

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

CORAM

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

C.M.A.No.4350 of 2019

M/s.L&T Insurance Company Limited,
Now HDFC Ergo General Insurance Company Limited,
No.180, Capital Towers, No.G-1, Ground Floor,
Opp. Palm Grove Hotel, Nungambakkam High Road,
Chennai - 600 034. ... Appellant/2nd Respondent

Vs.

1.Tamizharasi
2.Sivalingam
3.Muthulakshmi
4.M.Sivaguru (Minor)
(4th respondent rep by guardian
mother i.e., 1st respondent)
5.P.Padma ... Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.2180 of 2014 dated 13.12.2018 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.II, Small Causes Court, Chennai.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.A.G.Rajan for R1 to R4

WEB COPY
JUDGMENT

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

This appeal is filed, challenging the quantum alone and, therefore, the question of liability has not been gone into.

2. The deceased was stated to have met with an accident on 18.01.2014. He was taken to hospital and thereafter on the next day he died. The respondents/claimants are four in number. They made a claim for a sum of Rs.29,75,500/-. The income was claimed at Rs.18,000/- per month. The Tribunal accepted the income by placing reliance upon Ex.P6 - Salary Certificate and awarded a sum of Rs.34,97,200/-. Challenging the same, the present appeal has been filed.

3. The learned counsel appearing for the appellant submitted that in the claim petition, no particulars of the employer has been furnished. The Tribunal took into consideration Ex.P6 - Salary Certificate without examining anybody in support of the same. The accident occurred in the year 2014. It is not possible for a Cab Driver who is working in a private company to earn Rs.18,000/- per month. In such view of the matter, the amount awarded by the Tribunal requires interference.

4. The learned counsel appearing for the respondents/claimants 1 to 4 submitted that the document marked has not been questioned. There are four claimants. In fact, out of the four claimants, only three were awarded compensation while the father of the deceased was granted only a sum of Rs.22,500/-. The Tribunal awarded only a sum of Rs.34,97,200/- as compensation which is just and proper. Hence, the appeal will have to be dismissed.

5. We are concerned with the monthly income fixed by the Tribunal. The Tribunal, in our considered view, committed an error in accepting the income as sought to be fixed by the respondents/claimants 1 to 4. In the claim petition, nothing has been stated about the employer. Furthermore, Ex.P6 has not been proved in the manner known to law. Merely marking a document is not sufficient but the same has to be proved. The so-called employer of the deceased has not been examined. The accident occurred on 18.01.2014. Therefore, one has to see the income existing on the date of the accident. It cannot be comprehended that a Cab Driver in a private company would be earning Rs.18,000/- per month as early as in the month of January, 2014. In such view of the matter, we are inclined to fix the monthly income at Rs.12,000/-. Accordingly, the loss of income arrived at is Rs.25,70,400/- [Rs.12000/- + (40% - Future Prospects) + Rs.4800/- x 12 x 17 x 3/4]. We are inclined to add a sum of Rs.1,60,000/- towards the loss of love and affection and loss of consortium. Towards the other conventional heads such as funeral expenses, loss of estate and transportation, a sum of Rs.15,000/-, Rs.15,000/- and Rs.10,000/-, has been awarded. Towards the medical expenses, we are adding Rs.30,000/- separately, since the deceased died on the next day of the

accident. Thus, the total compensation arrived at is Rs.28,00,400/- with the interest at 7.5% per annum from the date of the petition till the date of realization.

6. The appellant/Insurance Company is directed to deposit the compensation amount as awarded by this Court along with proportionate interest, less the amount, if any, already deposited to the credit of M.C.O.P.No.2180 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.II, Small Causes Court, Chennai within a period of six weeks from the date of receipt of a copy of the judgment.

7. We also direct the Tribunal to transfer the respective shares of the award amount in the same ratio as fixed by the Tribunal by way of RTGS to the bank accounts of claimants 1 to 3 within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants 1 to 3 are entitled to withdraw the same. Insofar as the share of the fourth respondent/ minor claimant is concerned, the Tribunal is directed to deposit the same in a Nationalized Bank till he attains majority. The mother of the minor claimant is entitled to withdraw the interest accrued on the minor's deposit once in three months directly from the Bank.

8. In view of the above, the Civil Miscellaneous Appeal stands allowed in part. No Costs. Consequently, connected C.M.P.No.24812 of 2019 is closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

ssm
To

The Motor Accidents Claims Tribunal,
Special Subordinate Court No.II,
Small Causes Court, Chennai.

Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.A.G.Rajan, Advocate SR.No.5602
+1cc to Mr.M.B.Gopalan, Advocate SR.No.6898

C.M.A.No.4350 of 2019

RSI (CO)
GMY (28/02/2020)