BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE : 25.01.2021
CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL
C.M.A(MD)No.638 of 2016
and
C.M.P(MD)No.6838 of 2016

Royal Sundaram Alliance Insurance Company Ltd.,
Sundaram Towers,
46, Whites Road,
Royapettai,Chennai-14. : Appellant / 2nd Respondent

Vs.

1.Muthukannu
2.Kalaiselvi
3.Anandhi
4.Anjalai
5.Minor ManikandaPrabhu
6.Minor Priyanka
7.Minor Venkateshan
8.Palanisamy
9.Chinnammal : Respondent Nos.1 to 9/Claimants
(Respondent Nos.5, 6 and 7 were represented by their guardian and mother, the 4th respondent herein)

10.Sudha : 10th respondent / 1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 10.09.2015 made in M.C.O.P.No.5084 of 2013 on the file of the Motor Vehicles Accident Claims Tribunal(Special District Judge), Trichirappalli.

For Appellant : Mr.M.Jerin Mathew
For R-1 to R-7 & R-9 : Mr.N.Sudhagar Nagaraj
(R-8 Dismissed vide order dated 04/07/2018)
R10 : No Appearance

JUDGMENT
(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA, J.)

The Insurance Company is the appellant. Challenging the award dated 10.09.2015 made in M.C.O.P.No.5084 of 2013 on the file of the Motor Vehicles Accident Claims Tribunal(Special District Judge), Trichirappalli, the present Civil Miscellaneous Appeal is filed.

2. The claimants, who are the respondents have made the claim as compensation for the death of one late.Mariappan, who died in the accident that occurred on 30.06.2013. The first respondent and the fourth respondent are the first and second wife of the deceased Mariappan. The respondent Nos.2, 3, 5, 6 and 7 are the children and respondent Nos.8 and 9 are the parents of the deceased.

3. The deceased was employed as a Foreman in Tamil Nadu Electricity Board, Mannarpuram, Trichirappalli District. On the date of accident, when the deceased was riding his two-wheeler, a Tipper Lorry bearing Registration No.TN47 AX 8777, hit him behind and caused the accident resulting in his death. The compensation claimed by the claimants was Rs.75,00,000/-. The owner of the lorry, who is arrayed as tenth respondent in this appeal remained ex-parte. The appellant / Insurance Company had taken permission under Section 170 of the Motor Vehicles Act, 1988, to contest the case on all the grounds that are available to the owner without prejudice to their rights to contest the claim under Section 149 (2) of the Motor Vehicles Act, 1988.

4. The Tribunal had found that the accident occurred due to the negligence on the part of the Driver of the Trpper Lorry based on the evidence of P.W.2, who is an eye-witness. However, the Tribunal had deducted 10% for the contributory negligence on the part of the deceased for not being cautious for reducing the speed of the vehicle. So far as the compensation aspect is concerned, P.W.3 was examined, who is the Account Supervisor of the Tamil Nadu Electricity Board. He has stated that the deceased was working as Grade -II Foreman in the Electricity Board earning a sum of Rs.40,946/- per month as salary. On the date of death, the deceased had completed 50 years of age. The Tribunal after deducting $1/5^{th}$ amount for his personal expenses, fixed the monthly contribution at Rs.32,756.80/- and adopted multiplier of '11' and arrived at a sum of Rs.43,23,897.60/- (Rs.32,756.80X12X11) as 'loss of dependency' and on the other heads of 'loss of consortium', 'loss of love and affection' and 'for transportation and funeral expenses', the Tribunal had awarded Rs.40,000/-, Rs.1,00,000/- and Rs.20,000/- respectively. In all, the compensation payable was fixed at Rs.44,83,898/-.

5. From the above said sum, 20% was deducted for professional tax and income tax. As already 10% had been deducted from the compensation for contributory negligence,

30% from the total compensation arrived at was deducted and the final amount payable was Rs.31,38,729/-. The Tribunal had consciously avoided any payment to the second wife, who is the fourth respondent and apportioned the amount as between the other legal heirs viz., wife, children and parents.

6. The only point that was raised by the appellant / Insurance Company in this appeal was that the deceased was having two wives and employed in Electricity Board, which is in violation of the Board's Standing Orders and therefore, he could have lost his job at any time. Hence, the compensation payable arrived at taking into account '11' is incorrect.

7. However, in the counter statement filed by the Insurance Company before the Tribunal, no such grounds were taken by the appellant / Insurance Company except stating that the second wife is not entitled for any compensation.

8. Therefore, such ground is not sustainable unless and until any person aggrieved had preferred any complaint and prosecuted the deceased. Excepting the above said point, there was no other convincing argument from the side of the appellant / Insurance Company for modifying the award as the defence taken by the appellant based on the Board's Standing Orders, is not available to the Insurance Company. Therefore, the said objection is not sustainable, as the compensation otherwise awarded to the claimants are just and reasonable and there is no reason to interfere with the same.

9. In the result, this Civil Miscellaneous Appeal is dismissed confirming the award dated 10.09.2015 made in M.C.O.P.No.5084 of 2013 on the file of the Motor Vehicles Accident Claims Tribunal(Special District Judge), Trichirappalli. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

To

1.The Special District Judge,
Motor Vehicles Accident Claims Tribunal,
Trichirappalli.

2.The Section Officer-2 copies
VR Section,Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-2085[F] dated 25/01/2021)

Judgment made in
C.M.A(MD)No.638 of 2016
25.01.2021

KM (15.02.2021) 4P 5C