IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1002 of 2018
and C.M.P.No.8152 of 2018

IFFCO - TOKIO
General Insurance Company Ltd.,
Tulsi Chambers,
195, T.V.Samy Road West,
R.S.Puram, Coimbatore - 641 002,
Coimbatore District. ..Appellant
/2nd respondent

Versus

1.T.Janaki
2.R.Thenmozhi
3.R.Vennila
4.T.Saravanan ..1 to 4 Respondents/
1 to 4 Petitioners

5.K.Ajikurian ..5th Respondent
/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order and decreetal order dated 25.04.2016 made in M.C.O.P.No.507 of 2013 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Dharapuram.

For Appellant : Mr.C.R.Krishnamoorthy

For Respondents : Mr.MA.P.Thangavel [for R1 to R4]

J U D G M E N T

The Appellant/Insurance Company has filed this appeal against the judgment and decreetal order dated 25.04.2016 made in M.C.O.P.No.507 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharapuram.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners/claimants is that on 23.04.2013 at about 12.30 p.m., while the deceased was proceeding in his two wheeler bearing Registration No.TN-33-AM-2873 towards east in Coimbatore to Karur main road, the 1st respondent car bearing Registration No.TN-43-AA-8373 came at high speed dashed against the two wheeler of the deceased from behind, causing him fatal injuries, resulting in his death, subsequently, in the hospital. The accident occurred due to rash and negligent driving by the 1st respondent driver only. The vehicle was insured with the 2nd respondent at the time of the accident. The deceased was aged 64 years and by doing real estate business was earning Rs.15,000/- per month. The petitioners/claimants who are the wife and children of the deceased were dependents on the earning of the deceased. Thus, the petitioners/claimants sought for a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

4. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners/claimants. The 1st respondent driver was proceeding at slow speed, but the deceased only drove his motor cycle in a zig-zag manner, under the influence of alcohol, at high speed and dashed against the 1st respondent vehicle. As such, the negligence of the deceased alone caused the accident. The claim of the petitioners/claimants about the age, avocation and income of the deceased is denied. The amount sought for by the petitioners/claimants is exorbitant. The 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners/claimants examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.15 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. After analysing the available evidence on record, the Tribunal found that the negligence of the 1st respondent driver alone caused the accident and passed an award for a sum of Rs.8,41,631/- payable by the respondents. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel for the 2nd respondent/Insurance Company contends that the deceased was aged 64 years and he was getting pension of Rs.12,137/- per month and after the demise his wife/1st petitioner was getting family pension, but the same was not taken note of by the Tribunal, while fixing the notional income of the deceased. The 2nd and 3rd petitioners are married

daughters and as such, they are not dependents of the deceased. The Tribunal ought to have deducted 1/3rd of the income towards personal expenses. The amount awarded under different heads is highly excessive. Thus, the 2nd respondent/Insurance Company sought for setting aside of the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioners/claimants contends that all the petitioners/claimants are dependents on the income of the deceased and the award passed by the Tribunal is just and reasonable. It is further pointed out that there is no need to modify the award, as no ground is established to find fault with the conclusion of the Tribunal. Thus, the petitioners/claimants sought for dismissal of the appeal.

8. This appeal is filed only on the issue of quantum. The Tribunal, on the basis of P.W.2 - evidence as well as contents of Ex.P.1 - F.I.R, Ex.P.3 - Rough sketch and Ex.P.4 - Observation mahazar of the occurrence spot as well as Ex.P.7 - Alteration report and Ex.P.8 - Final report filed by the police found that the negligence of the 1st respondent driver alone caused the accident. The said conclusion is not challenged by the respondents by filing any appeal. Thus, the finding of the Tribunal, that the negligence of the 1st respondent driver alone caused the accident has become final.

9. The son of the deceased who deposed as P.W.1 stated that the deceased was aged 64 years at the time of the accident and by working as a cotton and real estate agent was earning Rs.15,000/- per month. The fact that the deceased was a retired employee of Tamil Nadu Housing Board and was getting Rs.12,137/- as monthly pension is not disputed. The copy of driving license and identity card of the deceased are produced and marked as Exs.P.13 and 14 respectively. The pass book of the bank account is also filed as Ex.P.15. However, there is no proof filed by the petitioners/claimants to prove that the deceased was earning Rs.15,000/- per month, by working as real estate agent. Further, the petitioners/claimants only produced the identity card and pass book of the deceased, but no pension order or pension payment book was produced. As such, it will be appropriate to fix his income at Rs.8,000/- per month. Considering that the number of dependents are 4, it will be appropriate to deduct 1/4th of the income towards personal expenses. Further it is clear from Ex.P.2 - Post mortem report as well as Ex.P.13 - Driving license and Ex.P.14 - Identity card that the age of the deceased was 64 years and the multiplier to be applied is '7', as such the loss of income is calculated as follows:-

[Rs.8000 -(Rs.8000 x ¼) x 12 x 7] = Rs.5,04,000/-

Thus, a sum of Rs.5,04,000/- is granted as compensation under the head “loss of income”.

10. In respect of awarding compensation under conventional heads, as per the judgment of the Hon'ble Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses and hence, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses and for loss of consortium a sum of Rs.40,000/- is awarded.

11. The learned counsel for the petitioners/claimants contended that due to the sudden demise of their father, the petitioners 2 to 4/claimants 2 to 4 are suffering from loss of love and affection. Considering the circumstances, it will be appropriate to award at a rate of Rs.20,000/- each for loss of love and affection. Thus, they are entitled for Rs.60,000/- under the head for loss of love and affection. Likewise, the petitioners/claimants is also entitled for transport charges for which Rs.10,000/- is awarded and for damages of clothes Rs.5,000/- is awarded.

12. Accordingly, the compensation awarded by the Tribunal stands modifies as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court(Rs.)
1	Loss of dependency	7,64,631.00	5,04,000.00
2	Funeral Expenses	25,000.00	15,000.00
3	Loss of Consortium	-	40,000.00
4	Loss of Estate	2,000.00	15,000.00
5	Love and Affection	50,000.00	60,000.00
6	Transportation	-	10,000.00
7	Damages of Clothes	-	5,000.00
8	Total	8,41,631.00	6,49,000.00 round off 6,50,000.00

13. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.6,50,000/- from Rs.8,41,631/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above reduced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified reduced award amount is as follows:-

1 to 4 petitioners/claimants - 25% each.

(v) On such deposit, the petitioners/claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

bri

To

1.The Subordinate Judge,
Dharapuram.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.C.R.Krishnamoorthy, Advocate SR.No.31011
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.31426

C.M.A.No.1002 of 2018

GP(CO)
GN(06/07/2018)