claims Tribunal, (Subordinate Judge) at Pollachi in MCOP No.97 of 2011.

2. A person by name, T.Ramu died on 27.06.2010 as a result of an accident caused by a vehicle owned by the seventh respondent and insured with the appellant / Insurance Company. The respondents 1 to 5 / claimants are the legal heirs and dependants of the deceased. The first respondent being the wife of the deceased, second and third respondents being the minor children of the deceased and the fourth and fifth respondents being the parents of the deceased have preferred a claim before the Motor Accident Claims Tribunal ((Subordinate Judge) at Pollachi in MCOP No.97 of 2011 seeking compensation for the death of T. Ramu.

3. The Motor Accident Claims Tribunal, (Subordinate Judge) at Pollachi District under the impugned award dated 29.11.2013 has directed the appellant / Insurance Company to pay the claimants, who are the respondents 1 to 5 in this appeal, a compensation of Rs.7,48,000/- together with interests and costs as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency	6,48,000
Love and affection	50,000
Funeral expenses	10,000
Transport	10,000
Loss of consortium to the first respondent	30,000
Total	748000

4. The appellant / Insurance Company has challenged the award on the following grounds :

- a) They are not liable to compensate the claim, since the Driver of the van, insured with the appellant / Insurance Company was not possessing a badge endorsement in his driving licence at the

time of the accident. Having committed policy violation, the appellant / Insurance Company is not liable to compensate the respondents 1 to 5 / claimants.

b) the quantum of compensation awarded by the Tribunal is excessive.

5. Heard Mr.E.Rajadurai, learned counsel for the appellant and Mr.Lokesh , learned counsel for the respondents 1 to 5. The 6th respondent has been duly served and his name has also been printed in the cause list, today but there is no representation on his side. The seventh respondent remained ex-parte both before the Tribunal as well as before this Court.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. Insofar as the first contention raised by the appellant / Insurance Company is concerned and in view of the settled position of law as laid down by the Hon'ble Supreme Court in the case of Mukund Dewangan versus Oriental Insurance Company Limited reported in 2016 4 SCC 298, the contention raised by the appellant / Insurance Company that they are not liable to compensate the claim in view of the non possession of a badge endorsement in the Driving licence of the driver of the insured vehicle cannot be accepted by this Court.

8. The Hon'ble Supreme Court in the aforesaid decision has held that there is no necessity for a separate badge endorsement for the purpose of payment of the compensation. In the case on hand, the driver of the insured vehicle was admittedly possessing the driving licence (marked as M.O.2), though the badge endorsement was not there in the said driving licence. Therefore, the first contention is rejected by this Court.

9. Insofar as the second contention raised by the appellant / Insurance Company with regard to the quantum of compensation is concerned, this Court is of the considered view that the compensation awarded by the Tribunal cannot be considered to be excessive for the following reasons :

The accident happened in the year 2010. The Tribunal has fixed the notional monthly income of the deceased at Rs.4,500/-. In the claim petition, the respondents 1 to 5 /claimants have pleaded that the deceased T. Ramu was running a dairy farm and also having a coconut business. No contra evidence has been produced by the appellant / Insurance Company to disprove the claim of the

respondents 1 to 5 / claimants that the deceased was running a dairy farm and is also doing a coconut business. This being the case, this Court is of the considered view that the assessment of the notional monthly income of the deceased at Rs.4,500/- by the Tribunal cannot be considered to be excessive as alleged by the appellant / Insurance Company.

10. The Tribunal has rightly adopted the correct multiplier and also deducted the 1/3rd towards the personal expenses of the deceased under the impugned award, which is correct. The Tribunal has awarded a compensation of Rs.6,48,000/- towards loss of dependency to the respondents 1 to 5 / claimants under the impugned award. This Court is of the considered view that the compensation awarded towards loss of dependency by the Tribunal cannot be considered to be an excessive as alleged by the appellant / Insurance Company. The Tribunal has awarded the compensation of Rs.50,000/- towards Loss of love and affection; Rs.10,000/- towards Funeral expenses; Rs.10,000/- towards Transportation and Rs.30,000/- loss of consortium to the first respondent / wife of the deceased, which this Courts considered to be a just compensation.

11. Considering the fact that in the claim petition, the respondents 1 to 5 / claimants have pleaded that the deceased was earning Rs.10,000/-p.m. and they had claimed a total compensation of Rs.15,00,000/- and after giving due consideration to the aforementioned factors, this Court is of the considered view that there is no merit in this appeal as the compensation awarded by the Tribunal under the impugned award cannot be considered to be excessive.

12. In the result, there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.97 of 2011 on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge) at Pollachi, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the major claimants / first, fourth and fifth respondents as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks

thereafter. Insofar as the share of the second and third respondents / minor claimants are concerned, the same shall be deposited in Fixed deposit in any one of the Nationalised Banks, till they attain the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Motor Accident Claims Tribunal
(Subordinate Judge) at Pollachi District.

Copy to :
The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.J.Chandran, Advocate, sr no.30547

C.M.A.No.1647 of 2014

VBA (CO)
RMP (28/04/2021)

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