IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2018

CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.1959 of 2016
and CMP.No.14232 of 2016

M/s. United India Insurance Co.Ltd.,
Salem. ... Appellant/2nd Respondent

Vs

1. Shanthi ... Petitioner/Respondent
2. Minor.Balakrishnan
S/o.Arumugam,
Minor rep.by his mother Shanthi ... 1st Respondent
3. Mani
Sri Shanmuga Transport,
Palanisamy Gounder Thottam,
Sankari, Salem - 301.
4. Gopikrishnan
5. Keerthika ... 3rd & 4th Respondents

PRAYER : Civil Miscellaneous Appeal filed against the award and decree dated 26.03.2015 made in MCOP.No.739 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.S.Arun Kumar

For Respondents : Mr.SP.Yuaraj.

J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Special District Court, Salem in MCOP. No. 739 of 2013 dated 26.03.2015, the United India Insurance Co.Ltd.,/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the award of a sum of Rs.22,55,465/- passed by the Claims Tribunal as erroneous.

2. Heard the learned counsel appearing for the appellant

and the learned counsel appearing for the respondents.

3. The brief facts of the case are as follows:-

On 13.05.2013 at about 13:00 hrs when the deceased (Arumugam) was walking on the extreme left side of the road near Priya Coffee Bar at Salem, Thiruvagoundanur Roundana with atmost care and caution, at that time, a bus bearing registration No.TN-52-C-7899 owned by the third respondent, insured with the appellant, came at high and uncontrollable speed in a rash and negligent manner without following the traffic rules hit the deceased. Due to the unexpected accident the deceased was thrown out and fell down on the road and sustained grievous injuries in the head and all over the body, he succumbed on the spot due the injuries, leaving the respondents 1,2,4 & 5/petitioners in utter stress and mental agony. Therefore it is the contention of the petitioners that the accident happened only due to the negligent driving of the bus driver and if the bus driver took little care the accident would have been avoided easily.

4. Per contra, the appellant/Insurance Company filed its counter statement stating that the deceased tried to cross the road without minding the on going bus and the driver of the bus could not be anticipated the same and caused accident. Therefore the appellant case is that the contributory negligence of the deceased should have been taken into consideration at the time of consideration of the claim. After the perusal of evidence of PW1, PW2, PW3 and RW1, Ex.P.1 to Ex.P.4 and pleadings of both the petitioners as well as the respondent, the Tribunal came to the conclusion that the negligence is on the part of the bus driver and therefore the Tribunal awarded a compensation of Rs.22,55,465/- to the legal heirs of the deceased.

5. Now the point for consideration in the present appeal filed by the Insurance Company is only on the issue of determination of quantum of compensation fixed by the Tribunal.

6. PW1 deposed that the age of the deceased/husband was 57 years and Ex.P1 and Ex.P.4 marked through PW1. Further PW1 deposed that the second respondent is her son. The respondents 4 & 5 in the present appeal are the children of the deceased husband's first wife. PW1 married the deceased only after five years of the death of the first wife of the deceased. On behalf of the petitioners before the Tribunal, PW3 eye witness was examined and he deposed that the accident occurred due to the rash and negligent driving of the bus driver and due to the said accident the deceased died on the spot. On behalf of the appellant/Insurance Company no eye witness was enquired. After the incident the Salem traffic police registered a case in Crime No.261 of 2013 and the investigation confirmed that the driver of the bus drove the bus in a rash and negligent manner.

Therefore, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the bus driver. We also agree with the findings of the Tribunal.

7. Apart from PW1's deposition, the post mortem report also marked as Ex.P.2 and in that the age of the deceased was mentioned as 57 years at the time of death. Ex.C1 is the Ex-Service Man Welfare Department letter, Ex.C2 is the Salary certificate original and Ex.C3 is the Ex-Service Man Welfare Department letter and these exhibits were marked through one Shanbagavalli (PW2), Superintendent, Ex-Service Men Welfare Department, Salem. As per the salary certificate marked through PW2, the total salary of the deceased was Rs.33,334/- per month. The Tribunal has taken the salary of the deceased rightly as Rs.33,334/- per month but they have committed error while determining the compensation with regard to the income tax deductions etc., of the deceased. Further they failed to add the future prospects of 15% as held in National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. After considering all aspects, we determine the salary per month for the deceased as stated below.

