

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.220 OF 2017

AND

C.M.P.NO.1463 OF 2017

The Manager
Cholamandalam MS General Insurance Company Limited,
D-126, 100 Feet Road,
Mudaliyarpet, Pondicherry. .. Appellant/2nd Respondent

Vs.

1.Selvi
2.Valli
Ramu (died)
3.Minor Rasiya
(3rd respondent Minor by guardian
mother Selvi - 1st respondent)

.. Respondents 1, 3/
Petitioners 1, 2 & 4

4.Jayaprakash .. 4th Respondent/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.03.2016 made in M.C.O.P.No.468 of 2013 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Cuddalore, Virudhachalam.

For Appellant: Ms.C.Harini
for Mr.N.Vijayaraghavan

For R1 to R3 : Mr.R.Sreedhar

For R4 : Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against award dated 17.03.2016 made in M.C.O.P.No.468 of 2013 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Cuddalore, Virudhachalam.

2.The appellant is the second respondent in M.C.O.P.No.468 of 2013 on the file of the Motor Accidents Claims Tribunal, III

Additional District and Sessions Judge, Cuddalore, Virudhachalam. The respondents 1 to 3 along with one Ramu filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Ramakrishnan, who died in the accident that took place on 15.05.2012.

3. According to the respondents 1 to 3, on 15.05.2012, at about 24.00 hours, while the deceased Ramakrishnan was travelling as a owner of the vegetable goods in the Mahindra Maxximo bearing Registration No.TN-31-AS-6179, at Small bridge near Aganathar temple on the Vridhachalam to Pennadam main road, the driver of the vehicle drove the same in a rash and negligent manner and dashed against small bridge, due to which the vehicle capsized and the deceased died on the spot. Based on the above averments, the respondents 1 to 3 along with one Ramu have filed the claim petition before the Tribunal against the 4th respondent as well as appellant.

4. The 4th respondent remained ex-parte before the Tribunal.

5. The appellant/Insurance Company filed counter statement and denied the averments made in the claim petition. The appellant further contented that the deceased and four others have travelled as unauthorised passengers and due to overloading of passengers the accident had occurred. The 4th respondent was not possessing valid driving licence at the time of accident. Therefore, the appellant is not liable to pay any compensation to the respondents 1 to 3. The respondents 1 to 3 have to prove their age, occupation and income of the deceased and that they are the dependents of the deceased and the amount claimed is excessive.

6. Before the Tribunal, the wife of the deceased examined herself as P.W.1, one G.Rajendran-eye-witness was examined as P.W.2 and marked 5 documents as Exs.P1 to P5. On the side of the appellant, one G.Anandan, Assistant Manager of Insurance Company was examined as R.W.1 and P.Rajaraman, Junior Assistant of RTO Virudachalam, was examined as R.W.2 and marked five documents as Exs.R1 to R5.

7. Pending claim petition one of the claimant Ramu died. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Mahindra Maxximo belonging to the fourth respondent and directed the appellant-Insurance Company to pay a sum of Rs.15,71,000/- as compensation to the respondents 1 to 3, at the first instance and recover the same from the 4th respondent/owner of the Mahindra Maxximo.

8. Against the said award dated 17.03.2016 made in M.C.O.P.No.468 of 2013, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing the liability on the appellant by ordering pay and recovery since admittedly the deceased travelled as unauthorized passenger and he did not travel as owner of the goods. The Tribunal failed to consider the evidence of R.W.1, Ex.R1 to Ex.R5. The respondents 1 to 3 failed to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal erred in fixing excessive amount of Rs.6,000/- as notional income and granted 50% of enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses are excessive and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the deceased travelled along with goods as owner of goods. The respondents 1 to 3 proved the said contention by letting in oral and documentary evidence. The deceased was doing vegetable business and was earning a sum of Rs.16,000/- per month at the time of accident. The amounts granted by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

12. It is the contention of the respondents 1 to 3 that the deceased was doing vegetable business at the time of accident and he travelled as owner of the goods. They examined P.W.2 to prove the same. The appellant contended that the deceased travelled as unauthorized passenger. R.W.1/official of the appellant has deposed that the deceased was sitting on top of the vegetables and the said vegetables belonged to one KKV Kumar. The said KKV Kumar was not travelling on the day. R.W.1 also further deposed that the appellant has not produced any materials to show that the vegetables belonged to one KKV Kumar. Considering the oral and documentary evidence the Tribunal held that the deceased travelled only as owner of goods. The Tribunal also held that the appellant failed to prove that at the time of accident four persons travelled in the vehicle. The Tribunal has given valid reason for holding that the deceased did not travel as gratuitous passenger but travelled as a owner of the goods.

13. As far as quantum of compensation is concerned, the respondents 1 to 3 contended that the deceased was earning a sum

of Rs.16,000/- per month. They failed to substantiate the said contention. Hence, the Tribunal fixed a sum of Rs.6,000/- and granted 50% enhancement towards future prospects and the same is proper. The deceased was aged 24 years at the time of accident. The Tribunal deducted 1/3rd towards his personal expenses and taking into consideration the age of the deceased, applied multiplier '18' and granted a sum of Rs.12,96,000/- towards loss of income, which is not excessive. In addition to that the Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium to the 1st respondent and Rs.50,000/- towards loss of love and affection for the 2nd respondent which are excessive and hence the same are reduced to Rs.40,000/- each. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection to the minor 3rd respondent which is proper and hence the same is confirmed. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses which is excessive and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is awarded towards loss of estate. The driver of the offending vehicle did not have a driving licence at the time of accident. The Tribunal hence has rightly ordered pay and recovery. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	12,96,000/-	12,96,000/-	confirmed
2.	Loss of consortium to 1 st respondent	1,00,000/-	40,000/-	reduced
3.	Loss of Love and Affection to 2 nd respondent	50,000/-	40,000/-	reduced
4.	Loss of love and affection to 3 rd respondent	1,00,000/-	1,00,000/-	confirmed
5.	Funeral expenses	25,000/-	15,000/-	reduced
6.	Loss of estate	-	15,000/-	granted
	Total	Rs.15,71,000/-	Rs.15,06,000/-	reduced by Rs.65,000/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,71,000/- is hereby modified to Rs.15,06,000/- 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 award amount now determined by this Court, together with interest 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, at the first instance and recover the same from the 4th respondent/owner of the vehicle. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the modified award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount if any lying in the deposit to the credit of M.C.O.P.No.468 of 2013, if the entire award amount has already been deposited by them. The share of the minor, namely the 3rd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor/3rd respondent attains majority. On such deposit, the 1st respondent, being the mother of the minor, 3rd respondent, is permitted to withdraw the accrued interest once in three months for the welfare of the minor/3rd respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Motor Accidents Claims Tribunal,
III Additional District and Sessions Judge,
Cuddalore, Virudhachalam.
2. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.18314
+1cc to Mr.R.Sreedhar, Advocate, S.R.No.17360

C.M.A.No.220 of 2017 and
C.M.P.No.1463 of 2017

RJI (CO)
CS/17/12/2020