

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.M.A.No.2881 of 2017
and C.M.P.No.16851 of 2017
and
Cros.Obj.No.82 of 2017

United India Insurance Co. Ltd.,
Divisional Office I,
Second Floor,
104 A, Peramanur Main Road,
Salem-636 007.

... Appellant/2nd Respondent in CMA/
1st respondent in Cros.Obj.

Vs

1.Shanthi

2.Minor Rajasekar

3.Minor Rasukutti

4.Minor Bindhiya

(2,3,4 Minors are Rep. by Mother 1st Respondent)

5.Kasambu

6.Ramasamy Udayar

... Respondents 1 to 6/Petitioners
in both CMA and
Cross Objectors in Cross Objection

7. Sri Kumaran Rig Service,
By its Managing Partner P.Subramaniyan,
No.4, KPN Extension, Bangalore,
Karnatiaka-560 018.

... 7th Respondent/1st Respondent
in CMA and
2nd Respondent in Cross Objection

Prayer in C.M.A.No.2881 of 2017: Civil Miscellaneous Appeal
filed under Section 173 of Motor Vehicles Act, 1988, to set
aside the decree and judgment dated 08.08.2016 passed in
M.C.O.P.No.1445 of 2011 on the file of the Special District
Judge Motor Accident Claims Tribunal, Salem.

Prayer in Cross Objection: Cross Objection under Order 41 Rule 22 of the Code of Civil Procedure, against the judgment and decree dated 08.08.2016 made in MCOP No.1445 of 2011 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant in CMA /
1st respondent in Cross Obj. : Mr.C.Paranthaman

For Respondents 1-6/
Cross Objectors : Mr.S.P.Yuvaraj

COMMON JUDGMENT

The Civil Miscellaneous Appeal is preferred as against the judgment and decree dated 08.08.2016 passed in M.C.O.P.No.1445 of 2011 on the file of the Special District Court, Motor Accident Claims Tribunal, Salem.

2.The Cross-Objection has been filed by the claimants seeking enhancement of compensation granted by the Tribunal in the award dated 08.08.2016 made in M.C.O.P.No. 1445 of 2011 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

3.Both the appeal and cross-objections arise out of the same accident and same award and hence, they are disposed of by this common judgment.

4.Parties in these appeals are referred to as per their respective ranks in the claim petition for the sake of convenience.

5.The respondents are the claimants who filed petition claiming compensation for a sum of Rs.25,00,000/- for the death of the husband of first respondent, the father of respondents 2 to 4 and son of the respondents 5 and 6. At the time of accident, it is admitted that the deceased was aged about 34 years. The accident was found to be on account of rash and negligent driving of the driver of Borewell Truck belonged to the seventh respondent which was insured with the appellant/Insurance Company. As against the claim for a sum of Rs.25,00,000/-, the Tribunal awarded a sum of Rs.10,45,000/- along with interest at 7.5% per annum.

6.The Tribunal though found that the policy produced was taken to cover the liability under the Workmen Compensation Act, the tribunal awarded a sum of Rs.10,45,000/-(Rupees Ten Lakhs Forty Five Thousand only) with an interest of 7.5% per annum. Challenging the quantum of compensation on the ground that the policy was taken only to cover the liability under the Workmen Compensation Act, the Insurance Company, has preferred the appeal to set aside the decree and judgment dated 08.08.2016 passed in M.C.O.P.No.1445 of 2011 on the file of the Special District Judge Motor Accident Claims Tribunal, Salem.

7.The learned counsel for the appellant relied upon the policy and submitted that the respondents/claimants are not entitled to any amount by filing the petition under the Motor Vehicles Act.

8.The learned counsel appearing for the appellant and the respondents have admitted the position that quantum of compensation, the tribunal has awarded is the amount payable under the Workmen Compensation Act. It has been followed by this Court in several cases, that the Motor accident Claims Tribunal has jurisdiction to entertain the claim petition to enforce the liability of the insurer under the Workmen Compensation Act.

9.The learned counsel appearing for the appellant further submitted that the Insurance Company is not liable to pay interest at 12% Per annum.

10.The learned Counsel for the respondent however submitted that the tribunal has wrongly awarded 7.5% interest, eventhough, the claimants are entitled to get interest at 12% per annum from the tribunal as per the provisions of Workmen Compensation Act. The only issue to be considered is whether the claimants are entitled to get interest at 12% per annum or 7.5% per annum. The claim petition is preferred before the motor accident claims tribunal under Section 166 of the Motor Vehicles Act. The respondents/claimants have not approached the authority under the Workmen Compensation Act. It is not in dispute that the tribunal can award only interest at 7.5% normally. This Court therefore is unable to accept the arguments of the learned counsel for the respondents/claimants.

11.This Court is of the view that the claimants are not entitled for more than 7.5% per annum, eventhough, the award was passed by relying upon the provisions of Workmen Compensation Act. As a result, the award of Motor Accident Claims Tribunal, the Special District Judge, Salem, dated 08.08.2016 in M.C.O.P.No.1445 of 2011 is confirmed and the appellant/Insurance

Company shall pay a sum of Rs.10,45,000/- (Rupees Ten Lakhs Forty Five Thousand only) in all as compensation with interest at the rate of 7.5% per annum, after deducting the amount already paid, if any, within a period of two months from the date of receipt of a copy of this order. On such deposit, the claimants are at liberty to withdraw their share of compensation, as per the order of the Tribunal.

12. The Civil Miscellaneous Appeal and the Cross Objection are dismissed and the award in M.C.O.P.No.1445 of 2011 is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TTA

To

The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

+1 cc to Mr.C.Paranthaman, Advocate, SR.No.38281

+1 cc to Mr.S.P.Yuaraj, Advocate, SR.No.38553

C.M.A. No.2881 of 2017
and C.M.P.No.16851 of 2017
and Cros.Obj.No.82 of 2017

GJ(CO)
TE(20/04/2021)

WEB COPY