



C.M.A.No.1786 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2023

CORAM

THE HON-BLE MR.JUSTICE P.B.BALAJI

C.M.A.No.1786 of 2018

1.M. Shanthi
2.Minor M.Kaiazhagan
3.Minor M.Loeshwaran
[Appellants2 and 3 are represented
through his mother and next friend
M.Shanthi]
4.M. Vellammal

...Petitioners/Appellants

Vs.

1.N. Varatharajan
2. TheOriental Insurance Company Ltd.,
56A/1-2. Mariamman Kovil Street,
Kambam Post & Taluk. Theni District.

...Respondents/Appellants

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree of Motor Accident Claim Tribunal (Sub-Court), Dharapuram dated 05.10.2015 passed in M.C.O.P.No.407 of 2013 insofar as it is against the appellants and enhance the compensation.

For Appellants : Mr.J.Antony Jesus



WEB COPY



C.M.A.No.1786 of 2018

For Respondents : Mr.S. Arunkumar for R2
For R1 – No appearance

* * * * *

J U D G M E N T

The above Civil Miscellaneous Appeal has been preferred by the claimants to set aside the Judgment and Decree in M.C.O.P.No.407 of 2013 on the file of the Subordinate Judge, Motor Accidents Claims Tribunal (M.A.C.T) Tharapuram dated 05.10.2015 and to enhance the compensation of Rs.20 lakhs arising out of the death of Mr. Murugan who was driving the vehicle which capsized and resulted in his death on the fateful day viz., 02.02.2013. The claimants are the wife, minor children and mother of the deceased Murugan.

2. It is the case of the claimant that the deceased was earning Rs.15,000/- per month and he contributed not less than Rs.10,000/- per month towards family expenses and maintenance.

3. On the side of the 2nd Respondent / Insurance Company, counter



C.M.A.No.1786 of 2018

statement was filed denying the allegations made by the claimants in M.C.O.P.No.407 of 2013 and the claimants were put to strict proof of the averment that the deceased was earning not less than Rs.15,000/-per month. In addition, a specific defence taken by the Insurance Company is that their liability is not governed under the provisions of the Motor Vehicles Act and the claim has to be made under the Workmen Compensation Act (now Employees Compensation Act).

4. Before the Tribunal, the wife of the deceased was examined as P.W1 and an eye witness, one Kamatchi was examined as P.W.2. Exs.P.1 to P.8. were marked on the side of the claimants. On the side of the respondents, no oral or documentary evidence was let in.

5. On assessing the rival contentions and based on the oral and documentary evidence available on record, the Tribunal Awarded a sum of Rs.5,75,505/-as compensation payable to the claimants.

6. The Tribunal specifically adverted to the admitted facts that the



C.M.A.No.1786 of 2018

deceased himself capsized the vehicle and under the provisions of the Motor Vehicles Act, no compensation could be awarded to his heirs/legal representatives. However, following the ratio laid down by this court in ***Oriental Insurance Company Limited vs. Kaaliya Pillai [2003-1-LW 143]*** this Court applied the formula available under the Workmen Compensation Act and proceeded to pass an award.

7. The Insurance company has not chosen to prefer an appeal. However, the claimants aggrieved by the quantum awarded to them, have approached this Court by way of the present Civil Miscellaneous Appeal.

8. Heard the learned counsel Mr.J. Antony Jesus appearing for the Appellants and Mr.S. Arunkumar appearing for the 2nd Respondent, Insurance company.

9. Learned counsel appearing for the Appeallants mainly contended that the claim of Rs.15,000/- towards monthly income of the deceased went uncontraverted and there is no cross examination in this regard. Therefore, the



C.M.A.No.1786 of 2018

Tribunal ought to have taken Rs.15,000/- as the monthly income of the deceased. But it has been taken only a sum of Rs.6,500/- .

10. Per contra, the learned counsel appearing for the Insurance Company contended that in view of the counter statement the Insurance Company has specifically denied the claim of Rs.15,000/- as income of the deceased and it is the claimants' burden to establish their case by adducing necessary documentary evidence and since there is no documentary evidence available in this regard, the Tribunal cannot be found fault with for fixing Rs.6,500/- as the notional income of the deceased.

11. On going through the records and the evidence of the parties, specifically cross examination of P.W.1 and P.W.2, admittedly only because the formula under the Workman Compensation Act has been applied the Award itself has come to be passed. Otherwise, the claim under the Motor Vehicles Act would not have been entertained.

12. With regard to the income of the deceased the burden proving the



C.M.A.No.1786 of 2018

same is totally on the claimants and the claimants cannot expect the Insurance Company to lead contra evidence with regard to the salary of deceased. It was something well within the knowledge of the Claimants alone. However, considering the fact that the accident occurred in the year 2013, admittedly the deceased was the driver of the heavy vehicle, he would have been earning not less than Rs.10,000/- per month. At the same time, under the Employees Compensation Act, the notional income as per the Notification dated 18.01.2010, a maximum Rs.8,000/- can be adopted.

13. This Court therefore feels that even though there is no documentary evidence to establish the income of the deceased, the notional income can be taken as Rs.8,000/- per month, which is the maximum permissible under the provisions of the Workmen Compensation Act. Accordingly the Award is reworked as follows:

$$\text{Rs.8,000} \times 50\% \times 175.54 = \text{Rs.7,02,160/-}$$

The funeral expenses of **Rs.5,000/-** awarded by the Tribunal is confirmed. In other aspects the Award does not require any interference.

14. In the result, the Award of the Tribunal is modified to **Rs.7,07,160/-** payable with interest @ 7.5%, from the date of petition i.e., 3.6.2013 till the



C.M.A.No.1786 of 2018

date of deposit by the Insurance Company to the credit of the M.C.O.P.No.407 of 2013 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Dharapuram. On such deposit, the Appellants/Claimants shall be at liberty to take out appropriate application before the Tribunal concerned to withdraw the same.

15. It is also seen that the Appellants 2 and 3 have become majors by now. The Appellants are given liberty to move appropriate applications before the Tribunal for payment out of the Award amount. The apportionment of the Award amount shall be in the same ratio as awarded by the Tribunal.

16. In the result the Civil Miscellaneous Appeal is partly allowed. No costs.

10.04.2023

Index : yes/no
Internet : yes
Neutral Citation: Yes/No
ggs



WEB COPY



C.M.A.No.1786 of 2018

P.B.BALAJI.,J.

ggs

To
The Motor Accident Claim Tribunal (Sub-Court),
Dharapuram.

C.M.A.No.1786 of 2018

10.04.2023

Page: 8 / 8