

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2820 of 2014

and

M.P. No.1 of 2014

M/s.National Insurance Co. Ltd.,
Divisional Office - VI,
New No.25, Whites Road,
Namata Complex,
3rd Floor,
Chennai - 600 014. ...Appellant/2nd Respondent

vs.

1. Irulandi ...1st Respondent/1st Petitioner
(Set exparte before the Tribunal)

2. Otchammal ... 2nd Respondent/2nd Petitioner

3. Ramamoorthy ... 3rd Respondent/1st Respondent

4. Gowri ... 4th Respondent /3rd Respondent

5. Minor Vivadha
(Minor Petitioner rep. by mother
/ Guardian Gowri) ...5th Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P. No.724 of 2006 on 30.06.2011 on the file of the learned Motor Accident Claims Tribunal (Fast Track Court - IV Additional District - Judge & Presiding Officer), Coimbatore at Tirupur District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Ma.Pa.Thangavel for R1 & R2

R3 - Served - No appearance

R4 - Tapal returned - Insufficient address

R5 - Minor rep. by R4

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 30.06.2011 passed by the Motor Accident Claims Tribunal (Fast Track Court IV, Additional District - Judge & Presiding Officer), Coimbatore at Tirupur District in M.C.O.P. No.724 of 2006.

2. A person by name, Ganesan died on 20.09.2005 as a result of an accident caused by a vehicle, owned by the third

respondent and insured with the appellant / Insurance Company. The first and second respondents, being the parents of the deceased, the fourth respondent, being the wife of the deceased and the fifth respondent, being the minor daughter of the deceased are the claimants. The claimants are the legal heirs and dependants of the deceased.

3. The first and second respondents preferred a claim before the Motor Accident Claims Tribunal (II Additional District - Judge) Coimbatore at Tirupur District in M.C.O.P. No.724 of 2006 seeking compensation for the death of Ganesan.

4. The Tribunal under the impugned award directed the appellant / Insurance Company to pay the first, second, fourth and fifth respondents / claimants a compensation of Rs.9,39,588/- together with interests and costs, as detailed below :-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency	7,65,000
Love and affection for Rs.10,000 x 4	40,000
Funeral expenses	5,000
Medical expenses	1,29,588
Total	9,39,588

5. The appellant / Insurance Company has challenged the impugned award on the following grounds :-

- a) The Tribunal has erroneously held that only due to the rash and negligent driving by the Driver of the lorry, insured with the appellant / Insurance Company, the accident had happened, which resulted in the death of Ganesan and
- b) the quantum of compensation awarded by the Tribunal is excessive.

6. Heard Mr.J.Chandran, learned counsel for the appellant / Insurance Company and Mr.Ma.Pa.Thangavel, learned counsel for the first and second respondents. Despite service of notice on the third respondent, there is no appearance on his side.

7. This Court has perused the materials and evidence available on record before the Tribunal.

8. Before the Tribunal, the claimants have filed seven documents which were marked as Exs.P1 to P7 and two witnesses were examined on their side viz., Erulandi, the father of the deceased Ganesan as PW1 and Sasikumar, an Eyewitness to the accident as PW2. On the side of the appellant / Insurance Company, four witnesses were examined viz., RW1 to RW4 and one document marked as Ex.R1, which is the Insurance policy

for the subject vehicle.

9. Insofar as the first contention raised by the appellant is concerned, the same has been duly considered by the Tribunal under the impugned award. The Tribunal has rejected the said contention for the following reasons :

a. PW2, Sasikumar, an Eyewitness has deposed that the accident happened only due to the rash and negligent driving by the Driver of the lorry insured with the appellant / Insurance Company . FIR (Ex.P1) has also been registered only against the Driver of the insured lorry. The MVI report of the insured lorry was also marked as Ex.A2. The Tribunal has rejected the oral evidence adduced by RW2, the Driver of the insured lorry for the reason that it has not been corroborated with any supporting evidence.

This Court is in agreement with the aforesaid finding of the Tribunal.

b. Further, RW2 is not an independent witness. The Tribunal has rightly rejected his oral evidence, since it has not been corroborated by any supporting evidence. The FIR (Ex.P1), MVI report (Ex.A2), oral evidence adduced by an eye witness to the accident (PW2) all conclusively establish that the Driver of the lorry insured with the appellant was alone responsible for the cause of the accident. Therefore, the first contention raised by the appellant is rejected by this Court.

10. Insofar as the second contention is concerned, the deceased Ganesan was aged 32 years at the time of the accident.

11. In the claim petition, the claimants have pleaded that he was a production contractor at Ganesha Banian Company, earning Rs.6,000/- p.m., at the time of the accident. The accident happened on 20.09.2005. No contra evidence has been produced by the appellant / Insurance Company to disprove the age, avocation and the monthly income of the deceased. However, the Tribunal has fixed the notional monthly income of the deceased at Rs.5,000/-. The Tribunal has also rightly deducted 1/4th towards personal expenses of the deceased, since the claimants were four in number. The Tribunal has also adopted the correct multiplier of 17. This Court does not find any infirmity in the assessment of the notional monthly income of the deceased at Rs.5,000/- by the Tribunal. Thus, the loss of income assessed by the Tribunal at Rs.7,65,000/- cannot also to be considered as excessive as alleged by the appellant / Insurance Company. In fact, the Tribunal has not awarded any compensation towards loss of future prospects.

12. The Tribunal has awarded Rs.40,000/- towards loss of love and affection, Rs.5,000/- towards funeral expenses, Rs.1,29,500/- towards medical expenses, which is supported by medical bills. This Court does not find the same to be

excessive as alleged by the appellant / Insurance Company.

13. For the foregoing reasons, the second contention raised by the appellant with regard to the quantum of compensation is also rejected by this Court.

14. For the foregoing reasons this Court does not find any infirmity in the findings of the Tribunal. Therefore, there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. 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.724 of 2006 on the file of the learned Motor Accident Claims Tribunal (Fast Track Court IV, Additional District - Judge & Presiding Officer), Coimbatore at Tirupur District, 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 first, second and fourth respondents / major claimants, 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 fifth respondent / minor claimant is concerned, the same shall be deposited in Fixed deposit in any one of the Nationalised Banks, till she attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The Additional District - Judge & Presiding Officer,
Fast Track Court IV,
The Motor Accident Claims Tribunal,
Coimbatore, Tirupur.

2.The Section Officer,
V.R. Section,
Madras High Court.

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