IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.722 of 2016
and C.M.P.No.5874 of 2016

M/s.United India Insurance
Co.Ltd.,
Silingi Building
New No.134, Old No.40-45
Greams Road
Chennai-600 006 ..Appellant/Respondent-2.

vs

1.S.Natarajan
2.N.Murugavel
3.N.Valarmathi ..Respondents 1 to 3/Petitioners
4.N.Gomathi ..4th Respondent/1st Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 12.06.2015 passed in M.C.O.P.No.6493 of 2013 by the Motor Accident Claims Tribunal, Chief Judge (In the court of Small Causes, Chennai).

For appellant : : Mr.J.Chandran
For Respondents : :
for R1 to R3 : : M/s.A.N.Viswanatha Rao

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the 2nd respondent before the Tribunal viz., the Insurance Company, against the judgment and decree dated 12.06.2015 passed in M.C.O.P.No.6493 of 2013 by the Motor Accident Claims Tribunal (In the court of Small Causes, Chennai).

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners before the Tribunal as per their claim petition is that on 09.04.2013 at about 6.50 hours, while the deceased was proceeding in a Motor Cycle bearing Reg.No.TN-18-P-0130 as Pillion Rider at GST Salar, Urapakkam, the rider of the motor cycle rode the same in a rash and negligent manner, viz., the rider of the offending vehicle, due to which, the Motor cycle capsized and the deceased fell down and sustained fatal injuries and died. Against the 1st

respondent who is the owner and the 2nd respondent, being the insurer of the offending vehicle, the Petitioners claimed compensation of Rs.10,00,000/- under various heads.

3. On the other hand, the 2nd respondent/Insurance Company opposed the petitioners claim by filing a detailed counter. The 2nd respondent denied the validity of vehicle records, driving licence of the driver and insurance coverage of the offending vehicle and pleaded for dismissal of the petition.

4. To substantiate the claim before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced Exhibits P.1 to P.5. The 2nd respondent/Insurance Company, neither examined any witness nor produced any documentary evidence.

5. After considering the available oral and documentary evidence, the Tribunal awarded compensation of Rs.6,45,000/- with interest at 7.5% p.a., from the date of petition till the date of deposit. The Tribunal categorically held that the accident occurred only due to rash and negligent driving of the rider of the motor cycle and the 2nd respondent being the insurer of the offending vehicle is liable to indemnify the first respondent. The details of the compensation is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1.	Loss of pecuniary benefits to the dependants of the deceased 5000 x 2/3 x 12 x 11	Rs.4,40,000/-
2	Loss of consortium	Rs.25,000/-
3	Loss of love and affection to petitioners 1 to 3 Rs.50,000/- each (Rs.50000 x3 =1,50,000)	Rs. 1,50,000/-
4	funeral expenses	Rs. 25,000/-
5	transport expenses	Rs. 5,000/-
	Total	Rs.6,45,200/-

6. Aggrieved by the said conclusion arrived at by the Tribunal, the 2nd respondent/Insurance Company has filed the present Civil Miscellaneous Appeal contending that the Award passed by the Tribunal is on the higher side; the claim of the Petitioners who are legal heirs of the deceased on the ground of dependency is not sustainable and the tribunal failed to appreciate the same properly. It is further contended that the Tribunal has wrongly calculated the loss of income and adopted wrong multiplier. Hence, the 2nd respondent/appellant seeks to entertain the appeal.

7. On the other hand, the learned counsel for the Petitioners/claimants has contended that the Tribunal has properly appreciated the evidence and the finding of the Tribunal that the accident occurred only due to rash and negligent driving of the rider of the Motor Cycle is based on the FIR registered in Crime No.330/2013 on the file of D3 Guduvanchery Police Station and the same is corroborated by the eyewitness evidence of P.W.2. The learned counsel for the Petitioners/claimants contended that the award of the Tribunal needs no interference and the same may be confirmed.

