

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4848 OF 2019

AND

C.M.P.NO.27929 OF 2019

The Manager,
Oriental Insurance Company Limited,
Motor Third Party Claims Office,
Oriental House, IInd Floor,
No.216, Prakasam Salai,
Broadway, Chennai - 600 108. .. Appellant/2nd Respondent

Vs.

1.R.Shyamaladevi .. Respondents 1 to 3/
Claimants 1 to 3

2.R.Shyam Kumar

3.R.Shyam Sundar

4.The Managing Director,
Pondicherry Road Transport Corporation Limited,
No.4, Iyyanar Koil Street, Raja Nagar,
Pondicherry - 605 013. ..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 27.04.2019 made in M.C.O.P.No.472 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Kanchipuram.

For Appellant : Mr.D.Bhaskaran

For RR 1 to 3 : Mr.M.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 27.04.2019 made in M.C.O.P.No.472 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Kanchipuram.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant is the second respondent in M.C.O.P.No.472 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Kanchipuram. According to the respondents 1 to 3, on 27.03.2016 at about 04.30 P.M., while the deceased was walking on the extreme left side of G.W.T. Road on Chennai - Tindivanam direction, the driver of the bus belonging to the 4th respondent, which was coming on the backside of the deceased drove the same with high speed in a rash and negligent manner and dashed on the backside of the deceased due to which, the deceased sustained fatal injuries and succumbed to death on the same day at Maduranthakam Government Hospital. Hence, the respondents 1 to 3, who are the wife and sons of the deceased filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of R.Ravi Kumar, against the 4th respondent and appellant/Insurance Company, being the owner and insurer of the bus respectively.

4.The appellant/Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 3/claimants. According to the appellant/Insurance Company, as per F.I.R., the deceased alone suddenly crossed the National Highways even without looking the oncoming vehicles in the Highways and the driver of the 4th respondent's bus applied brake and due to his own fault, the deceased sustained fatal injuries. There is contributory negligence on the part of the deceased. The driver of the 4th respondent's bus was not having valid driving license at the time of accident and the 4th respondent's bus was not insured with the appellant. The compensation claimed by the respondents 1 to 3/claimants under different heads are excessive and they are not entitled for the same. In any event, the total compensation of Rs.25,00,000/- claimed by the respondents 1 to 3/claimants for the deceased, who was aged more than 45 years is highly excessive and exorbitant and they are not entitled to any amounts as claimed by them and prayed for dismissal of the claim petition.

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

6. Before the Tribunal, the first respondent examined herself as P.W.1 and eye-witness Murugan as P.W.2 and marked eleven documents as Exs.P1 to P11. No oral or documentary evidence was let in by the appellant-Insurance Company.

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 4th respondent and directed the appellant-Insurance Company, being the insurer of the bus to pay a sum of Rs.23,80,000/- as compensation to the respondents 1 to 3/claimants.

8. Questioning the quantum of compensation awarded by the Tribunal in the award dated 27.04.2019 made in M.C.O.P.No.472 of 2016, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that P.W.1/wife of the deceased in her cross examination has deposed the date of birth of the deceased as 03.07.1969 as per which the deceased was aged 46 years at the time of accident and the proper multiplier applicable is '13'. Whereas, the Tribunal applied multiplier '14', which is not correct. P.W.1 also deposed that the deceased will have job only for 15 days in a month. The Tribunal erred in fixing excessive sum of Rs.16,500/- as monthly income of the deceased. The respondents 1 to 3 have not examined the employer of the deceased to prove the avocation and income of the deceased. In the absence of material evidence, the Tribunal ought to have fixed notional income of the deceased not more than Rs.9,000/- per month. In any event, the amount of Rs.23,80,000/- awarded by the Tribunal as total compensation to the respondents 1 to 3/claimants is highly excessive and prayed for setting aside the award passed by the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 to 3/claimants contended that the deceased was a driver cum conductor and was earning a sum of Rs.20,000/- per month and Rs.300/- as daily batta. To prove the same, the claimants produced Ex.P7/salary certificate of the deceased. Therefore, inspite of salary certificate produced by the respondents 1 to 3/claimants, a sum of Rs.16,500/- per month fixed by the Tribunal as notional income of the deceased is meagre. The deceased was aged 45 years at the time of accident and the Tribunal rightly applied multiplier '14'. The Tribunal after analyzing the entire materials on record, has awarded a sum of Rs.23,80,000/- as compensation to the respondents 1 to 3/claimants, which is just and reasonable. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 3/claimants and perused the entire materials on record.

12. It is the contention of the respondents 1 to 3/claimants that the deceased was aged 45 years and was a driver cum conductor and was earning a sum of Rs.20,000/- per month and Rs.300/- as daily batta. To prove the same, they produced Ex.P7/salary certificate of the deceased. The respondents 1 to 3/claimants have not examined the employer of the deceased to substantiate their claim. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.16,500/- per month fixed by the tribunal as notional income of the deceased is excessive. The accident occurred in the year 2016. Therefore, a sum of Rs.15,000/- per month is fixed as notional income of the deceased. As far as age of the deceased is concerned, P.W.1/wife of the deceased in her cross examination has deposed that the date of birth of the deceased is 03.07.1969. To prove the age of the deceased, the respondents 1 to 3/claimants have marked the driving license of the deceased as Ex.P10. The Tribunal erroneously fixed the age of the deceased as 45 years based on Ex.P4/postmortem certificate and applied multiplier '14'. The correct age of the deceased as per Ex.P10/copy of driving license of the deceased is 46 years and the proper multiplier applicable is '13'. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.19,50,000/- {Rs.18,750/- [Rs.15,000/- + Rs.3,750/- (25% of Rs.15,000/-) X 12 X 13 X 2/3]}. The amounts awarded by the Tribunal under conventional heads are just and reasonable and hence they are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	23,10,000/-	19,50,000/-	Reduced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.23,80,000/-	Rs.20,20,000/-	reduced by Rs.3,60,000/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.23,80,000/- is hereby modified to Rs.20,20,000/- 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 award amount now determined by this Court, along with interest and costs, less the amount if any, already deposited by them to the credit of M.C.O.P.No.472 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Kanchipuram. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw their respective share of the modified award amount now determined by this Court 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.472 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Kanchipuram, if the entire amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court, Kanchipuram.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.C.Prabakaran, Advocate in sr.no.879
+1cc to Mr.D.Bhaskaran, Advocate in sr.no.796

C.M.A.No.4848 of 2019

VBA(CO)
CS/15/10/2020