

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2542 of 2017
and C.M.P.No.13870 of 2017

United India Insurance Co.Ltd.,
TPHUB, 1st Floor,
Peramanur Main Road,
Salem-636 007 ... Appellant/2nd Respondent

Vs.

1.Karthika
2.Perumayee
3.Govindan
4.Minor. Madhan ..Respondents 1 to 4/Claimants 1 to 4
(Minor is rep by his NF & Gaurdian Mother Karthika)
5.Muthayammal 5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.04.2017 made in M.C.O.P.No.58 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court & Special Court EC. Act, Salem.

For Appellant : M/s.I.Malar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company challenging the award dated 26.04.2017 made in M.C.O.P.No.58 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court & Special Court EC. Act, Salem.

2.The appellant/ United India Insurance Company Limited is the 2nd respondent in M.C.O.P.No.58 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court & Special Court EC. Act, Salem. The respondents 1 to 4, the legal heirs of the deceased, filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of her husband Angamuthu, who died in the accident that took place on 09.11.2014.

3. According to the 1st respondent, her husband was working as a coolie. On the date of accident, i.e., on 09.11.2014 at about 9.00 p.m., when the deceased Angamuthu was riding his Bajaj Discover Two Wheeler and was proceeding towards Omalur, due to the rash and negligent driving of the bus and sudden stopping of the same in the Mamangam Bus stop, the deceased hit his vehicle on the bus from behind and on account of which, he died on the spot. Hence, the respondents 1 to 4 had filed the above claim petition claiming compensation against the 5th respondent as well as the appellant as owner and insurer of the bus respectively.

4. The 5th respondent owner of the bus remained exparte before the Tribunal.

5. The appellant/United India Insurance Company Limited filed counter statement denying the averments made in the claim petition and contended that the accident has occurred only due to the rash & negligent driving of the two wheeler by the deceased. The deceased did not possess driving license at the time of accident and he did not wear helmet. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 4. The age, avocation, income and the medical expenses incurred by the respondents 1 to 4 are denied. In any event, the compensation claimed by the respondents 1 to 4 are excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined one Suresh and Subhash as P.W.2 and P.W.3 and marked 9 documents as Exs.P1 to P9. On the side of the appellant/Insurance Company, one Sampath Kumar, Special Sub Inspector of Police attached to TIW Police Station, Salem, was examined as R.W.1 and one Deenakarunakaran was examined as R.W.2 and 5 documents were marked as Exs.R1 to R5 and Exs.W.1 to W.3 were marked as the documents produced by PW2 and PW3.

7. 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 bus belonging to the 5th respondent and directed the 5th respondent as well as the appellant, to jointly and severally pay a sum of Rs.15,64,000/- as compensation to the respondents 1 to 4.

8. Questioning the liability fastened on the appellant/Insurance Company and quantum of compensation awarded by the Tribunal by award dated 26.04.2017 made in M.C.O.P.No.58 of 2015 the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company though raised several grounds on the issue of liability, has restricted his contention only with regard to quantum of compensation granted to the respondents 1 to 4. The learned counsel appearing for the appellant contended that the respondents 1 to 4 failed to prove the avocation and income of the deceased and in the absence of material evidence, the Tribunal erroneously fixed the monthly income as Rs.9000/-, after deducting 1/3rd of the same towards personal expenses and applying multiplier ''17'', had granted excessive amount of Rs.12,24,000/- for loss of income and prayed for setting aside the award of Tribunal and allow the appeal.

10.Though notice has been served on the 5th respondent and her name is printed in the cause list, there is no representation for 5th respondent either in person or through counsel.

11.Heard the learned counsel appearing for the appellant and perused the entire materials available on record.

12.It is the contention of the respondents 1 to 4 that deceased was aged about 27 years and was working as a coolie and was earning a sum of Rs.20,000/- per month at the time of accident. The respondents 1 to 4 failed to substantiate the same. In the absence of materials, the Tribunal has fixed a sum of Rs.9000/- per month as notional income of the deceased. The accident is of the year 2014 and the monthly income fixed by the Tribunal at Rs.9000/- is meagre. There are four dependants of the deceased and the Tribunal, instead of deducting 1/4th towards personal expenses of the deceased, deducted 1/3rd which is not correct. The deceased was aged 27 years at the time of accident and the Tribunal has not awarded any enhancement towards future prospects. But the Tribunal had awarded a sum of Rs.1,00,000/- towards loss of consortium, Rs.20,000/- towards funeral expenses and Rs.2,00,000/- towards loss of love and affection, which are excessive. In view of the meagre amount fixed as notional income, deduction of 1/3 instead of 1/4th and not granting any enhancement towards future prospects, the excess amounts awarded by the Tribunal towards loss of consortium, funeral expenses and loss of love and affection are not interfered with and the sum of Rs.15,64,000/- granted as compensation to the respondents 1 to 4, is confirmed.

13.For the above reason, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.15,64,000/- awarded by the Tribunal as compensation to the respondents 1 to 4 together with interest and costs is confirmed. Both the appellant/Insurance Company as well as the 5th respondent are

directed to jointly and severally deposit the award amount, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount as apportioned by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor 4th respondent is directed to be deposited in any one of the Nationalized Banks till the minor 4th respondent attains majority. On such deposit, the 1st respondent being the mother of the minor 4th respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 4th respondent. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

vsn

To

1.The Additional District Judge cum Special Court for EC Act Cases
Motor Accident Claims Tribunal
Salem.

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

+1cc to Mrs.I.Malar, Advocate SR.No.13702

C.M.A.No.2542 of 2017
and

C.M.P.No.13870 of 2017

VBA (CO)
GMY (18/08/2020)

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