IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|---|---|
| Reserved on | 14.12.2017 |
| Pronounced on | 28.04.2018 |

C O R A M

THE HONOURABLE MRS.JUSTICE S.VIMALA
&
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2362 of 2016

The Branch Manager,
United India Insurance Co. Ltd.,
No.29-C, I Floor, C.N.A.Road,
Khaderpet, Vaniyambadi 635 753 ...Appellant/4th Respondent

Vs

1. Kumar
2. Kantha
3. Nivya
4. K.Vasu
5. Dhanalakshmi
6. S.M.Babu ..Respondents/petitioners and Respondents 1 to 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 31.7.2015 made in M.C.O.P.No.113 of 2014 on the file of the Motor Accidents Claims Tribunal, District Judge, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents 1,4,5 & 6 : No appearance

For Respondents 2 & 3 : Mr.Mukund R.Pandiyan,



JUDGMENT

S.RAMATHILAGAM, J.

This Civil Miscellaneous Appeal has been preferred by the appellant Insurance Company against the award made in MCOP.No.113 of 2014 on the file of the Motor Vehicles Accident Claims Tribunal, District Judge, Krishnagiri dated 31.7.2015.

2. The brief facts of the claim petition is as follows;

(i) On 27.12.2013 at 1.15 hours, the deceased Madhusudhanan was travelling in a car bearing registration No.TN-21-J-7971, belonging to one Vickraman, who is the son of respondents 2 and 3, along with others, along Dharmapuri to Bommidi Main Road. The said car was insured with the 4th respondent and was driven by its driver-cum owner, the said Vickraman, in a rash and negligent manner. When the said car was proceeding near Joliyur, it dashed against the high way bridge diversion signal and caused the accident. Due to the accident, deceased Madhusudhanan and others sustained grievous injuries. Immediately he was taken to hospital for initial treatment and thereafter to Salem Manipal Hospital for further treatment, where, he succumbed to injuries. The said vickraman, who is the owner cum driver of the car also died in the accident.

(ii) A claim petition was filed before the Motor Accidents Claims Tribunal (Special District Judge Tribunal) Krishnagiri by the claimants 1 to 3, who are father, mother and unmarried sister of the deceased respectively against the respondents 1 to 4 stating that the accident had occurred only due to the rash and negligent driving of the owner cum driver of the said car and a case has also been registered against him. The 1st respondent is the previous owner of the car. The mother and father who are the legal heirs of the driver cum owner of the car are 2nd and 3rd respondents respectively , the 4th respondent is the insurer of the car.

(iii) It was contended in the claim petition that the deceased Madhusudhanan was 22 years and hale and healthy at the time of the accident and he was an Engineering graduate and was working in D.P. Motors as a Mahendra Two Wheeler Authorised dealer at chennai-47 and was earning Rs.1,74,000/- per annum. Due to the death of the deceased, the whole future of the 3rd claimant/sister of the deceased was lost and shattered. The deceased was young and he had a bright future prospects in his life. They claimed compensation to the tune of Rs.70,00,000/-.

(iv) Resisting the same, a counter was filed by the 4th respondent Insurance Company disputing the age, avocation and income of the deceased.

(v) On the side of the claimants, the 1st claimant examined himself as PW1, Thiru.Pugazhenthi and one Chandrasekar were examined as PW2 and PW3 respectively and marked Ex.P.1 to P.8 as documents. On the side of the respondents, neither a witness nor a document has been examined or marked.

3.The Tribunal after assessing the evidence and documents placed before it, and also verifying the fact that the deceased was an Engineering graduate, has fixed the monthly income at Rs.14,500/- and quantified the compensation on other heads and awarded a sum of Rs.33,72,000/- as total compensation. The break up details are tabulated as under;

| | Rs. |
|---|---|
| Future loss of income | 31,32,000/- |
| Loss of love and affection to petitioners 1 and 2 | 2,00,000/- |
| Funeral expenses | 30,000/- |
| Transport to hospital | 10,000/- |
| Total | 33,72,000/- |

4. The above said amount is directed to be jointly and severally paid by 2nd and 4th respondents along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation and out of the award amount, 1st and 2nd claimants are entitled to get Rs.15,00,000/- each and the 3rd claimant is entitled to get Rs.3,72,000/- with accrued interest thereon.

5. Aggrieved against the award passed by the tribunal, the Insurance Company as appellant, has preferred the present appeal challenging the quantum of compensation awarded.

