THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM :

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

C.M.A. No. 2571 of 2016
and CMP.Nos.18434 of 2016 and 9660 of 2017

Cholamandalam MS General Insurance Company Limited
Wajeeva Corporate Centre,
3rd Floor, No.1, Village Road,
Nungambakkam, Chennai-600 034. ..Appellant

Vs.

1.S.Rathinakumari
2.A.Elizabeth
3.S.Immanuel (Minor)
4.S.Beulah (Minor)
(Respondents 3 &4 Minors Rept.
By Mother & NF 1st respondent)

5.D.Prasanna Kumar ..Respondents

Prayer: Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 16.03.2016 made in MCOP. No. 5436 of 2013 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan
For Respondents 1 to 4 : Mr.A.A.Venkatesan

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

Aggrieved over the award passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in MCOP. No. 5436 of 2013 dated 16.03.2016, the Insurance Company/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the award and for other reliefs.

2. In the claims tribunal, the respondents 1 to 4 herein have filed the claim petition under Section 166 of Motor Vehicles Act and Rules 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.30,00,000/- for the death of

A.Samson, who is the husband of the first respondent, son of the 2nd respondent and father of the 3rd & 4th respondents. After elaborate enquiry, the claims tribunal awarded a sum of RS,22,75,000/- as total compensation to the respondents 1 to 4 herein.

3. Today, we heard the arguments advanced by Mr.M.B.Raghavan, learned counsel appearing for the appellant and Mr.A.A.Venkatesan, learned counsel appearing for the respondents 1to 4.

4. The claims tribunal after elaborate enquiry came to the conclusion that the alleged accident had happened only due to the rash and negligent act of the above said offending vehicle driver. According to the submissions made by the learned counsel appearing for the appellant, he did not dispute the findings of the Tribunal with regard to the negligence of the driver of the lorry bearing registration no. TN 18 H 0983, who drove the offending vehicle insured with them. The only submission of the learned counsel appearing for the appellant is with regard to the quantum.

5. In the said circumstances, in order to determine the just compensation, we have to consider the following factors for arriving a just compensation.

i. Monthly income of the deceased, ii. Future Prospects, iii. Annual dependency, 4. Multiplier to be adopted for calculating pecuniary loss and other compensation under the conventional heads.

6. With regard to the monthly notional income, the trial Court has fixed Rs.10,000/- as notional income. Now on going through the materials submitted by the claimants in the Claims Tribunal to show the income of the deceased, it appears that during the time of trial, the first petitioner in the claim application deposed that the deceased was working as coolie by doing steel polishing work under PW3, who is the employer to the deceased and earned Rs.15,000/- per month. Further, he deposed that entire amount was contributed to the family. Moreover, PW3 namely A.Srinivasan deposed that for the past 15 years, the deceased was working under him and earned Rs,15,000/- per month. In order to dispute the said evidence, no contra evidence has been put forth by the respondents. However in order to prove the said evidence, no documents were marked on the side of the petitioner to show the income.

7. In the said circumstances, considering the nature of coolie work done by the deceased, the trial Court has determined the monthly income of the deceased as Rs.10,000/-. We also considered the said fact and other circumstances and the

prevailing circumstances in and around the work of the deceased and confirm the finding arrived by the Claims Tribunal and fix Rs.10,000/- per month as notional income of the deceased.

8. Secondly, in order to calculate the future prospects, the Claims Tribunal added 50% of the income towards future prospects and calculated the loss of dependency. Now, it is necessary to refer the judgement 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, the Hon'ble Apex Court has held that if 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. On going through the evidence given by the PW1/wife of the deceased before the Claims Tribunal, the deceased was aged about 39 years. Further, PW3/owner of the deceased also deposed that the deceased was working as Coolie, thereby considering the above said circumstances, we hold only 40% of monthly income can be added for future prospects as per the above said judgment.

