IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :26.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3737 of 2011
an M.P.No.1 of 2011

United India Insurance Company Ltd.,
Rep by its Manager,
123-A,2nd Road,
Mayiladuthurai Town. ...Appellant/2nd Respondent

Vs

1.R.Thaiyalnayaki (died)
(R2 & R3 brought as
legal heirs as per order of
this Court dated 26.10.2018)

2.R.Parthipan
3.R.Pradeepa Respondents/ Petitioners
4.R.Jayakumar ...Respondent/ 1st Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 9.4.2011 made in O.P.No.247 of 2007 on the file of the Motor Accidents Claims Tribunal (principal Subordinate Judge), Mayiladuthurai.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.S.Sounthar for R2 to R3
Not ready in notice Reg. R4
R1 -Died

J U D G M E N T

The instant appeal has been filed by the appellant/insurance company challenging the Award dated 09.04.2011 passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge, Mayiladuthurai) in MCOP.No.247 of 2007.

2.The brief facts leading to the filing of the instant appeal are as follows:-

One Ramamurthy died on 13.05.2007 as a result of an accident that took place on 06.04.2007 caused by an Autorickshaw bearing Regn.No.TN-51Y-0956 owned by the fourth respondent and insured with the appellant/insurance company. The dependents of the deceased Ramamurthy who are the respondents 1 to 3 in the instant appeal, preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.247 of 2007 seeking a compensation of Rs.15,00,000/- for the death of Ramamurthy. The Motor Accident Claims Tribunal, by its award dated 09.04.2011 in MCOP.No.247 of 2007, directed the appellant/insurance company to pay the respondents 1 to 3 a sum of Rs.6,92,302/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3. Aggrieved by the impugned award dated 09.04.2011 in MCOP.No.247 of 2007, the instant appeal has been filed by the appellant/Insurance Company.

4. Heard, Mr.D.Bhaskaran learned counsel for the appellant and Mr.S.Sounthar learned counsel for the respondents 1 to 3. The 4th respondent has remained exparte both before the Tribunal as well as before this Court. Memo has been filed by the appellant/insurance company stating that the first respondent (wife of the deceased) died on 11.02.2013 leaving behind the 2nd & 3rd respondent/sons as the only legal heirs. The appellant seeks permission of this court to record the second and third respondents as the legal heirs of the first respondent. The said memo is taken on file and the same is recorded. The second and third respondents are brought on record as legal heirs of the deceased first respondent.

5. According to the learned counsel for the appellant, the quantum of compensation awarded by the Tribunal to the respondents 1 to 3 is an excessive compensation. According to him, the compensation of Rs.6,24,000/- towards loss of pecuniary benefits to the respondents 1 to 3 is excessive and further the Tribunal has erroneously applied 13 multiplier even though the deceased was 52 years at the time of the accident. Even though, in the grounds of the appeal, the appellant has questioned their liability to pay the compensation, the learned counsel for the appellant has restricted his submissions before this Court only to the quantum of compensation awarded to the respondents 1 to 3 by the Tribunal.

6. Per contra, the learned counsel for the respondents 2 & 3/claimants would submit that only due to the accident, the deceased Ramamurthy died. He further submitted that the accident happened on 06.04.2007 and the deceased sustained grievous injuries, for which he was taking continuous treatment and subsequently died on 13.05.2007.

He drew the attention of this court to the discharge summary, wound certificate, death certificate and medical bills which were all marked as exhibits before the Tribunal to show that the deceased was taking continuous medical treatment ever since the date of accident till the date of his death on 13.05.2007. He further submitted that the deceased was 49 years at the time of the accident, as evident from the death certificate which is marked as exhibit before the Tribunal. He further submitted that even though in the claim petition, the respondents 1 to 3 had claimed that the deceased was earning a sum of Rs.7,500/- per month at the time of the accident, the Tribunal has assessed his monthly income only at Rs.6,000/-. Considering all these factors, he submitted that the Tribunal has rightly assessed the compensation payable to the respondents 1 to 3.

7. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following :

a) As rightly contended by the learned counsel for the respondents 2 & 3, the death of Ramamurthy occurred only due to the accident which happened on 06.04.2007, as seen from the discharge summary, wound certificate and medical bills which were marked as exhibits before the Tribunal. On the side of the respondents 1 to 3, eleven documents were marked as exhibits and two witnesses were examined. On the side of the appellant, two documents namely charge sheet and the investigation report were marked and one witness was examined. As seen from the evidence placed on record before the Tribunal, the appellant has not been able to disprove the contention of the respondents 1 to 3 that only due to the accident that occurred on 06.04.2007, Ramamurthy died on 13.05.2007. Therefore, the Tribunal has rightly fixed the liability on the appellant.

b) In so far as the quantum of compensation awarded by the Tribunal is concerned, in the FIR, the age of the deceased is disclosed as 52 years at the time of the accident. The complaint was given by the deceased himself on 06.04.2007 itself, being the date of the accident and therefore the age given in the FIR will have to be given much weightage than the death certificate namely Ex.P.5 which discloses that Ramamurthy was 49 years at the time of the accident. But the Tribunal, under the impugned award has taken the age given in the death certificate for the purpose of assessing the compensation towards loss of pecuniary benefits by adopting multiplier method and has erroneously applied 13 multiplier instead of 11 multiplier which is the correct multiplier to be adopted for the deceased who is aged 52 years. Further, non-production of postmortem certificate of the deceased will not disentitle the respondents 1 to 3/claimants from getting the compensation since the other documents produced by them before the Tribunal clearly establishes that only due to the accident that occurred on 06.04.2007, Ramamurthy died on 13.05.2007.

c) Since 11 multiplier will have to be adopted for assessing the compensation towards loss of pecuniary benefits, the compensation awarded by the Tribunal to the respondents 1 to 3/claimants towards loss of pecuniary benefits is reduced from Rs.6,24,000/- to Rs.5,28,000/- [Rs.6000 x 12 x 11 x 2/3). Further, the compensation awarded by the Tribunal towards loss of consortium, funeral expenses and loss of estate has to be enhanced in view of the judgment of Constitution Bench of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (6) SCC 680. In the considered view of this Court, the loss of consortium is enhanced to Rs.40,000/- from Rs.15,000/-, compensation awarded towards funeral expenses is enhanced to Rs.15,000 from Rs.2,000/- and compensation awarded towards loss of estate is enhanced to Rs.15,000/- instead of Rs.10,000/-. In so far as the other heads of compensation namely loss of love & affection and medical expenses are concerned, the findings of the Tribunal are not disturbed by this Court as it is an adequate compensation.

8. In the light of the above observations, the compensation awarded by the Tribunal under the impugned award is reduced to Rs.6,39,302/-, details as follows -

Heads	Amount awarded by the Tribunal (Rs)	Amount Modified by this Court (Rs.)
Loss of Pecuniary benefits	6,24,000	5,28,000
Loss of consortium	15,000	40.000
Loss of love & affection 2 &3	20,000	20,000
Funeral expenses	2,000	15,000
Loss of estate	10,000	15,000
Medical expenses	21,302	21,302
Total	6,92,302	6,39,302

9. In the result, the impugned award dated 09.04.2011 passed in MCOP.No.247 of 2007 by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Mayiladuthurai is modified as above and the appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

10. As per the order of this Court, the appellant/insurance company had already deposited 75% of the award amount alongwith accrued interest. Hence, the appellant/insurance company is directed to deposit the balance amount, as awarded by this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants 2 & 3 are permitted to withdraw the modified award amount alongwith interest, equally among themselves, on filing appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kyl/rgr
To

1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Mayiladuthurai.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Sounthar , Advocate SR.No. 73818
+1cc to Mr. D.Bhaskaran, Advocate SR.No. 73747

A.SK(25/02/2019)