In the High Court of Judicature at Madras

Dated : 24.3.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice P.KALAIYARASAN

Civil Miscellaneous Appeal No.3086 of 2013 and MP.No.1 of 2013

The Oriental Insurance Co. Ltd.,
Third Party Claim Cell, Vellore-9. ...Appellant/2nd Respondent

Vs

1.Amutha
2.Rajesh
3.Ravi ...RR1 to 3/Petitioners
4.G.S.Gopalakrishnan ...4th Respondents/ 1st Respondent

(R4 set exparte in lower Court)

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the award dated 18.2.2013 made in MCOP.No.278 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Ranipet, Vellore District.

For Appellant : Mr.N.Vijayaraghavan
For Respondents 1 to 3 : Mr.C.Prabhakaran

Judgment was delivered by NOOTY.RAMAMOHANA RAO,J

This civil miscellaneous appeal is preferred by the Insurance Company objecting to the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Subordinate Court), Ranipet, Vellore District in M.C.O.P.No. 278 of 2010 dated 18.2.2013.

2. On 10.9.2010 at about 6.45 PM, one Sri.Rajendran, who was aged around 47 years and working as a Special Assistant in the State Bank of India, was returning home on his motor cycle bearing Regn.No.TN-23-AP-9856. When he reached Pulithangal Village, right opposite to Ranipet Engineering College and when he was about to take a turn towards Vellore Town, the offending vehicle - a car bearing Regn.No.TN-25-R-5816 that was coming from Chennai to Vellore, which was driven rashly and negligently by its driver, without properly observing the traffic rules,

caused the accident by hitting the motor cycle. The impact of the accident was so grave that Sri.Rajendran fell off the motor cycle and sustained several serious injuries. When he has been taken to the Government Hospital for medical attention at nearby Walajah, the doctors declared him to have died already. Hence, the claimants, who are the wife and two children of the deceased, instituted the original petition seeking a compensation of Rs.75 lakhs.

3. The appellant before us was the insurer of the offending vehicle. Three witnesses have been examined on behalf of the claimants and Ex.P.1 to Ex.P.8 were also got marked. Though no witnesses have been examined on behalf of the respondents in the original petition, but, strangely on behalf of the Insurance Company, the xerox copy of the identity card of the deceased Sri.Rajendran was got marked as Ex.R.1.

4. P.W.1 is none other than the wife of the deceased Sri.Rajendran - the first claimant. There is no controversy with regard to the fact that the deceased Sri.Rajendran was employed as Special Assistant with the State Bank of India and his date of birth being 26.2.1958, he was aged around 52 years at the time of accident. P.W.3, who is the Branch Manager of the State Bank of India, BHEL Mukundarayapuram Branch, deposed that the earnings of the deceased Rajendran were Rs.38,019/- per month and after deductions, which included contribution to the provident fund, income tax, professional tax, group insurance premium and monthly equated instalments towards car loan and consumer loan, SBI Staff Cooperative Credit Society contribution, his take home pay worked out to Rs.21,872/-.

5. Ex.P.8 - pay slip for the month of August 2010 disclosed his annual gross salary as Rs.5,57,891/-, of which, the income under the Head of Salary for income tax purposes was worked out to Rs.5,52,760.43 Ps and the gross total income worked out to Rs.5,22,760.43 Ps. After standard deductions under Section 80C/CCC/CCD of the Income Tax Act to the tune of Rs.1 lakh, the total taxable income worked out to Rs.4,22,760/-. Hence, to the extent of age of the deceased and his annual taxable salary amount of Rs.5,52,760/-, there is no dispute. It is also not in dispute that the age of superannuation for the clerical staff in the State Bank of India is 60 years and hence, Sri.Rajendran - the deceased, being only a Special Assistant, would be entitled to serve the State Bank of India, in the normal course, till he would have attained the age of superannuation of 60 years.

6. After considering the entire evidence on record, the Tribunal rendered a finding that the accident took place entirely due to the rash and negligent manner of driving by the driver of the offending car and the deceased Sri.Rajendran has not contributed to the accident. Fortunately, in the instant case, P.W.2 was an independent eyewitness and he was present when the accident took place. We find ourselves in agreement with this finding of fact recorded by the Tribunal that the accident had occasioned all due to the rash and negligent driving by the driver of the car. Since the offending vehicle is insured with the appellant, the liability to compensate for the wrong act has rightly to be fastened on to the appellant.

