

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

CORAM:

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

C.M.A.No.1340 of 2017

and

C.M.P.No.7073 of 2017

The Oriental Insurance Company Ltd.,
Branch Office No.3L,
Siddhaveerappa Chetty Street,
Dharmapuri Town,
Dharmapuri District. Appellant/2nd Respondent

Vs.

1.Kaveriammal
2.Arumugam
3.Sumathi
4.Murugesan
5.Karural
6.Venkatesan
7.R.Natesan

... Respondents/ Petitioner s & 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.01.2015 made in M.C.O.P.No.262 of 2014 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Mr.S.Arunkumar

For RR1 to 6 : Ms.A.L.Ganthimathi

: No appearance for R7

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 05.01.2015 made in M.C.O.P.No.262 of 2014 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

2.The brief facts of the case are as follows:

On 07.05.2011, at about 06.15 p.m, the deceased Kariappan was riding his bicycle near Agraharam Diversion Road at Koothapadi, Dharmapuri District. At that time, the Hero Honda motorcycle, bearing Registration No. TN 29 A 6882, belonging to the seventh respondent and insured with the appellant Insurance Company, came from Halepuram side in a rash and negligent manner and hit the bicycle, as a result of which the deceased Kariappan sustained grievous injuries. Though he was immediately rushed to the Government Hospital at Pennagaram, he was taken to various hospitals for better treatment but he succumbed to the injuries on 12.05.2011. Contending that the accident had occurred only due to the negligence on the part of the rider of the motorcycle, the wife, sons and daughters of the deceased filed a claim petition before the Tribunal, seeking compensation of Rs.10,00,000/-.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle belonging to the 7th respondent and directed the appellant/Insurance Company, being the insurer of the said motorcycle, to pay a sum of Rs.6,96,010/- as compensation to the respondents 1 to 6. Challenging the award, the present appeal has been filed by the Insurance Company.

4.The learned counsel appearing for the appellant/Insurance Company has contended that the Tribunal has erred in directing the appellant to pay the compensation in spite of the fact that the 7th respondent has wilfully violated the policy conditions by permitting a person to ride the vehicle without any driving license. The counsel submitted that the Tribunal has failed to appreciate the evidence of R.W.1 and R.W.2; that the Tribunal has failed to consider that the respondents 1 to 6 have failed to prove the avocation and income of the deceased. In the absence of any evidence, the Tribunal has erroneously fixed Rs.5,000/- per month as notional income of the deceased, which is not proper, according to the learned counsel for the appellant.

5.Per contra, the learned counsel appearing for the respondents 1 to 6 has contended that the Tribunal has considered the materials and evidence in proper perspective and has awarded the compensation which is just, fair and reasonable and hence the same need not be interfered with by this Court. It is also submitted that in fact, the Tribunal has not granted any enhancement towards future prospects, according to the learned counsel.

6.Heard the learned counsel appearing for the appellant/Insurance Company as well as learned counsel appearing for the respondents 1 to 6 and perused the materials available on record carefully.

7.It is the contention of the respondents 1 to 6 that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle belonging to the 7th respondent. P.W.2 is the eye witness to the occurrence. He deposed before the Tribunal that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle belonging to the 7th respondent. F.I.R. was registered against the rider of the motorcycle and he was charge sheeted. The Tribunal, considering the evidence of P.W.2, Ex.P1-FIR and Ex.P11-Motor Vehicle Inspection Report, held that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle. There is no error in the said finding of the Tribunal warranting interference by this Court.

8.As far as the quantum of compensation is concerned, considering the facts and circumstances of the case, only the amounts awarded towards loss of consortium, loss of love and affection, transportation charges and funeral expenses are found excessive and hence require reduction. It would be appropriate to award sums of Rs.75,000/-, Rs.1,00,000/-, Rs.9,000/- and Rs.15,000/- respectively, towards these heads. The amount awarded by the Tribunal towards medical bills is confirmed, since it is an actual expenditure incurred. Since the deceased was aged 59 years, the appellants are not entitled to any enhancement towards future prospects of the deceased. The Tribunal has awarded a sum of Rs.3,56,400/- towards loss of income, after analysing the exhibits, evidence of witnesses, Post Mortem Certificate and Death Certificate of the deceased, Legal Heirship Certificate and all other aspects in a proper perspective and hence the same is confirmed. The details of the modified compensation are as follows:

S. No	Description	Amount (Rs)
1.	Loss of income	3,56,400
2.	Loss of consortium	75,000
3.	Loss of love and affection to the respondents 2 to 6	1,00,000
4.	Transportation	9,000
5.	Funeral expenses	15,000
6.	Medical bills	44,610

Total	Rs.6,00,010/-
-------	---------------

(Rounded off to Rs.6,00,000/-)

9. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.6,96,010/- awarded by the Tribunal is hereby reduced to Rs.6,00,000/- 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 modified amount of compensation as ordered above, with interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 6/claimants are permitted to withdraw their respective shares, as per the ratio of apportionment made by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

+1cc to Ms.A.L.Ganthimathi , Advocate SR.No. 29747

C.M.A.No.1340 of 2017

and

C.M.P.No.7073 of 2017

A.SK(28.04.2021)

सत्यमेव जयते

WEB COPY