8. Since the deceased died at the age of 57 years, we add 15% towards future prospects as held by the Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. Thus 15% of Rs.33,334/- will be a sum of Rs.5,000/- is added to the salary of the deceased towards future prospects. Therefore, the income of the deceased along with future prospects will be a sum of Rs.38,334/-

Calculations are as follows:-

Gross taxable income Rs.4,60,008/- (Rs.38,334 x 12). Out of the said amount, a sum of Rs.2,00,000/- (standard deduction) is deducted. (Rs.4,60,008/- - 2,00,000/-). After the standard deduction the taxable income of the deceased will be Rs.2,60,008/-. Thereafter 10% tax will be chargeable from the income of Rs.2,60,008/- which will be a sum of Rs.26,000/-. Therefore, the loss of income after deducting the income tax amount of Rs.26,000/- to the deceased family is Rs.4,34,008/- (Rs.4,60,008 - Rs.26,000/-). From this amount, we deduct 1/4th towards personal expenses of the deceased, as the number of dependants are four in the present case, as held in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. Therefore, the loss of dependency is Rs.3,25,506/- (Rs.4,34,008 - 1,08,502). As the age of the deceased was 57 years at the time of accident, by applying the multiplier 9 as held in Sarla Varma (cited supra) the total loss of income of the deceased will be a sum of Rs.29,29,554/- (Rs.3,25,506/-x 9). Therefore we fix a sum of Rs.29,29,554/- towards loss of dependency against the sum of

Rs.20,71,629/- awarded by the Tribunal. The Tribunal awarded a sum of Rs.25,000/- towards loss of consortium. However we feel it should be increased to Rs.40,000/-. The Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra) made clear that the maximum amount of consortium cannot be awarded more than Rs.40,000/-. Therefore, we re-fix the consortium as Rs.40,000/-. Further the Tribunal awarded Rs.45,000/- towards loss of love and affection and we inclined to refix the same as Rs.75,000/- for 2^{nd} respondent/2^{nd} petitioner minor and a sum of Rs.20,000/- each to 3^{rd} and 4^{th} respondents. As no amount was awarded towards "Loss of estate" by the Tribunal, a sum of Rs.15,000/-. is fixed under that caption. Further the Tribunal had fixed Rs.25,000/- towards Funeral expenses, however as held in the National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, we inclined to re-fix a sum of Rs.15,000/- towards funeral expenses.

9. Hence the total compensation payable to the respondents 1,2,4 &5/petitioners are as follows:-

Head	Amount (Rs.)
Loss of Dependency	Rs.29,29,554/-
Loss of consortium	Rs.40,000/-
Loss of love and affection to the 2^{nd} respondent	Rs.75,000/-
Loss of love and affection to the 3 respondents	Rs.20,000/-
Loss of love and affection to the 4^{th} respondent	Rs.20,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.31,14,554/-

10. The Insurance Company is directed to deposit the entire amount, with interest and costs directly through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1, 3 & 4 are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed this Court in the ratio fixed as stated below:-

1. 1^{st} respondent Rs.13,14,554/-
2. 2^{nd} respondent Rs.8,00,000/-
3. 3^{rd} respondent Rs.5,00,000/-

4. 4^{th} respondent Rs.5,00,000/-.

The share in respect of the second respondent who is minor, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till minor attain majority. The 1^{st} respondent being the mother of the second respondent is permitted to withdraw the quarterly interest from the said deposit. The respondents are directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

11. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.22,55,465/- is enhanced to Rs.31,14,554/-. The said amount shall carry the same rate of interest as awarded by the Tribunal namely 7.5% per annum and the apportionment shall be as ordered by this Court. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

dpq

To
The Motor Accidents Claims Tribunal,
Special District Court, Salem

+1cc to Mr.S.ARUNKUMAR, Advocate, S.R.No.39211
+1cc to Mr.SP.YUARAJ, Advocate, S.R.No. 39350

C.M.A.No.1959 of 2016
and CMP.No.14232 of 2016

RK(CO)
TR(23/08/2018)