IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. Nos.1879 of 2016 & 2057 of 2016
C.M.A. No. 1879 of 2016

Royal Sundaram Alliance Insurance Company Limited,
Subramaniam Building, 2nd floor, No.1
Club House Road, Anna Salai,
Chennai 600 002. ..Appellant/2nd Respondent

Vs.

1. Easwari
2. Minor Sathya
3. Minor Mythili ... 1 to 3 Respondents/Petitioners
(minors represented by their mother And next friend Easwari)

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

(The first petitioner before the Tribunal passed away in the course of trial. Hence, the 1st petitioner before the tribunal is not shown in the cause title)

C.M.A. No. 2057 of 2016

E. Kanakkaiya (since deceased)
1. Easwari
2. Minor Sathya
3. Minor Mythili
(minors 2& 3 are represented by their Mother and next friend Mrs.Easwari)
... Appellants/Petitioners

Vs.

1. S. Vijayakumar
(R1 remained ex parte before the Tribunal, Hence, his presence may be dispensed with)

2. Royal Sundaram Alliance Insurance Company Limited,
Subramaniam Building, 2nd floor, No.1
Club House Road, Anna Salai,
Chennai 600 002. ...Respondents/Respondents

Common Prayer: Civil Miscellaneous Appeals as against the order and decree dated 04.04.2016 passed in M.C.O.P. No. 2978 of 2013 by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant in C.M.A. No. 1879/2016/2nd respondent in C.M.A. No. 2057/2016 :: Mr.S. Manohar

For Respondents 1 to 3 in C.M.A. No. 1879/2016/ Appellants 1 to 3 in C.M.A. No.2057/2016 ::Mr.F.Terry Chellaraja

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

C.M.A. No. 1879 of 2016 has been filed by the Insurance Company and C.M.A.No. 2057 of 2016 has been filed by the legal heirs of one Mr.E. Kanakkaiya, aged about 51 years, building maistry, allegedly earning about Rs.600/- per day, who sustained grievous injuries in the accident, which occurred on 11.03.2013 and subsequently died on 30.06.2013, on account of the injuries, challenging the award dated 04.04.2016 passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, in M.C.O.P. No. 2978 of 2013. While the claimants are aggrieved over the quantum of compensation awarded, the Insurance Company challenges the award on the question of both quantum and liability.

2. For the sake of convenience, the parties are referred to as Insurance Company and Claimants.

3. Mr.S. Manohar, learned counsel for the Insurance Company would submit that death of the victim was not due to the injuries arising out of the accident in question, as the victim had already sustained injuries in his left leg, even before the date of the accident on 11.03.2013, as evidenced by Ex-P3, Discharge Summary filed by the claimants. He would submit that the victim died of Septicaemia and it is not known as to whether was caused on account of previous injury or injuries sustained by him in the subject accident. Therefore, it is the contention

the learned counsel for the Insurance Company that in the absence of any proof by the claimants, death could not be attributed to the injuries sustained by the victim in the accident in question.

4.On the other hand, Mr.F. Terry Chellaraja, learned counsel for the claimants would submit that the date of accident was on 11.03.2013 and the victim was admitted in the hospital twice where he underwent surgery on 29.03.2013 and on 30.04.2013 and because of the injuries, he died on 30.06.2013. He would rely upon Exs-P2 and P3 documents and also the evidence of P.W.3, Doctor and Ex-P9, Expert Medical Opinion to prove that the victim died due to complications of septicaemia leading to irreversible shock because of the injuries sustained by him in the accident in question. Though it is stated in Ex-P3, Case Sheet that even before the accident, the victim had injuries in his left leg,the injuries sustained in the accident in question were on his right leg. He was admitted in Rajiv Gandhi Govt. General Hospital and was taking treatment from 11.03.2013 to 24.03.2013. Admittedly,the victim sustained scalp injury and deep lacerated injury to knee joint showed Grade III Compound Fracture of Right SC Femur with Quadriceps tendon rupture. The procedure done was knee spanning external fixation of the knee joint and Myoraphy was done in the hospital. Subsequently, he underwent wound debridement several times and developed infection resulting in oozing of pus from the injuries.Thereafter,again he was admitted and taking treatment in the said hospital,from 26.03.2013 to 28.03.2013 for septic encephalopachy. He underwent major surgery of AK amputation right side.He was taking treatment in the hospital from 26.03.2013 till 24.06.2013.P.W.3 Doctor deposed that due to septicaemia and irreversible shock, arising out of the accident, the victim died. There is no rebuttal evidence on the side of the Insurance Company either contradicting P.W.1 or P.W.2 or P.W.3, Expert Doctor’s evidence. When P.W.3 Doctor’s categorical evidence would prove that septicaemia and irreversible shock occurred because of the injuries sustained by the victim, necessarily, it has to be held that because of the injuries caused in the subject accident only, the victim died after three months. If the date of death had been long after the date of accident, then there would be a chance for accepting the contention of the learned counsel for the Insurance Company whereas after amputation of his right leg above knee, the victim was discharged from the hospital on 24.06.2013 and subsequently, he died on 30.06.2013, within four days. Ex-P3 Case sheet, Ex-P4, Discharge Summary and subsequent documents and evidence would correlate and confirm that death is due to the injuries sustained in the accident in question. Merely because the date of the accident was on 11.03.2013 and death was on 30.06.2013, it cannot be assumed and presumed that there is no connection between the injuries and the cause of death. As already observed, after amputation of right leg above knee, the victim was discharged from the hospital on 24.06.2013 and within four days, he died, which by itself would prove that cause of death was due to the injuries sustained. Therefore, the finding reached by the Tribunal, in this regard, is confirmed.