6. In its appeal, the appellant Insurance Company raised the following grounds;

(a) the tribunal has erroneously awarded huge compensation of Rs.33,72,000/- based on surmises and conjectures;

(b) the tribunal failed to properly consider Ex.P.5-appointment order issued to the deceased, wherein, it was stated that the probation period is extendably, employment is at discretion of the employer, increment and promotion is not assured .

(c) the tribunal has grossly erred in not appreciating the evidence of PW3 during his cross examination who stated that the deceased was under probation period and employment cannot be construed as permanent and has granted exorbitant under the head future prospectus.

(d) Contrary to the amount awarded in the case of Rajesh Vs. Rajbir Singh, the tribunal erred in granting Rs.2,00,000/- towards loss of love and affection;



7. Learned counsel for the appellant Insurance Company would argue that as per Ex.P.5-appointment order, the deceased was a probationer at the time of the accident and the period of probation is expendable while increment and promotion are not assured, hence consideration of 50% is not a proper one. He would further contend that the amount of Rs.2,00,000/- awarded under the head 'loss of love and affection' is excessive in the light of reported judgment of the Apex Court in Rajesh Vs.

Rajbir Singh (2013 SCC 54) and on the whole, the compensation awarded by the claim tribunal is exorbitant and excessive, thus he prayed for reduction of the compensation awarded.

8. Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant/Insurance Company and perused the entire materials available on record.

9. The points for consideration in this appeal are as follows;

(i) whether the loss of income as determined by the Tribunal by considering the probationary period of the deceased is proper one?

(ii) whether the compensation awarded under loss of love and affection contrary to the judgment of Rajesh Vs. Rajbir Singh (2013 SCC 54) is correct?

10. It is seen that the deceased at the time of accident was 22 years and he has claimed a sum of Rs.70,00,000/- as compensation. The 1st respondent who was mentioned as previous owner has sold the Maruti Alto Car to one Vickraman and the registration certificate also stands in his name. The date of registration certificate was on 12.6.2013 and the date of accident was on 27.12.2013. The averment of the appellant is that he is not the owner of the said car on the date of accident, but the Insurance certificate has not been transferred and it is in the name of the 1st respondent. Apart from this, the appellant also denies the alleged accident on the part of the driver and also denying the age, income and entitlement of the deceased for claiming compensation. The Insurance company/appellant in their counter before the MCOP has stated that the driver was driving the vehicle slowly and carefully and when he was nearing Joliyur, one unknown heavy vehicle came on the opposite direction of the car with bright light and on seeing that, the driver of the car turned the same to avoid accident against the oncoming vehicle and hit against the right side bridge and caused the accident.

11. This appellant also denies the age, occupation and income of the deceased and also the amount claimed by the petitioner as excessive and exaggerated one.

12. The tribunal after analysing the evidence placed by both sides and also the documents filed by both sides, based on the evidence of PW2 -eye witness and in the light of Ex.P.1 FIR, fixed the liability on the driver of the car bearing Registration No. TN-21-J-7971 and on perusal of the documents and evidence of the witnesses on the side of the claimants

regarding occupation and income of the deceased, the tribunal has assessed his income based on Ex.P.5 and also by applying multiplier to his age, group, awarded a sum of Rs.33,72,000/- towards future loss of income.

| | Rs. |
|---|---|
| Future loss of income | 31,32,000/- |
| Loss of love and affection to petitioners 1 and 2 | 2,00,000/- |
| Funeral expenses | 30,000/- |
| Transport to hospital | 10,000/- |
| Total | 33,72,000/- |

13. It is the main contention of the learned counsel for the appellant that the deceased was only a probationer at the time of accident and hence his increment and promotion is not assured at that time and so the future prospects also could not have been considered. It is his further contention that the amount awarded under the head loss of love and affection is contrary to the decision of the Apex Court reported in Rajesh Vs. Rajbir Singh.

14. On a perusal of records, it is observed that the deceased was working as a Supervisor and his last drawn salary was Rs.17,500/- and it is the evidence of P.W.3, who is the sales executive of employer of the deceased that if the deceased continued in service in the company, he could have been promoted and his salary would be Rs.30,000/- to Rs.35,000/- per month.

15. The arguments of the appellant is that based on Ex.P.5- appointment order, the deceased was only a probationer at the time of accident. Hence the increment and promotion are not assured. Therefore addition of 50% towards future prospects, while determining the compensation is not a proper one.

