IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.2050 OF 2014
AND
M.P.NO.1 OF 2014

M/s.HDFC Ergo General Insurance Co.Ltd.,
Rep. By its Branch Manager,
Gandhipuram, Coimbatore Town,
Coimbatore Taluk & District. .. Appellant/ 3rd Respondent

Vs.

1. Ramasamy
2. R.Ravi
3. Radha ...Respondents 1 to 3/ Petitioners 1 to 3
4. T.Gowri Shanker
5. M.C.Palanisami ...Respondents 4 & 5/ Respondents 1 & 2

(Respondents 4 & 5 are ex-parte in lower Court)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.12.2012 made in M.C.O.P.No.167 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Gobichettipalayam.

For Appellant : Mr.M.B.Raghavan

For Respondents 1 to 3 : Mr.Mohan Raj for M.Pa.Thangavel

JUDGMENT

The matter is heard through "Video Conferencing/Hybrid mode".

This Civil Miscellaneous Appeal has been filed to set aside the award dated 17.12.2012 made in M.C.O.P.No.167 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional

District Court, Gobichettipalayam.

2.The appellant is the 3rd respondent in M.C.O.P.No.167 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Gobichettipalayam. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.9,31,000/- as compensation for the death of one Sarasumani, who died in the accident that took place on 22.06.2010.

3.According to the respondents 1 to 3, on 22.06.2010, at about 3.30 a.m., while the deceased was waiting near Thookanaikenpalayam Bus Stop, to catch Erode bus. At that time, a pick up van bearing Registration No.TATA.ACE.TN-56-4294, driven by its driver in a rash and negligent manner, violating the traffic rules and dashed against the deceased. As a result of which, the deceased was thrown to a distance and she sustained multiple fractures and grievous injuries. Immediately she was taken to Government Hospital, Gobi. The Assistant Surgeon gave first-aid treatment and there advised to be admitted in a Government Hospital, Erode and later she was died. Based on the above averments, the respondents 1 to 3 have filed the claim petition claiming compensation against the appellant/Insurance Company.

4.The respondents 4 and 5, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement and denied the averments made in the claim petition. The appellant contented that the respondents 1 to 3 have to prove the age, occupation and income of the deceased and that they are the dependants of the deceased. In any event, the total compensation claimed is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, 1st respondent examined himself as P.W.1, the 2nd respondent was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. The appellant-Insurance Company had examined one Jayaraj as R.W.1 and marked Ex.R1 to Ex.R2.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the van owned by 5th respondent, and directed the appellant-Insurance Company to deposit a sum of Rs.6,00,230/- to the respondents 1 to 3.

8.To set aside the award dated 17.12.2012 made in M.C.O.P.No.167 of 2010, the appellant/Insurance Company, has come out with the present appeal.

9.The learned counsel appearing for the appellant / Insurance Company would contend that the Tribunal without appreciating the material evidence available on record, has awarded excessive compensation and none of the claimants were depending upon the income of the deceased and therefore, the adoption of regular formula for computing compensation does not warrant. He also would contend that the deceased was 61 years at the time of accident and there is no possibility for her for earning the income and the notional income fixed by the Tribunal is excessive and without basis. Therefore, the learned counsel would submit that the award of the Tribunal is liable to be set aside.

10.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

11.According to the claimants 1 to 3, the deceased was doing textile business by purchasing sarees, lungis, dhoties etc., at low price and used to sell the same at higher rates and thereby she was earning at a sum of Rs.10,000/- per month. In order to prove the same, the claimants also got marked Ex.P10 to show that the deceased had purchased saree, lungi etc., for Rs.21,800/- and sold the same on credit basis for a sum of Rs.33,900/-. The claimants also produced Ex.P11/credit book which the deceased was maintaining in respect of the persons who purchased the clothes and sarees from her on credit basis. Considering these aspects, the Tribunal has rightly come to the conclusion that the deceased was earning a sum of Rs.225/- to Rs.300/- per day and thereby rightly fixed at Rs.6,750/- per month. Out of which 1/4th deduction was made towards her personal expenses. This Court does seen any infirmity and confirmed the same.

12.As regards the age of the deceased, though the claimants have not filed any documents to show the exact age of the deceased, however, in the postmortem certificate, it was mentioned the age of the deceased as 51. However, taking into consideration the legal heir certificate produced by the claimants under Ex.P9, wherein, the Tribunal has found that the age of the elder son was mentioned as 41 years. Therefore, the Tribunal was of the view that the age mentioned in the postmortem certificate cannot be considered as 51 since the elder son was shown as aged 41. In such circumstance, the Tribunal has taken the deceased age between 54 and 57 and as such, adopted multiplier '9' and arrived at the loss of dependency at Rs.5,46,804/-. The conclusion arrived at by the Tribunal is correct and reasonable and this Court is not inclined to interfere with the same. As regards the compensation awarded by the Tribunal under various heads are confirmed by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.6,00,230/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants is confirmed. The appellant-Insurance Company is directed to pay a sum of Rs.6,00,230/- as compensation to the respondents 1 to 3/claimants along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

The III Additional District Judge,
Motor Accidents Claims Tribunal,
Gobichettipalayam.

+1cc to Mr.M.Pa.Thangavel, Advocate, S.R.No.30964

C.M.A.No.2050 of 2014

GPL(CO)
PM/29/10/2021