



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM
AND

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

C.M.A. No.2355 of 2021
and CMP.No.13246 of 2021

M/s. Iffco Tokio General Insurance Company Limited,
Kingstone Park, II Floor,
No.19/1, Ramalinga Nagar,
Woraiyur, Trichy.

...Appellant/2nd Respondent

Vs.

1. Ramachandran
2. Chettichi
3. S. Sudharkar

...Respondents/Petitioners 1&2
& 2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree made in MCOP.No.360 of 2017, dated 13.03.2020 on the file of the Motor Accident Claims Tribunal, Sessions Court, Perambalur.

For Appellant : Mr.M.B.Raghavan

For Respondents

for RR1 & 2 : Mr.T.Gobinath

for R3 : Set ex-parte before the Tribunal

J U D G M E N T

[Judgment of the Court was delivered V.SIVAGNANAM, J]

The appeal is heard through video conferencing.

2. Questioning the award passed by the Motor Accident Claims Tribunal, Sessions Court, Perambalur, in MCOP.No.360 of 2017, dated 13.03.2020, the present appeal has been filed by the Insurance Company.

3. It is the case of the claimants/respondents 1 and 2, that on 05.03.2017 at about 3.30 p.m. the deceased Sekar was travelling as pillion rider in the third respondent's Appachi two wheeler Vehicle bearing Registration No.TN-46-T-9932 on the Esanai-Melapuliyur Road. When they were nearing Madhavanai Ammal Koil Erikarai, the rider of the said two wheeler drove the



vehicle in a rash and negligent manner and dashed on the the left side road stone. Due the impact, the deceased Sekar was thrown out of the vehicle and sustained fatal injuries all over the body and died on the spot. A case in Cr.No.225 of 2017 under Sections 279, 337 and 304A IPC was registered against the driver of the two wheeler by the Perambalur Police Station. The parents of the deceased Sekar laid a claim petition, claiming a compensation of Rs.50,00,000/-.

4. Resisting the claim petition, the Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

5. To substantiate the case, on the side of the claimants PW1 and PW2 were examined and Exs.P1 to P5 were marked. On the side of the Insurance Company, RW1 and RW2 were examined and Exs.R1 to R5 were marked.

6. The Tribunal, after considering the oral and documentary evidence held that the accident had occurred due to the negligence of the rider of the two wheeler and awarded a compensation of Rs.21,72,000/- along with the interest at the rate of 7.5% p.a. Since the rider of the two wheeler did not have valid driving licence at the time of the accident, the Tribunal directed the Insurance Company to pay the above compensation amount at the first instance and thereafter recover the same from the owner of the vehicle. Assailing the award, the appellant/Insurance Company has filed the present appeal.

7. Heard the learned counsels appearing on either side and perused the materials available on record.

8. This appeal has been filed only challenging the quantum, hence, the other issues need not be dealt with herein.

9. It is the submission of the learned counsel for the appellant / Insurance Company that the Tribunal fixed an exorbitant sum of Rs.15,000/- as monthly income of the deceased without any valid proof and also awarded excessive amounts under different heads. Consequently, the sum of Rs.21,72,000/- awarded as compensation to the claimants, is on the higher side and the same needs proper reduction.

10. Per contra, the learned counsel for the respondents 1 and 2 / claimants made his submissions supporting the award passed by the Tribunal and prayed to dismiss the appeal.

11. As alleged by the Insurance Company, considering the cost of living prevalent at the time of the accident, this Court



is of the view that a sum of Rs.15,000/- fixed as monthly income of the deceased is on the higher side, hence, the same is reduced to Rs.13,000/-. By adding 40% towards future prospects, the monthly salary of the deceased is arrived at Rs.18,200/-. Since, the deceased was a bachelor, 50% of the amount is deducted towards personal expenses, and this Court fixes the contribution to his family at Rs.9,100/-. So, the loss of dependency would be Rs.18,56,400/- $[9,100 \times 12 \times 17]$, by adopting multiplier "17". In addition to that, this Court is inclined to modify the award of the Tribunal under the conventional heads, viz., Rs.15,000/- towards Loss of Estate; Rs.15,000/- towards Funeral Expenses; Rs.80,000/- towards Love & Affection; Rs.5,000/- towards Transportation. In total, the claimants are entitled to Rs.19,71,400/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

12. The Tribunal found that the rider of the offending vehicle drove it without having a valid and effective driving license and thereby violated the terms and conditions of the Insurance Policy. Hence, the Tribunal directed the appellant/Insurance Company to pay the award amount at the first instance and thereafter recover the same from the third respondent/owner of the two wheeler Vehicle bearing Registration No.TN-46-T-9932. The said finding is confirmed.

13. i) In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the above modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. The apportionment of shares as fixed by the Tribunal to the claimants, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

ii) The appellant/Insurance Company is permitted to recover the above compensation amount in accordance with law from the third respondent/ owner of the two wheeler Vehicle bearing Registration No.TN-46-T-9932 after making payment to the claimants.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

pvs



To

1. The Sessions Judge,
Motor Accident Claim Tribunal,
Perambalur

2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.T.Gobinath, Advocate, S.R.No.43258

C.M.A. No.2355 of 2021

PA(CO)
RGA(01/11/2021)