BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.758 of 2014
and
M.P.(MD)No.1 of 2014

The Divisional Manager,
The Oriental Insurance Company Limited,
Sekar Champers,
732, P.K.S.A. Arumugam Road,
Sivakasi - 626 189. .. Appellant/2nd Respondent

Vs.

1.K.Veeralakshmi
2.K.Kannan
3.K.Balaji .. Respondents 1 to 3/
Petitioners 1 to 3

4.S.S.Mangaiyan .. 4th Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award made in M.C.O.P.No.11 of 2013, dated 09.12.2013, on the file of the Motor Accidents Claims Tribunal-cum-Subordinate Judge, Aruppukottai.

For Appellant : Mr.K.Bhaskaran

For Respondents : Mr.M.Vaikkam Karunanithi
(for R1 to R3)

JUDGMENT

The appellant/Oriental Insurance Company has filed the present C.M.A(MD)No.758 of 2014, challenging the award passed in MCOP.No.11 of 2013, dated 09.12.2013, on the file of the Motor Accidents Claims Tribunal-cum-Subordinate Judge, Aruppukottai.

2.It is a case of a fatal accident caused in the accident took place on 11.06.2012 around 6.00 p.m. near Arupukkottai to Palayampatti Road. The motorcycle insured with the Insurance Company bearing Registration No.TN67-AD-6958 driving in rash and negligent manner and dashed against the deceased, resulted grievous injuries causing death in the hospital on 17.06.2012. The deceased person was aged about 59 years and he was a owner of the Hotel business and subsequently shifted his business as land broker.

3.The learned counsel appearing for the appellant/Insurance Company contended that the age of the deceased as per the post-mortem report was 59 years and as per the family ration card, the age of the deceased was 63 years. The Tribunal has considered the age of 59 years taking into account in the post-mortem report. But, such a finding is erroneous, in view of the fact that the age stated in the family ration card issued by the Government of Tamil Nadu alone is to be taken as an authenticated age as per the established principles and the age in the post-mortem report is to be construed as approximate and the age declared by the person concerned in the family ration card alone is to be taken as an authenticated age. Such being the proposition, the Tribunal has erroneously fixed the age of the deceased as 59 years instead of 63 years as per the family ration card.

4.The learned counsel appearing for the respondents opposed the appeal by stating that the age of the deceased was 59 years, which is to be adopted and the post-mortem was conducted by the Doctors, which is to be relied upon. This Court is not inclined to appreciate the arguments advanced by the learned counsel for the respondents, in view of the fact that the self declaration of the age in the family ration card issued by the Government of Tamil Nadu alone is to be considered as an authenticated age and the age prescribed in the post-mortem report shall be construed as approximate.

5.The learned counsel appearing for the respondents/claimants to substantiate his arguments that the age certificate issued by the Doctors in the post-mortem report alone is to be taken as conclusive and the age prescribed in the family ration card need not be considered. To support the view, the learned counsel cited a judgment reported in ***2013 (1) TN MAC 290 (Divisional Manager, New India Assurance Co. Ltd., CSI Building Officers' Line Road, Vellore v. G.Selvi and others***)

> "39.In Ex.P6-Xerox copy of the Family Ration Card, the name of deceased brother is mentioned as M.Baskaran, aged 34 years. In Ex.P2 - Post-Mortem Certificate, the age of the deceased is mentioned as 40 years. In the Claim Petition, the Respondents 1 to 3/Claimants has stated that at the time of death, the deceased was 37 years."

6.In the said judgment, the age stated in the post-mortem certificate was taken for the purpose of calculating the quantum of compensation.

7.The above judgment submitted by the learned counsel for the respondents need not be relied upon, in view of the fact that the Hon'ble Division Bench of this Court in a judgment reported in ***2005 (5) CTC 515 (The Managing Director, Tamil Nadu State Transport Corporation, Madurai v. Mary and others***) stated as follows:

> "9.As regards compensation, the appellant is aggrieved by the assessment of the age of the deceased at 41. The age of the deceased had been assumed to be 41 on the basis of the birth certificate/certificate issued by the Church at the time of anointing of the deceased on 25.7.1959. As against the said material, the appellant seeks to rely on the post mortem certificate fixing the age at 50. It is needless to mention that the age fixed under the post mortem certificate cannot be stated to be an accurate age and the same could be referred to only in the absence of any other material. When a contemporaneous birth certificate is issued under Ex.A-3 disclosing the age of the deceased as 41, there is no justification to reject the said certificate. On the basis of the said certificate, the multiplier of 15 has been properly adopted."

8.It is always known that the Doctors prescribed the age in the post-mortem certificate based on the anatomical analysis and it will be certainly appropriate and can never be accurate. Therefore, in the absence of any other document like Ration card, Birth certificate, Passport, Aadhar card and Voter I.D., the age prescribed in the post-mortem certificate shall be considered. When the self declared age is available in the above said Government I.D.s, the same is to be taken as conclusive and the age in the post-mortem certificate can never be construed as conclusive. Therefore, this Court is not inclined to consider the arguments advanced by the learned counsel for the respondent and the findings of the Hon'ble Division Bench will prevail over and accordingly, this Court is of the unambiguous view that the age stated in the family ration card alone will prevail for the purpose of fixation of compensation by the Tribunal.

9.The learned counsel appearing for the appellant/Insurance Company stated that in view of the change in the age of the deceased, the multiplier alone is to be changed as per ***Sarla Verma*** case. The Tribunal adopted the multiplier of '9' and for the age of 63, the multiplier '7' is to be adopted. Accordingly, the quantum of compensation awarded by the Tribunal is modified as hereunder:

Loss of income Rs.7000X12X7X2/3	Rs.3,92,000/-
Love and affection Rs.50,000/-X2 each	Rs.1,00,000/-
Funeral expenses	Rs.10,000/-
Loss of life estate	Rs.2,500/-
Transport	Rs.5,000/-
Loss of consortium	Rs.50,000/-
Medical expenses	Rs.35,500/-
Total	Rs.5,95,000/-

10.Accordingly, the total compensation Rs.7,07,000/- is modified as Rs.5,95,000/-. In all other respects, the order of the Tribunal is confirmed and the Civil Miscellaneous Appeal is partly allowed.

11.The learned counsel appearing for the appellant/Oriental Insurance Company represented that the 50% of the award amount granted by the Tribunal has already been deposited and the appellant is directed to deposit the balance award amount with accrued interest within a period of four weeks from the date of receipt of a copy of this order. The respondents 1 to 3/claimants are permitted to withdraw the entire award amount with accrued interest through RTGS, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(C)

/True copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal-cum-
Subordinate Judge, Aruppukottai.

+1 cc to M/s.K.Bhaskaran, Advocate in SR.No. 73864
vsa
CSL/PM-PN/22.03.2017 :4P/3C

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and
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