In the High Court of Judicature at Madras

Dated: 20.01.2016

Coram

The Honourable Mr. Justice T.RAJA

C.M.A.No.2046 of 2007
and
M.P.No.2 of 2007

The Branch Manager,
National Insurance Company Ltd.,
Branch Office, F-215,
Maruthi Complex,
Swarnapuri, Salem. ... Appellant/2nd Respondent

..Vs..

1.Veerammal

2.Gowri

3.Shanthi

4.Chitra

5.Jayamurugan

6.Minor Chinnarasu
rep. by his mother & next friend
Veerammal

7.Thayammmal(Died)

8.Devendra Babu

9.M/s.National Bus Service,
No.68, Thiruchengode Road,
Namakkal District.

10.The Branch Manager,
United India Insurance Co. Ltd.,
Divisional Office,
No.2, Dr.Sankaran Road,
Thiruchengode.
Since R8 remained ex-parte before the Tribunal,
Notice to R8 may be dispensed with.
... Respondents/Petitioners1 to 7
1st respondent/3 &4th Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Sub-ordinate Judge, (MACT), Sankagiri in M.A.C.T.O.P.No.87 of 2003 dated 18.11.2005.

For Appellant : Mr.K.Suryanarayanan
Ms.J.Star for

For Respondent Nos.1 to 6 : Mr.N.Manokaran
R7-Died
R8-Dispensed with

For Respondent Nos.9 & 10 : Mrs.R.Sreevidya

JUDGMENT

The Branch Manager, National Insurance Company Ltd., Salem, has preferred this appeal, challenging the correctness of the impugned award passed by the learned Sub-ordinate Judge, (MACT), Sankagiri in M.A.C.T.O.P.No.87 of 2003 dated 18.11.2005.

2.Heard the learned counsel appearing for the parties and also perused the materials available on record.

3.Learned counsel for the appellant/Insurance Company contended that the learned Tribunal failed to note that the accident which took place on 04.06.2003 on the Highway was only due to the rash and negligent driving of the drivers of both the bus and the lorry and in addition thereto, submitted that the deceased Muniappan, who was also travelling in the bus, was keeping his head and arm stretched outside the window and therefore, in all fairness, the Tribunal ought to have found that the deceased also contributed to the negligence and thereupon, ought to have fixed the contributory negligence on the part of the deceased, which has not been done. He further submitted that the learned Tribunal erroneously gave a finding that the driver of the lorry was solely responsible for the accident based on the evidence of the wife of the deceased, examined as P.W.1, who was not even an eye witness to the accident. Adding further, the learned counsel submitted that the Insurance Company, after filing a detailed counter affidavit, contended before the Tribunal that the deceased Muniappan was carelessly sleeping in the bus and was keeping both his head and hands stretched out of the window at the time of accident and therefore, placing the entire negligence on the part of the driver of the lorry, without there being any supportive evidence, more particularly, when no eye witness was examined to prove the negligence of the driver of the lorry, and fastening the Insurance Company to pay the compensation, is erroneous.

4.Continuing his argument, he submitted that in order to support the case of the Insurance Company, the officials and private investigators were examined as R.W.1 and R.W.2 to prove that the accident had occurred only due to the rash and negligent driving of the driver of the bus, which have been completely overlooked by the Tribunal. He would further submit that the Tribunal, without appreciating the well settled decision of this Court reported in 2004 (2) TN MAC 115 (DB) wherein, it is held that 50% negligence has to be fastened on the petitioner, who had stretched his arm out of the window while travelling in the bus, had proceeded to pass the award, directing the appellant to pay a sum of Rs.5,80,000/- with interest at the rate of 7.5% per annum from 26.06.2003 to 18.11.2005, which is neither tenable nor sustainable. He contended that even as per the ration card produced by the claimants, the age of the deceased Muniappan was shown as 48 and therefore, a proper multiplier of 13 should have been applied instead of 15, as per the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma V. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC):2009 (6) SCC 121. Concluding his argument, he would further submit that in view of the wrong application of the multiplier 15, the learned Tribunal had awarded a huge compensation of Rs.5,80,000/- towards pecuniary loss and therefore, the impugned award passed by the learned Tribunal is liable to be interfered with.

5.Per contra, the learned counsel for the respondents/claimants would submit that when the post mortem certificate issued by the doctor indicated the age of the deceased as 42, the application of the multiplier 15 by the Tribunal cannot be found fault with. Adding further, he would submit that on the date of accident, the drivers of both the bus and lorry were equally responsible for causing the accident and when the driver of the offending lorry was not examined by any one including the Insurance Company, he contended that it is not open to the Insurance Company to maintain the present appeal challenging the quantum of compensation.