8. Heard both sides and perused the materials available on record.

9. As per the evidence of P.W.1, who is the 2nd petitioner, the deceased was his mother and she was aged about 53 years. It is evident from Ex.P.1 Post Mortem Certificate and Ex.P.2 Death Certificate that the age of the deceased is 55. Hence, the tribunal has rightly fixed the age of the deceased as 55. Admittedly, the Petitioners did not let in any evidence to prove the fact of employment of the deceased and her income. In such circumstances, the Tribunal has fixed the income of the deceased at Rs.5000/- per month and deducted 1/3rd towards her personal expenses. There is no material produced by the Petitioners to show that the deceased was earning the amount claimed by them. In any event, an addition of Rs.500/- is added to the income fixed by the tribunal and the monthly income of the deceased is fixed at Rs.5500/-. The deceased being 55 years old lady, the correct multiplier to be adopted is 11. In such circumstances, following the dictum laid down by the Apex Court in the ruling reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], while determining the income of self-employed or on fixed salary in the age group of 50-60 years, addition of 10% of actual salary to the income of the deceased towards future prospects has to be taken into account. Thus, applying the above decision and by applying multiplier of 11, it will be appropriate to calculate the loss of earning of deceased, as under,:-

Actual income = Rs.5500/-
10% addition towards future prospects = Rs.550/-
= Rs.6050/- x 12 x 11 x 2/3 = Rs.5,32,400/-

In view of the decision cited supra, Rs.5,32,400/- is granted as compensation under the head "Loss of Earning".

10. In respect of awarding compensation under conventional heads, the Supreme Court, in the decision cited supra [2017 (2) TN MAC 609], at paragraph 54, held as follows:-

> "The conventional and traditional heads, needless to say, cannot be determined on

percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads. "

Following the above said Apex court Ruling, towards loss of estate, loss of consortium and funeral expenses, this court is inclined to modify the compensation as under:-

Loss of Estate = Rs.15,000/-
Loss of consortium = Rs.40,000/-
Funeral Expenses = Rs.15,000/-

Further, this court is of the considered opinion that the amount awarded by the Tribunal, under the other heads are not sustainable and the same is liable to be set aside. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of pecuniary benefits to the dependants of the deceased	Rs.4,40,000/-	Rs.5,32,400/-
2	Loss of consortium	Rs.25,000/-	Rs. 40,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
3	Loss of love and affection to petitioners 1 to 3 Rs.50,000/- each(Rs.50000 x3 =1,50,000)	Rs.1,50,000 /-	---
4	funeral expenses	Rs. 25,000/-	Rs.15,000/-
5	transport expenses/loss of estate	Rs. 5,000/-	Rs.15,000/-
	Total	Rs.6,45,000/-	Rs.6,02,400/-

11. In the light of the foregoing discussion, the award of the Tribunal is modified and the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed as stated infra:-

(1) The award granted by the Tribunal is reduced to Rs.6,02,400/- from Rs.6,45,000/-.

(2) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(3) This court by order dated 04.04.2016 directed the appellant/Insurance Company to deposit the entire award amount and further granted permission to the claimants/respondents 1 to 3 to withdraw 50% of their respective share amount as apportioned by the Tribunal. Therefore, excess amount, if any, in deposit can be withdrawn by the appellant/Insurance Company after satisfying the order of this court, within a period of six weeks from the date of receipt of a copy of this order.

(4) The claimants are entitled to modified compensation amount as follows:-

(i) 1st petitioner, husband is entitled to 20% = Rs.1,20,480/-

(ii) 2nd petitioner, son is entitled to 40% - Rs.2,40,960/-

(iii) 3rd petitioner/daughter is entitled to 40% = Rs.2,40,960/-

The Petitioners/claimants are permitted to withdraw their respective share of award amount with proportionate interest, by filing necessary application, less the amount if any already withdrawn by them.

(5) There will be no order as to costs in this appeal.

(6) Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

nvsri

To
1.The Motor Accidents Claims Tribunal,(Chief Judge)
Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.A.N. Viswanatha Rao, Advocate sr 2944.
+1 cC to Mr.J. Chandran, advocate sr 2896

C.M.A.No.722 of 2016

SJ(CO)
SP(20/02/2018)