9. Further, in order to calculate the personal and living expenses, the Tribunal decided to deduct one third of the total annual income, which is incorrect. With regard to this aspect, the Hon'ble Apex Court in the case of Sarla Verma and Others Vs. Delhi Transport Corporation and another passed in Civil Appeal No. 3483 of 2008 Dated 15.04.2009, has observed that if dependants are 4 to 6, one fourth of the total income to be deducted towards the personal and living expenses of the deceased. Accordingly, we decided to deduct one fourth of the total annual income for calculating personal and living expenses.

10. Now, with regard to the multiplier, the Tribunal took multiplier 15 for calculating the loss of dependency. In this occasion also, it is necessary to refer the judgment of the Hon'ble Apex Court (stated supra), in which the Hon'ble Apex Court has held that if a person is having the age of 36 to 40 years, the multiplier of 15 has to be taken into account for calculating loss of dependency. In this case also, as per Exhibit P2, post-mortem certificate, the age of the deceased is 39. Accordingly, we confirm the multiplier taken by the Claims Tribunal for calculating loss of dependency.

11. Now coming to the conventional heads, our Hon'ble Apex Court in the judgment of Pranay Sethi's case (supra), held that after calculating the loss of dependency, addition of Rs.70,000/- would be required to be added on account of conventional heads of loss of estate (Rs.15,000/-), loss of consortium (Rs.40,000/-) and funeral expenses (Rs.15,000/-). We also confirm the same amount towards the conventional heads.

12. Accordingly, we have decided 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 an amount of one fourth towards personal expenses, the loss of dependency per annum works out to Rs.1,26,000/-. Applying a multiplier of 15, the total loss of dependency would work out to Rs.18,90,000/-. Further, this Court added an additional amount of Rs.70,000/- 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/-), loss of consortium (Rs.40,000/-) and funeral expenses (Rs.15,000/-). Further on going through the particulars available from the claim application, at the time of the death of deceased, the deceased was having two children, aged about 11 years and 8 years respectively. Further, his mother namely A.Elizabeth is also alive in the age of 58 years. Losing the parental care and losing the affection of son is also akin to loss of consortium. So, it is desirable to award Rs.1,20,000/- to the respondents 2 to 4 for losing love and affection.

Hence, total compensation payable to the claimants is as hereunder:

i.	Loss of dependency	:	Rs.18,90,000/-
ii.	Los of Estate	:	Rs. 15,000/-
iii.	Loss of Consortium	:	Rs. 40,000/-
iv.	Funeral Expenses	:	Rs. 15,000/-
v.	Loss of Love and Affection by the respondents 2 to 4 herein .	:	Rs. 1,20,000/-
	Total Compensation	:	Rs.20,80,000/-

Out of the above said total compensation of Rs.20,80,000/-, this Court permits the respondents to with draw their shares as follows;

1st respondent being the wife of the deceased is permitted to withdraw Rs. 9,00,000/-

2nd respondent being the mother of the deceased is permitted to withdraw Rs.1,80,000/-

3rd & 4th respondents being minor children of the deceased are entitled for Rs.5,00,000/- each.

13. Since the appellant Insurance Company has already deposited a part of amount of Rs.14,02,526/- to the credit of MCOP. No. 5436 of 2013, this Court directs the appellant Insurance Company to deposit the remaining balance amount of Rs.6,77,474/- with interest, before the Tribunal, 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 & 2 are

permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed by this Court, in the ratio as fixed above, within a period of two weeks from the date of receipt of a copy of this order. The shares of the respondents 3 & 4, who are minors, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till they attain majority. Further the 1st respondent being the mother of the respondents 3 & 4, she is permitted to take quarterly interest in the fixed deposit made thereon.

14. In the result, the Civil Miscellenous Petition is partly allowed and the award granted by the Tribunal to the tune of Rs.22,75,000/- is reduced to Rs.20,80,000/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namley, 7.5% per annum.

Consequently, the connected Miscellenous Peitions is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

2. The Section Officer,
VR Section, High court,
Madras.(2 Copies)

+1cc to Mr.M.B.Gopalan, Advocate SR.No.26891
+1cc to Mr.A.A.Venkatesan, Advocate SR.No.26165

C.M.A. No. 2571 of 2016
and CMP.Nos.18434 of 2016
and 9660 of 2017

NMI(CO)
GN(10/08/2018)