IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A. Nos. 2445 and 2446 of 2015
and CMP.Nos.1 of 2015

M/s.United India Insurance C.Ltd.,
K.M.S.Complex No. 1019,
Salem Main Road, Atthur,
Salem-641002. Appellant/2nd Respondent

Vs.

1.S.Murugesan
2.M.Jayalakshmi ..Respondents in CMA.2445 of 2015/ petitioners in MCOP.NO.374/12

1.S.B.Mohan Ram
2.Rajalakshmi Jacob ..Respondents in CMA.2446 of 2015/ petitioners IN mcop no.375/12

3.V.Raghuraman .. 3rd respondent in both CMAs/ 1st Respondent in MCOP.NO.374&375/12

Prayer in CM.A.No. 2445 of 2015: Civil Miscellaneous Appeal is filed against the award and decree dated 16.02.2015 made in MCOP. No.374 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

Prayer in CM.A.No. 2446 of 2015: Civil Miscellaneous Appeal is filed against the award and decree dated 16.02.2015 made in MCOP. No.375 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellants (in both CMAs) : Mr.S.Arun Kumar

For Respondent 1to 4 (in both CMAs) : Mr.V.Raghupathi

COMMON JUDGMENT

(Judgement of this Court made by R.Pongiappan.J)

Aggrieved over the common award passed by the Motor Accidents Claims Tribunal/Principal District Judge, Perambalur dated 16.02.2015 in MCOP. Nos. 374/12 & 375/12, the appellant herein M/s. United India Insurance Company, who is the second respondent in the above said claim petitions has filed the above appeals.

2. On going through the manner of the accident that happend on 09.05.2012 at about 4 pm, the deceased Niroopa concerned in MCOP. No. 374 of 2012 travelled in a car which was driven by her husband namely Dhanasekaran concerned in MCOP. No.375 of 2012 on Chennai-Trichy main road from north to south on the extreme left side of the road. When they were proceeding near Valikandapuram Karuppusamy Kovil, a Mahindra Van bearing registration No. TN31-V-7156 belonging to the first respondent and insured with the second respondent was proceeding on the above said road from south to north which was driven by its driver in a rash and negligent manner with hectic speed without sounding horn and without observing the traffic rules came to the right side and dashed against the car as a result of which, both Niroopa and her husband Dhanasekaran sustained fatal injuries all over the bodies and died at the spot itself.

3. According to the case of the respondents/claimants in both C.MAs, the accident had happened purely due to the rashness and negligence of the driver who is the 5th respondent herein, agaisnt whom the Mangalamedu Police have registered a case in Crime No. 222 of 2012 under Sections 279, 337 and 304(A) IPC.

4. After the said accident, the legal heirs, who are the parents of Niroopa have filed a claim petition in MCOP. No.374 of 2012. In the same way, the parents of the deceased M. Dhanasekaran have filed a claim petition which was taken on file by the Tribunal in MCOP. No. 375 of 2012. During pendency of the proceedings, the 2nd petitoner in MCOP. No. 375 of 2012 namely M. Krishnakumari, who is the mother of the deceased M.Dhanasekaran died. So, Rajalakshmi Jackob, who is the legal heir of the said M.Krishnakumari was added as third petitioner in the said MCOP.

5. In the Tribunal, since two claim petitions are arising out of the same accident, the counsels appearing for the claimants in the claim petitions have filed a Memo

for joint trial, upon which, the tribunal also permitted for joint trial. After examining three witnesses on the side of the petitioners and after marking exhibits P1 to P7, the tribunal awarded a sum of Rs.21,80,000/- infavour of the petitioners in MCOP. No. 374 of 2012. In the sme way, the tribunal has awarded a sum Rs.13,12,000/- as a compensation to the petitioners in MCOP. No. 375 of 2012.

6. Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant and Mr.V.Raghupathi, learned counsel appearing for respondents 1 to 4 herein.

7. Today when the matter was taken up for hearing Mr.S.Arunkumar, learned counsel appearing for appellent submitted that in the absence of acceptable evidence, the claims tribunal merely based on the oral evidence, erroneously awarded Rs.21,80,000/- and Rs.13,12,000/- respectively. He fairly stated that he has no grievannce with regard to fixing of liabilIty by the tribunal.

8. On the other hand Mr.V.Raghupathi, learned counsel appearing for the respondents 1 & 2 in both CMAs has submitted that the deceased in both applications were of the age of 29 years and 31 years respectively. Further the deceased in MCOP. No. 374 of 2012 had completed M.Phil Degree. That apart, she has got first class Degree in Computer Science and got very good academic career and good physique.

9. He has further submitted that the deceased in MCOP. No. 375 of 2012 was having spinning mill of his own at Madurai and earned not less that Rs.30,000/- per month and contributed to his family consisting of himself, his wife and parents, thereby, he pleaded that there is no interference necessary for the award passed by the claims tribunal.

10. In the light of the above submissions made, the following points are raised for consideration.

> Whether the income derived by the deceased, future prospects, deduction of personal and living expeses which were taken into account for determining the award amount are correct or not.

CMA. No. 2445 of 2017

11. In the award passed by the tribunal on considering Ex.P4 and Ex.P7 which are the B.Sc Degree Certificate in Computer Science obtained by the deceased Niroopa issued by

the Madurai Kamarajar University and the consolidated mark sheet obained in M.Sc(Computer Science) and other documents relating to the educational certificates, which were marked as Exhibits P9 to P11 and on evidence given by PW1 Murugesan, the notional income of the deceased Niroopa was fixed at Rs.10,000/- per month. We also confirm the view taken by the tribunal and fix the monthly income of the deceased at Rs.10,000/-.

12. Now on considering the future prospects, it is necessay to rely on the judgment of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12, in which, it was observed that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be added where the deceased was below the age of 40 years.