16. It is seen that that Ex.P.5 appointment order issued to the deceased reveals the amount of income and also the future prospects in column 6 after one year of experience. While considering the income of the deceased who is an Engineering Graduate of 21 years, as per Ex.P.5, there cannot be any contrary view for calculating the future prospects at 50%. A person of 21 years with educational qualification will definitely earn more and we cannot always view on the negative side by arguing that it is only probationary period. The uncertainty is always there for every person. Hence

probationary period cannot be the factor declining future prospects.

***   17. In the case of  Rajesh vs. Rajbir Singh in 2013 9 SCC 54, it is held as as follows :-**

**"Ïn the case of self-employed persons or persons with fixed wages, where the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects.**

**Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years".**

**Therefore, the compensation arrived by the Tribunal in calculating the future prospects for the deceased person who is an Engineering graduate is quite reasonable one.**

**18. It is seen from the compensation quantified by the Tribunal that no amount has been deducted towards the personal expenses of the deceased, though the monthly income has been quantified at Rs.14,500/-. As per the ratio laid down by the Supreme Court in Sarla Verma and others versus Delhi Transport Corporation and another case, 50% ought to be deducted towards the personal expenses of the deceased. Further, as per the ratio laid down in Rajesh case (supra), an addition of 40% needs to be made towards the future prospective increase in income of the deceased. Accordingly, while the income of the deceased is fixed at Rs.14,500/-, after deducting 50% towards personal expenses and adding 40% towards future prospective increase in income of the deceased, the monthly loss of income to the family is fixed at Rs.10,150/=. Accordingly, adopting the multiplier of 18, the loss of dependency is quantified at Rs.21,92,400/= (Rs.14,500/2 X 40% X 12 X 18 = Rs.21,92,400/=).**

**19. It appears that the amount awarded towards funeral expenses in a sum of Rs.30,000/- is on the higher side. This Court feels that a sum of Rs.15,000/- towards funeral expenses would be a just and reasonable compensation. The compensation of Rs.10,000/- awarded towards transportation expenses is just and reasonable**

and, therefore, no interference is called for with the said compensation.

20. Regarding loss of love and affection, the tribunal has awarded a sum of Rs.2,00,000/- which seems to be appropriate and the same is confirmed.

21. Accordingly, the compensation is modified as hereunder :-

Rs.

| | |
|---|---|
| Future loss of income (Rs.14,500/2 X 40% X12 X 18) | 21,92,400/- |
| Loss of love and affection | 2,00,000/- |
| Funeral expenses | 15,000/- |
| Transport to hospital | 10,000/- |
| Total | 24,17,400/- |

22. The compensation awarded by the Tribunal is reduced from Rs.33,72,000/- to Rs.24,17,400/- together with interest as awarded by the Tribunal.

23. In fine,
a) the Civil Miscellaneous appeal is partly allowed.

b) The compensation awarded by the Tribunal is reduced from Rs.33,72,000/- to Rs.24,17,400/- with interest as awarded by the Tribunal along with proportionate costs.

c) The appellant Insurance Company is directed to deposit the compensation awarded by this Court together with interest awarded by the Tribunal along with proportionate costs after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment.

d) On such deposit being made, the respondents 1 and 2/ parents of the deceased are entitled to a sum of Rs. 11,00,000/- each along with accrued interest and the 3rd respondent / sister of the deceased is entitled to a sum of Rs.2,17,400/- along with accrued interest. The tribunal is directed to transfer the said sums to the savings Bank Accounts of the claimants, through RTGS.

Consequently, the connected C.M.P. No.16475 of 2016 is closed. No costs.

Sd/-
Assistant Registrar(CS-VII)
24.05.2018

***Amended and Substituted as per order of this Court dated 30.07.2018 and made herein**
**-s/d-**
**Assistant Registrar(CS VII)**
**Dated 26.10.2018**

//True Copy//

Sub Assistant Registrar

msr

To

1. The District Judge,
   Motor Accidents Claims Tribunal,
   Krishnagiri.

**Amended order to be Substituted to the order Already despatched on 14.06.2018**

+1cc to Mr.S.ARUNKUMAR,Advocate,S.R.No.32668

+1cc to Mr.Mukund R.Pandiyan, Advocate in Sr.No.52351

C.M.A.No.2362 of 2016

NM(CO)
TR(04/06/2018)
CS/26/10/2018