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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1700 of 2020
and
CMP No.12518 of 2020

The Divisional Manager,
Divisional Office,
National Insurance Co. Ltd.,
No.110, Jawaharlal Nehru street,
2nd Floor , Pondicherry

...Appellant

Vs.

1. Sulochana
2. Mahalingam
3. Malarkodi
4. Arunachalam
5. Raja
6. Vigneswari
7. K. Renganathan

...Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 10.02.2020 passed in MCOP.No.135 of 2015 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Vriddhachalam.

For Appellant : Mr. Sree Vidhya

For Respondents : Mr. S. Udaykumar
for R1



J U D G M E N T

Feeling aggrieved with the award passed by the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Vriddhachalam in MCOP No.135 of 2015, the Insurance Company has filed this Appeal.

2. The brief facts leading to file the appeal is as follows:-

It is the case of fatal accident. On 06.03.2015, at about 2.30 p.m, while the deceased, namely Kesavammal, walking in the Pavazhangudi Village main road, a lorry bearing registration No.TN25/F.5577, belongs to the first respondent, which was insured with the second respondent in the claim petition, came in a rash and negligent manner and dashed against the deceased and also ran over her head and she died on the spot. The deceased was 65 years old at the time of accident. According to the claimants, the deceased was an agricultural coolie and earning a sum of Rs.15,000/- per month. Hence, claiming compensation of Rs.15 lakhs the claim petition has been filed against the owner of the vehicle and also the Insurance Company.

3. The first respondent/ owner of the vehicle, contested the claim petition stating that the accident has taken place due to the carelessness of the deceased and and there is no negligence on the part of the driver of the lorry and also stated that compensation claimed by the claimants are highly excessive.

4. The Insurance Company also contested the claim petition by filing counter affidavit denying the negligence on the part of the driver and hence, the Insurance Company is not liable to pay the compensation. The Insurance Company also disputed the monthly income of the deceased and also the liability.

5. In order to prove the case, before the Tribunal, the claimant examined 2 witnesses and marked as many as 9 exhibits. On the side of the respondents, 3 witnesses have been examined and marked as many as 2 exhibits.

6. Considering the materials available on records, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the lorry. In respect of quantum of compensation, the Tribunal, fixed the monthly income of the deceased at Rs.9,000/- and after adding 10% towards future prospects and deducting 1/4 towards personal expenses, arrived at a notional income of the deceased at Rs.7425/- . As the deceased was 65 years old at the time of accident, applying the multiplier of 7, arrived at a loss of



dependency at Rs.6,23,700/-. Apart from that the Tribunal has awarded a sum of Rs.50,000/- each towards love and affection to the petitioners 1 to 4 and a sum of Rs.25,000/- each to the petitioners 5 and 6 and for loss of estate and funeral expenses a sum of Rs.15,000/- ordered respectively, and in total a sum of Rs.9,03,700/- was awarded as total compensation. Aggrieved over the same, the Insurance Company is before this Court with this appeal.

7. Heard both sides and perused the materials available on records carefully.

8. The accident has taken place in the year 2015, the deceased was 65 years old at the time of accident. Even though, the claimants stated that the deceased was an agricultural cooli and earning monthly income of Rs.15,000/-, except the oral evidence of the claimant, there is no acceptable evidence to establish her monthly income and her avocation. The Tribunal without any reason whatsoever, fixed the monthly income of the deceased at Rs.9000/-, which was seriously disputed by the appellant Insurance Company.

9. The learned counsel appearing for the appellant would submit that the deceased was 65 years old lady and there is no evidence to show that she was doing agricultural work and earned a sum of Rs.9000/- per month. I find some force in the argument of the learned counsel, and this Court is of the view that the monthly income fixed by the Tribunal is excessive. However, considering the fact that the lady is a villager and P.W.2 has also stated that she was doing agricultural work, I am inclined to fix the monthly income of the deceased at Rs.7500/- per month. Since, she was 65 years old at the time of accident, no amount could be added towards future prospects. Considering the volume of family members, who are all married sons and daughters, I am inclined to deduct 1/4 towards her personal expenses (Rs.1875). Hence, the notional monthly income of the deceased comes to Rs.5625/- (7500-1875). The deceased was 65 years old, applying the multiplier of 7, the loss of dependency comes to Rs.4,72,500/- (Rs.5625 x 12 x 7). Admittedly, all the claimants are married sons and daughters and they are living separately and they are not dependents of the deceased. Hence, I am inclined to award a sum of Rs.80,000/- in total towards loss of love and affection to all the claimants. Apart from that the claimants are entitled for a sum of Rs.15,000/- each towards funeral expenses, loss of estate and transport expenses and the total compensation comes to Rs.5,97,500/-, rounded to Rs.6,00,000/- instead of Rs.9,03,700/- awarded by the Tribunal.



10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,03,700/- is hereby reduced to Rs.6,00,000/- (Rupees six lakhs only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of two weeks from the date of receipt of a copy of this judgment. The respondents 1 to 6/claimants are entitled to withdraw their respective share with interest, as apportioned by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To:

The Motor Accidents Claims Tribunal,
Principal Subordinate Court,
Vriddhachalam.

Copy to:

The Section Officer,
VR Section,
High Court,
Madras.

+1CC to M/s.Sree Vidhya, Advocate, Sr.No.42879

+1CC to Mr.S.Udaykumar, Advocate, Sr.No.42548

C.M.A.No.1700 of 2020

RGN (CO)

K.RK. (08.11.2021)