6.Continuing his arguments, he would submit that the Tribunal while awarding Rs.5,80,000/- with interest at the rate of 7.5% per annum from 26.06.2003 to 18.11.2005, has miserably failed to add 30% of the notional monthly income of the deceased towards future prospectus, which is against the well settled legal position as laid down by the Apex Court in the case of Santhosh Devi Vs. National Insurance Company Ltd., [AIR 2012 SC (Civil) 1519] and consistently being followed by this Court holding that the increase towards future prospectus should not be denied to those who were on fixed wages or self employed and therefore, he pleaded that if the award amount is increased, the same will be extremely useful to the claimants of the deceased family. Further, he submitted that the amount awarded by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses are on the lower side and hence, the same shall also be enhanced. He finally pleaded that the 1/3 deduction towards personal expenses of the deceased is to be interfered with, as there are seven dependants.

7.This Court is of the considered view that when the Hon'ble Apex Court has repeatedly held that in the matters of payment of compensation, the Court has to award proper and just compensation, ignoring the fact that the amount claimed by the claimants is less, because there is no specific provision in the Motor Vehicles Act to grant proper and just compensation more than the amount claimed in the claim petition, as per the decision in Santhosh Devi's case, 30% should be added towards future prospectus to the notional monthly income i.e., by taking the monthly income of the deceased at Rs.4500/- as fixed by the Tribunal, which comes to Rs.5850/-. In regard to the deduction made by the Tribunal towards personal expenses of the deceased, this Court, accepting the contention of the learned counsel for the respondents/claimants, deems it fit to deduct $1/5^{th}$ under the said head, since the dependants are seven in number and accordingly, after deducting $1/5^{th}$ towards personal expenses of the deceased, the notional income works out to Rs. 4680/- per month. In the considered opinion of this Court, ration card is a genuine proof and since the age of the deceased as per the ration card is 48, the same shall be taken and thereby, adopting the multiplier of 13 instead of 15, as rightly contended by the learned counsel for the appellant/Insurance Company as per the principle laid down by the Hon'ble Apex Court in Sarla Verma's case, the loss of dependency is arrived at Rs. 7,30,080/-, as detailed below:

| S.No. | Heads | Amount of Calculation |
|---|---|---|
| 1 | Loss of income | Rs.4500/- per month |
| 2 | 30% of (1) above to be added as Future Prospects | [Rs.4500+Rs.1350]= Rs.5850/- |
| 3 | $1/5^{th}$ of (2) deducted as Personal Expenses of the deceased | [Rs.5850-Rs.1170]= Rs.4680/- |
| 4 | Compensation after multiplier of 13 is applied | [Rs.4680x12x13]= Rs.7,30,080/- |

This Court also concurs with the contentions made by the learned counsel for the respondents/claimants in regard to the amount awarded by the Tribunal under the heads, loss of consortium and loss of love and affection and the same shall be redetermined as Rs.50,000/- towards loss of consortium to the wife of the deceased and Rs.10,000/- each i.e. Rs.70,000/- towards loss of love and affection, which would be just and reasonable. Since the accident took place in the year 2003, the amount awarded towards funeral expenses is enhanced to Rs.5000/- from Rs.2000/-.

8.The break-up details of compensation amount redetermined by this Court is as follows:

| S.No. | Heads | Amount |
|---|---|---|
| 1 | Loss of Dependency | Rs.7,30,080/- |
| 2 | Loss of Consortium | Rs. 50,000/- |
| 3 | Loss of Love and Affection (Rs.10,000/- each) | Rs. 70,000/- |
| 4 | Loss of Funeral Expenses | Rs. 5,000/- |
| Total | | Rs.8,55,080/- |

which is rounded of to Rs.8,55,000/- as total compensation.

9.In the result, the Civil Miscellaneous Appeal is disposed of with the above modification in the award of the Tribunal. It is stated by the learned counsel for the appellant that the entire award amount has been deposited by the Insurance Company. Therefore, the appellant/Insurance company is directed to deposit the enhanced balance amount with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw their share amount as per the apportionment made by the Tribunal, after giving credit to the amount already withdrawn by them, if any, except the share of the minor/sixth respondent. Consequently, connected Miscellaneous Petition is also closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Sub Court,
(The Motor Accident Claims Tribunal)
Sankagiri.

2.The Record Keeper,
V.R. Section, High Court, Madras.

+1 cc to Mr.K.Suryanarayanan Advocate sr.3460
+1 cc to Mr.R.Sree Vidhya Advocate sr.3950
+1 cc to Mr.N.Manokaran Advocate sr.3228

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aa04/05/2016