

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.809 of 2016
& CMP No.6498 of 2016

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Mannargudi. ...Appellant/2nd Respondent

-vs-

1. Backiavathi
2. Minor Kirthivasan
3. Minor Akilan

(Respondents 2 & 3 Minors Rep. By guardian
1st respondent Backiavathi)

4. Jayam
5. Pacirisamy

6. Tmt. G.Chandrothayam ...Respondents/Petitioners 1to5/
1st respondent

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 27.11.2015 made in MCOP.No.177 of 2014 on the file of the Motor Accident Claims Tribunal, District Judge at Thiruvavarur District.

For Appellant : Mr.J.Chandran

For Respondents: Mr. P.Thiagarajan, for RR 1 to 5

No Appearance for R6

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The Insurance Company which suffered an award for payment of a sum of Rs.21,85,522/- as compensation, for the death of one Srinivasan, in the motor accident that occurred on 29.03.2013 is an appellant.

2. According to the claimants, the deceased Srinivasan, who was an Electrician, Milk Vendor as well as Cattle Broker earning about Rs.50,000/- per month. On the fatal day the deceased Srinivasan was travelling as a pillion rider along

with his friend Pasupathi, from Tiruvarur to Orkudi, when they were nearing the Samathuvapuram at Orkudi, the Car bearing Registration No.TN-45-AK-7777, belonging to the 6th respondent and insured with the appellant Insurance Company driven by its driver in a rash and negligent manner, came from behind and dashed against the two wheeler. As a result of the accident, the deceased Srinivasan suffered grievous head injuries. He was taken for treatment to Thiruvarur Medical College and thereafter, shifted to Vinodhagan Memorial Hospital, Thanjavur for better treatment. Despite best medical attention, the said Srinivasan succumbed to the injuries caused in the accident on 24.04.2014. Claiming that the loss of the sole bread winner of the family, as a resulted in huge monetary loss to the family, the Claimants would seek a compensation of Rs.40,00,000/-.

3. The claim was resisted by the Insurance Company denying the very accident. It was also contended that the accident occurred due to a rash and negligent driving of the motor cycle. It was also claimed that the driver Pasupathi, who was riding the motor cycle at the time of the occurrence did not have the valid driving license. The Insurance Company also contended that the owner and the insurer of the Motor Cycle are also necessary parties to the claim petition. The age, occupation and the income as claimed by the claimants were denied by the Insurance Company and it was claimed that those amounts have been exaggerated in order to claim excessive compensation.

4. The Tribunal which heard the Claim Petition concluded that the accident occurred due to the rash and negligent driving of the driver of the car. In coming to the said conclusion, the Tribunal relied upon the FIR and the fact that the Insurance Company had not chosen to examine any person to dislodge the contents of the FIR and the evidence of P.W.2 eye witness.

5. On quantum, the Tribunal took the monthly income of the deceased at Rs.10,000/- per month, added 30% towards future prospects and after deducting 1/3 towards his personal expenses arrived at the monthly loss of dependency at Rs.8,667/-, applying a multiplier of 15, the Tribunal arrived at total loss of dependency at Rs.15,60,060/-. The Tribunal awarded a sum of Rs.1,00,000/- towards of loss of consortium to the wife, Rs.50,000/- each to the children and parents towards loss of love and affection, Rs.25,000/- towards funeral expenses, Rs.2,97,462/- towards medical expenses based on bills and Rs.3,000/- towards transportation. In all the Tribunal awarded a sum of Rs.21,85,522/- as compensation. The Tribunal also apportioned the compensation between wife, minor children and the parents of the deceased.

6. Aggrieved, the Insurance Company is on appeal.

7. We have heard Mr.J.Chandran learned counsel appearing for the Insurance Company and Mr.P.Thiagarajan, learned counsel appearing for the respondents 1 to 5/claimants. The 6th respondent the owner of the Car, though served, he does not appear either in person or through counsel.

8. Though Mr.J.Chandran would attempt to argue the question of negligence, we are afraid that his arguments on the question of negligence cannot be entertained in the absence of any evidence on the side of the Insurance Company to disprove the contents of the FIR and the evidence of P.W.2 eyewitness, who happened to the driver of the two wheeler at the time of the accident. We, therefore, confirm the finding of the Tribunal on the question of negligence and liability.

9. On the quantum Mr.Chandran, would submit that the Tribunal erred in taking the monthly income of the deceased at Rs.10,000/- and adding 30% towards future prospects. He would also fault the Tribunal for granting a sum of Rs.1,00,000/- towards loss of consortium and Rs.2,00,000/- towards loss of love and affection at Rs.50,000/- each to the claimants 2 to 5, namely, the children and the parents of the deceased.

10. Per contra, Mr.Thiagarajan, learned counsel appearing for the respondents 1 to 5 would submit that the adoption of Rs.10,000/- as monthly income is just and proper. He would also submit that as per the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2018 (1) LW 331, the Tribunal should have actually added 40% towards future prospects, but the Tribunal had added only 30% towards future prospects. He would therefore, submit that though the award granted under the conventional heads can be said to be on the higher side, the overall award is just and proper.

11. We have considered the rival submissions. Considering the age of the deceased and the evidence of P.Ws. 1 and 2 regarding his profession, namely Electrician and Milk Vendor, we are of the considered opinion that the fixation of the income at Rs.10,000/- cannot be faulted, particularly, in view of the fact that the accident had occurred in the year 2014. The Tribunal, as rightly pointed out by Mr.P.Thiagarajan, learned counsel appearing for the respondents 1 to 5/claimants, has added 30% towards future prospects whereas, it should have added 40% towards future prospects, in view of the judgment of the larger Bench of the Hon'ble Supreme Court. Thus worked out the compensation on loss of dependency alone works out to Rs.18,90,000/-, [Rs.10,000/- + Rs.4,000/- = Rs.14,000 - Rs.3,500 ($\frac{1}{4}$) x 12 x 15].

12. The compensation granted under the conventional heads works out to Rs.1,85,000/- and medical expenses is Rs.2,97,462/-, thus worked out the total compensation comes to Rs.23,72,462/-, whereas the Tribunal has granted only Rs.21,85,522/-. We, therefore, see no ground to interfere with the award of the Tribunal, even though the award under the specific heads can be said to be on the higher side, the overall award is just and reasonable. Hence the appeal is dismissed. The apportionment made by the Tribunal is also sustained. No costs. Consequently, the connected miscellaneous petition is closed.

13. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the major claimants, namely, respondents 1, 4 and 5 will be entitled to withdraw their respective shares of the compensation. The Tribunal is directed to deposit the share of the minors, namely respondents 2 & 3, in an interest earning fixed deposit in any one of the Nationalised Banks till they attain majority and the mother namely the 1st respondent would be entitled to withdraw quarterly interest from the fixed deposit for the maintenance of the minors.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

jv

To
The Motor Accidents Claims Tribunal,
District Judge,
Thiruvarur District.

+ 1 cc to Mr. P. Thiagarajan, Advocate Sr.62331
+ 1 cc to Mr. J. Chandran, Advocate Sr.61683

CMA.No.809 of 2016
& CMP No.6498 of 2016

GJ(CO)
EU(08/11/2018)