7. The contention raised by the learned counsel for the Insurance Company before us was that the Tribunal has unjustly awarded the compensation for future prospects projecting the present earnings by 30% whereas it ought not to have exceeded 15% taking into account the fact that the deceased was having less than 8 years of service for his eventual retirement from the service of the bank.

8. Since Ex.P.8 has recorded the factum relating to the date of birth of the deceased as 26.2.1958, by the date of accident namely 10.9.2010, he completed 52 years of age. He joined the service of the bank on 11.5.1979 and thus, completed 31 years of service to the bank. In view of the entries in the service record of the deceased, we are in agreement with the principal objection raised by the learned counsel for the appellant that for a left over service of less than 7 1/2 years, awarding 30% of the present income towards future prospects by the Tribunal is clearly erroneous and it should have been far less.

9. We have also noticed a few other errors committed by the Tribunal. The first error was the computation of the age of the deceased as 51 years, instead of 52 years and the second error was that what is liable to be taken into account is the annual income under the Head of Salary noted as Rs.5,52,760/- under Ex.P.8. Instead, it has been taken as Rs.4,56,228/- (Rs.38,019/- X 12). One more error is that the Tribunal noted in its award that the deceased was working as a Special Officer whereas he was actually working as a Special Assistant in the clerical cadre of the bank.

10. This apart, the Tribunal noted that the age of superannuation in the State Bank of India is 60 years. Hence, the deceased Sri.Rajendran would have retired from service on his attaining the age of superannuation by the end of February 2018. Thus, on the date of the accident namely 10.9.2010, he was left with less than 7 1/2 years of service. During this 7 1/2 years of left over service, it is less likely that the pay structure of the employees of the State bank of India would have been revised twice all over. At best, the deceased would have had the benefit of one more pay revision/ hike or perhaps one promotion.

11. Therefore, the quantum of future prospects, in such circumstances, would not have gone beyond 15% and it is more appropriate to peg it at 10%. We, therefore, modify the award passed by the Tribunal by ordering for computation of compensation payable, taking the income of the deceased under the Head of Salary as Rs.5,52,760/- per annum as is available from Ex.P.8 - salary slip for the month of August 2010 issued by the State Bank of India, BHEL Project Branch at Ranipet. That should be multiplied by 9 as was spelt out by the Supreme Court in Sarla Verma Vs. Delhi Transport Corporation [reported in 2009 (VI) SCC 121]. Therefore, the amount then works out to Rs.49,74,840/- (Rs.5,22,760/- X 9).

12. Claimants 2 and 3 are the sons of the deceased and they are aged around 20 and 22 years at the time of accident. It is, therefore, reasonable to assume that the employee would not be contributing more than 2/3rds of his earnings and particularly when he was employed in a prestigious organization like that of the State Bank of India, it is reasonable for us to infer that he would be spending 1/3rd of his earnings for his own maintenance and upkeep and social living. Therefore, after deducting 1/3rd from the above amount, the loss of dependency works out to Rs.33,16,560/- and towards future prospects, we wish to add another 10% thereof, which then works out to an aggregate of Rs.36,48,216/-. On all other aspects such as loss of consortium, loss of love and affection and funeral expenses, the award of the Tribunal stands confirmed.

13. Subject to this modification, the above civil miscellaneous appeal is disposed of. No costs. Consequently, the above MP is closed.

14. It is seen that during the pendency of the above appeal, while granting interim stay in M.P.No.1 of 2013 on 04.12.2013, this Court directed the appellant to deposit a sum of Rs.25 lakhs together with proportionate interest. It is also seen that

the amount was deposited to the credit of the original petition before the Tribunal and on 15.4.2014 at the instance of the claimants in M.P.No.1 of 2014, this Court permitted them to withdraw the said amount. It goes without saying that the balance amount together with interest and costs shall be deposited before the Tribunal to the credit of the original petition on or before 30.4.2017 and the entire amount shall be permitted to be withdrawn by the claimants in the proportion that the first claimant is entitled to 50% and claimants 2 and 3 are entitled to 25% each, as they have already attained the age of majority even by the time of accident.

-s/d-
Assistant Registrar(CSII)

True Copy

Sub-Assistant Registrar

To
The Motor Accidents Claims Tribunal
(Subordinate Court), Ranipet, Vellore District.

+1 cc to Mr.M.Vijayaraghavan Advocate sr 19426
+1 cc to Mr.C.Prabakaran Advocate sr 18569

CMA.Nos.3086 of 2013
and MP.No.1 of 2013

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