5. Though, originally, the victim filed the claim petition, subsequently, on his death, his legal heirs were brought on record as claimants by way of an amendment petition.

6. It is the case of the claimants before the Tribunal that the victim was working as Building Maistry earning about Rs.600/- per day, whereas the Tribunal, in the absence of any proof regarding the income of the deceased, notionally,fixed the monthly income of the deceased at Rs. 7000/- per month. The date of accident was on 11.03.2013 and the Honourable Apex Court, in the judgment rendered in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, determined the monthly income of a vegetable vendor, who sustained injuries in the accident, which occurred in the year 2008, at Rs.6500/-. Therefore, if we calculate the monthly income, taking into account the inflation index issued by the Central Board of Direct Taxes, for the purpose of classification of income, certainly, the income would be Rs.12,000/- per month. Therefore, this Court re-determines the monthly income of the victim at Rs.12,000/- instead of Rs.7000/- as fixed by the Tribunal.

7. The victim was aged about 51 years at the time of accident, as proved by Ex-P5, Death Certificate. As per the judgment of the Constitution Bench of the Honourable Apex Court, in Pranay Sethi's case (2017 ACJ 2700) 10% has to be added towards "Future Prospects" and accordingly, adding 10%, the "total monthly income" of the deceased comes to,

Monthly Income	::	Rs.12,000/-
Add: 10% towards "Future Prospects"	::	Rs.12,000/- (+) 10%(Rs.12,000/-)
	::	Rs.13,200/-

The size of the family of the deceased is three and therefore, one-third deduction has to be made towards " Personal Expenses". After one-third deduction, "the monthly contribution of the deceased to his family" would be,

Total Monthly Income	::	Rs.13,200/-
Less:1/3rd towards "Personal Expenses"	::	Rs.13,200/- (-) 1/3(Rs.13,200/-)
	::	Rs.13,200 - Rs.4,400/-
Monthly Contribution	::	Rs.8,800/-
Annual Contribution	::	Rs.8,800 x 12

The appropriate multiplier for the age of 51 years is 11. Therefore, applying the said multiplier, " Loss of Income " is arrived at Rs.11,61,600/- (Rs.8,800 x 12 x 11).

8. As far as the amounts awarded under other heads are concerned, Rs.3 lakhs awarded towards "Loss of Love and Affection" to minor claimants is on the higher side and the same is reduced to Rs.1lakh, which amount is akin to the amount awarded towards " Loss of Consortium" to the spouse. The amount awarded towards " Loss of Consortium" to the wife of the deceased/1st claimant , namely, Rs.1lakh is reduced to Rs.40,000/-, following the judgment of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700). Towards " Funeral Expenses" and " Loss of Estate" , a sum of Rs.30,000/- is awarded together.

9. As far as " Pain and Suffering" is concerned, it is not a case of instantaneous death. The victim met with the accident on 11.03.2013 and he was admitted in the hospital twice for the injuries sustained and remained in the hospital for more than 105 days and his right leg was amputated and thereafter, he died on 30.06.2013. Therefore, the sum of Rs.1 lakh awarded by the Tribunal towards " Pain and Suffering" is confirmed. No amount was awarded towards "Extra Nourishment" and a sum of Rs.50,000/- would be a reasonable amount under the said head. No amount was awarded towards "Transportation Expenses" and hence, a sum of Rs.25,000/- is awarded under the said head as the claimants would have incurred expenses for taking the victim to the hospital for his treatment and back home many times. Since the victim was hospitalized twice, had to undergo surgery and remained in the hospital as an in-patient for more than 105 days, "Attendant Charges" have to be awarded and therefore, a sum of Rs.25,000/- is granted towards the same. The total compensation payable to the claimants comes to Rs.15,31,600/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. The claimants shall pay additional court-fee for the enhanced amount, if any, within two weeks from the date of receipt of a copy of this order, failing which the enhancement made, would stand automatically deleted.

10. Out of the total compensation amount, the 1st claimant/wife would be entitled to Rs.7lakhs and the minor claimants would be entitled to the balance amount equally.

11. The Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount already deposited if any, within a period of four weeks

from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the share of the major claimant, as per the apportionment made by this Court, to her bank account, through RTGS, within a period of one week thereon. The respective shares of the minor claimants shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit, till they attain majority. The 1st claimant is permitted to withdraw the interest accruing on such deposit once in three months.

12. In the result, the Civil Miscellaneous Appeal in C.M.A. No. 1879 of 2016 filed by the Insurance Company is dismissed and the Civil Miscellaneous Appeal in C.M.A. No. 2057 of 2016 filed by the claimants is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nv

To

The II Judge,
MACT (II Court of Small Causes),
Chennai.

+1cc to M/s.M.Malar, Advocate Sr.41183
+1cc to Mr.S.Manohar, Advocate Sr.40851

C.M.A. Nos. 1879 & 2057 fo 2016

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srg 8/10/2018