13. On going through the award passed by the Tribunal, it is seen that only one third of income was deducted for calculating the claim. In this aspect, the deceased being a daughter of the respondents 1 & 2 herein and she having no issues, we come to the conclusion that it is necessary to deduct 50% of the total income for fixing the compensation as per the Judgment of the Hon'ble Apex Court in the case of Sarala Verma and Others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 passed in Civil Appeal No. 3483 of 2008, Dated 15.04.2009.

14. Secondly, with regard to the multiplier, it is necessary to see the judgment (supra), in which it was held that if the age group of the deceased is 25 to 30 years, the appropriate multiplier to be adopted is 17. In this case also, as per Exhibit P2, post-mortem certificate, the age of the deceased is 29 years.

15. Finally, with regard to the conventional heads, the Hon'ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12 held that an additional amount of Rs.30,000/- should be added towards the loss of estate (Rs.15,000/-) and Funeral expenses (Rs.15,000/-).

16. Accordingly, we decide that the annual income of the deceased would be Rs.1,20,000/- (10000 x 12). Adding a component of 40% for future prospects, the income would stand at Rs.1,68,000/-. Deducting 50% towards personal expenses, the loss of dependency per annum works out to Rs. 84,000/-. Applying a multiplier of 17, the total loss of dependency would work out to Rs.14,28,000/-. Further, this

Court added an additional amount of Rs.30,000/- as per the decision of the Hon'ble Apex Court as stated supra i.e on account of the conventional heads of loss of estate (Rs.15,000/-) and funeral expenses (Rs.15,000/-). In this claim petition, the petitioners being parents, had lost the love and affection of their daughter. So, we decide to award Rs,50,000/- towards loss of love and affection.

The total compensation payable to the claimants is as hereunder:

Loss of dependency	:	Rs.14,28,000/-
Los of Estate	:	Rs. 15,000/-
Funeral Expenses	:	Rs. 15,000/-
Loss of love and affection	:	Rs. 50,000/-
Total Compensation	:	Rs.15,08,000/-

17. Hence, the award of Rs.21,80,000/- granted by the Tribunal in MCOP. No.374 of 2012 is reduced to Rs.15,08,000/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namley, 7.5% per annum and the apportionment shall be as ordered by the Tribunal.

CMA. No. 2446 of 2017

18. In the award passed by the tribunal on considering Ex.P16 & Ex.P 17 which are the B.Sc Degree Provisional Certificate and B.Sc. (I.T) Statement of Marks of the deceased Dhanasekaran and other documents relating to the educational certificates and on the evidence given by PW2 Mohanram, the father of the deceased Dhanaseakran, the notional income of the deceaseed Dhanasekaran was fixed at Rs.6,000/-. We also affirm the view taken by the tribunal and fix the monthly income of the deceased at Rs.6,000/-.

19. Now on considering the future prospects, it is necessay to rely on the judgment of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12, in which, it was observed that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years.

20. On going through the award passed by the tribunal, it is seen that only one third of income was deducted for calculating the claim. In this case, the deceased being the son of the respondents 3 & 4 herein and he having no issues, we come to the conclusion that, it is necessary to deduct 50% of the total income for fixing the compensation as per the Judgment of the Hon'ble Apex Court in the case

of Sarala Verma and Others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, passed in Civil Appeal No. 3483 of 2008, Dated 15.04.2009.

21. Secondly, with regard to the multiplier, it is necessary to see the judgment (Supra) in which it was held that, if the age group of the deceased is 31 to 35 years, the apprpriate multiplier is 16. In this case also, as per the Exhibit P.12 - post-mortem certificate, the age of the deceased is 32 years.

22. Finally, with regard to the conventional heads, the Hon'ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12 held that the additional amount of Rs.30,000/- should be added towards the loss of estate (Rs.15,000/-) and Funeral expenses (Rs.15,000/-).

23. Accordingly, we decide that the annual income of the deceased would be Rs. 72,000/- (6000 x 12). Adding a component of 40% for future prospects, the income would stand at Rs.1,00,800/-. Deducting 50% towards personal expenses, the loss of dependency per annum works out to Rs. 50,400/-. Applying a multiplier of 16, the total loss of dependency would work out to Rs.8,06,400/-. Further, this Court added an additional amount of Rs.30,000/- as per the decision of the Hon'ble Apex Court as stated supra i.e on account of the conventional heads (i.e,) loss of estate (Rs.15,000/-) and funeral expenses (Rs.15,000/-). Further we decid to add Rs.40,000/- towards loss of love and affection.

The total compensation payable to the claimants is as hereunder:

Loss of dependency	:	Rs.	8,06,400/-
Los of Estate	:	Rs.	15,000/-
Funeral Expenses	:	Rs.	15,000/-
Loss of love and affection	:	Rs.	40,000/-
Total Compensation	:	Rs.	8,76,400/-

24. Hence, the award of Rs.13,12,000/- granted by the Tribunal in MCOP. No.375 of 2012 is reduced to Rs.8,76,400/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namley, 7.5% per annum and the apportionment shall be as ordered by the Tribunal.

25. Both Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected Miscelleneous Petitions are closed.

26. Accordingly, the appellant/Insurance Company is directed to deposit the entire award amounts, inrespect of above two Appeals as per the modified award passed by this Court, with interest and costs, before 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 Tribunal is directed to transfer the respective shares of respective claimants to thier bank accounts thro' RTGS within one week thereon.

Sd/-/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
The Motor Accidents Claims Tribunal
Principal District Judge, Perambalur

COPY TO
The section officer,
VR Section,
High court
Madras

C.M.A. Nos. 2445 and 2446 of 2015
and CMP.Nos.1 of 2015

ASK(22/10/2018)