IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Civil Miscellaneous Appeal No.242 of 2018 in
Civil Miscellaneous petition No.2664 of 2018

The Oriental Insurance Company Limited,
No.216, Prakasam Salai, Broad way,
Chennai - 600 108. ....Appellant/Respondent 2

.Vs.

1. M.Shanthi

2. A.V.Muthu ..R1 and R2 /Petitioners

3. G.S.Varadharajan .. R3 /1st respondent.

Prayer :Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act-1988 to set aside the decree and Judgment dated 21st day of September, 2017 made in M.C.O.P.No.7219 of 2013, on the file of Motor Accident Claims Tribunal (Special Sub Court No.1, to deal with M.C.O.P. Cases) Small Causes Court of Madras.

For Appellant : Mr.S.Manohar

For Respondents: Mr.K.Suryanarayanan for R1 and R2.

J U D G M E N T

By consent of both sides, the main appeal itself is taken up for final disposal at the admission stage. The appellant/Insurance company has preferred this Appeal filed against the order and decree dated 21st day of September, 2017 made in M.C.O.P.No.7219 of 2013, on the file of Motor Accident Claims Tribunal (Special Sub Court No.1, to deal with M.C.O.P. Cases) Small Causes Court of Madras.

2.For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal. The case of the petitioners is that on 21.07.2013 at about 18:30 hours, when the deceased Annadurai was travelling as a pillion rider in the two wheeler bearing registration No.TN-49-AM-2010 which was proceeding in Ariyalur to Trichy Main road, near Marudhai river bridge as the rider of the vehicle was riding the vehicle at high speed in a rash and negligent manner, the deceased Annadurai fell down on the left side of the road and died on the spot itself. The accident occurred due to the negligent driving of the rider of the said motor bike. At the time of accident the deceased was aged about 20 years and he was earning about Rs.15000/-per month by working as a Pump Operator in Kathirvel Enterprises, dealer of Indian Oil Corporation, Chennai. The petitioners who are the parents of the deceased were depending on the income of the son who died in the accident and hence they are seeking a compensation of Rs.20,00,000/- from the owner and the insurer of the vehicle.

3. On the other hand by filing counter, the 2nd respondent/Oriental Insurance company contends that the claim of the petitioners about the manner in which the accident took place is not correct. The claim of the petitioners about the age, avocation and income of the deceased is denied. The compensation claim of the petitioners is exorbitant. Hence, the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.W.1 and produced documents Ex.P.1 to Ex.P.12 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let it in. On the basis of evidence available on record, the Tribunal concluded that the negligence of the first respondent rider is the cause for the accident and awarded a sum of Rs.19,45,000/- as compensation to the petitioners/claimants.

5. Aggrieved over the said finding of the Tribunal, the second respondent /Insurance company has come forward with the present appeal.

6. The learned counsel for the appellant/second respondent/Insurance company contends that the tribunal erred in fixing the income of the deceased at Rs.10,000/- without any basis. Similarly it erred in fixing 50% of the income towards future prospectus. The tribunal ought to have taken a notional income of Rs.6500/- and ought to have added 40% towards future prospectus. The tribunal awarded huge amount under different heads and the same is not proper. The tribunal erred in awarding amount under various heads. Hence the appellant/second respondent/Insurance company seeks to set aside the award passed by the Tribunal by allowing this appeal.

7. Per Contra, the learned counsel for the petitioners/claimants contends that the Tribunal rightly awarded just and fair compensation and the same needs no inference. Hence, the petitioners sought for dismissal of the appeal.

8. According to P.W.1/2nd petitioner, the deceased was travelling as a pillion rider in the two wheeler bearing Reg.No.TN-49-AM-2010 and due to rash and negligent riding of the motorcycle by its rider Kanagaraj, the accident occurred. The Tribunal, on the basis of oral evidence of P.W.1 as well as contents of Ex.P.-1 FIR, Ex.P.2-Copy of the Rough Sketch, Ex.P.3-Copy of Charge sheet registered against the rider of the motorbike, held that due to rash and negligent driving of the rider of the motorcycle alone, the accident occurred. It is also pointed out that the owner of the motorcycle has not given complaint about the accident and 1st respondent has not filed any documentary evidence to prove that the deceased has driven the motorcycle on the date of accident and also 1st respondent has not filed any documentary evidence to prove that the rider of the motor cycle was not having valid driving licence on the date of accident. The said conclusion arrived at by the Tribunal is just and proper and hence, the same is confirmed.

9. The petitioners/claimants contend that the deceased Annadurai was aged about 20 years and earning Rs.500/- per day by working as a Pump operator in a Private petrol dealer establishment. The petitioners produced Death Certificate of said Annadurai as Ex.P.5 and Educational certificates as Ex.P.8. On the basis of the same, the age of the deceased is fixed as 20 years.

10. As stated earlier the claim of the petitioners is that deceased was getting Rs.15,000/- per month. However, there is no proof produced by the petitioners for the income at Rs.15,000/-p.m. Under such circumstances, it is appropriate to fix the monthly income at Rs.10,000/-. As the deceased was aged 20 years, it will be appropriate to add 40% towards future prospectus. The correct multiplier to be applied is '18'. Further the deceased being bachelor 50% of the income has to be deducted towards his personal expenses. Thus, the loss of dependency to the claimants is calculated as under:-

Monthly salary – Rs.10,000/-
Add : 40% towards future prospects (4000)
Deduction : 50% towards personal expenses.
10,000/- + 40% - 50% x 12 x 18
10,000/- + 4000 = 14,000/-
14,000 – 7000 = 7000
7000 x 12 x 18 = 15,12,000/-.

11. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Loss of estate -15,000/-

Funeral expenses -15,000/-

12. In view of the said Ruling, it is contended by the 2nd respondent/Insurance company that no amount need be provided for loss of love and affection. The said contention is to be accepted. Thus, the sum of Rs.2,00,000/- provided by the Tribunal under the said head is set aside.

13. Thus, considering the facts and circumstances of the case, this Court finds that the amount awarded by the Tribunal needs to be modified as stated above. Hence for the above said reasons, the award passed by the Tribunal is reduced as follows.

S. No	Particulars	Amount granted by the Tribunal	Amount awarded by this Court
1	Total loss of dependency	Rs.16,20,000/-	Rs. 15,12,000/-
2	Loss of Love and Affection	Rs. 2,00,000/-	-
3	Loss of Estate	Rs. 1,00,000/-	Rs. 15,000/-
4	Transport charges	Rs. 10,000/-	Rs. 5,000/-
5	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
	Total	Rs.19,45,000/-	Rs.15,47,000/-

14. In the result, the Civil Miscellaneous Appeal is Partly Allowed in the admission stage itself as follows:

(i) The award of the Tribunal is reduced to Rs.15,47,000/- from Rs.19,45,000/-

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award amount, the appellant/Insurance Company is directed to deposit the entire modified award amount, less the amount, if any, already deposited, along with accrued interest within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the petitioners/claimants are permitted to withdraw the amount awarded as above in equal share, by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
(v) There will be no order as to costs in this appeal.
(vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Smn/nvsri

The Motor Accident Claims Tribunal,
Small Causes Court of Madras.

+1cc to Mr.S.Manohar, Advocate Sr.13625
+1cc to Mr.K.Surya Narayanan, Advocate Sr.13435

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