IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.657 of 2011

Anbazhagi, ...Appellant

Vs

1. Ramachandran,

2. Divisional Manager,
   United India Insurance Company Ltd.,
   No.46, Katpadi Road, Vellore.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 18.03.2005 made in M.C.O.P.No. 1231 of 2003 on the file of the Motor Accident Claims Tribunal/[District Judge], Thiruvannamalai.

For Appellant : M/s. K.Subathra

For Respondent : R-2 Mr.C.Paranthaman
R1 - Exparte

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal, Thiruvannamalai, in M.C.O.P.No. 1231 of 2003, the appellant herein, who are the claimant, in the claim petition filed this appeal, in which, she is seeking the relief to enhance the award amount passed by the Claim Tribunal. In the Claim Tribunal, the appellant had filed a claim petition under Section 166 of the Motor Vehicles Act, in which, she claimed a compensation of Rs.5,00,000/- for the death of Chinnammal, who is the mother of the claimant. The respondent No. 1 is the owner of the offending vehicle, the 2nd respondent is the insurer. After elaborate enquiry, the Claims Tribunal awarded a compensation of Rs.2,02,000/- along with the interest at the rate of 9% per annum, against which the present appeal has been preferred.

In the Claims Tribunal, the case of the appellant is as follows:

2. On 06.07.2003 at about 04.30 p.m., in the Thiruvallur – Thiruthani road near to Nedumbaram Sakthi Juice company, when the deceased Chinnammal was walking in the road side. One Tata Sumo bearing registration No. TN 01 Q 0875 owned by the 1st respondent, and insured with 2nd respondent came in a rash and negligent manner, and hit against the deceased Chinnammal. Due to the accident the deceased Chinnammal died on the spot itself, after the accident SHO Kanakammal Chathiram Police Station registered a case in Crime No. 201 of 2003 under Section 279, 337,304(A) of IPC against the driver of the tata sumo vehicle. Thereby, the claimant who is the daughter of the deceased filed a claim application, claiming a compensation of Rs. 5,00,000/-

3. On the other hand, opposing the claim of the petitioner by filing counter, the 2nd respondent Insurance Company denied accident itself, and stated that only due to the rash and negligent act of the deceased the accident occurred. The Claim of the petitioner is excessive, the age, avocation and income of the deceased are all denied. Thus, the 2nd respondent sought for dismissal of claim petition.

4. Before the Tribunal the petitioner was examined as P.W.1 and Exhibited 5 documents as Ex.P1 to Ex.P5. On the side of the respondent, there is no oral and documentary evidence.

5. The 1st respondent is remained ex-parte.

6. In the claim Tribunal, on the basis of the available records found that the 1st respondent, car driver alone caused the accident and passed award for a sum of Rs.2,02,000/- as a compensation to the death of the deceased Chinnammal. Further directed the 2nd respondent to pay the compensation. Aggrieved over the said finding, the claimant has come forward with the present appeal.

7. The learned Counsel appearing for the appellant would contend that, at the time accident the deceased was earning Rs.100/- per day. But, the Tribunal did not look in to the issue perspectively, and calculated Rs.1.875/- is the monthly income of the deceased, it is erroneous one. Further, he would submit in the claim Tribunal the rash and negligent act of the offending vehicle was clearly established through the evidence of P.W.1.

8. On the other hand, the learned Counsel appearing for the 2nd respondent would contend that, the Claim Tribunal based on the evidence given by P.W.1 came to the conclusion that the income of the deceased is Rs. 1875 only. Further he would contend the said findings does not need any interference.

9. In the claim Tribunal, the claimant was examined as P.W.1., she specifically stated that, during the time of occurrence, when the deceased was walking in the road, the vehicle owned by the 1st respondent came in a rash and negligent manner and dashed against the deceased, in support of above evidence, in the claim Tribunal. a copy of the First Information Report dated 06.07.2003 was marked as Ex.P1. On go through the averments made in the First Information Report, it was alleged, only due to the rash and negligent act of the driver of the van, the deceased met with an accident. So, the evidence given by P.W.1 was corroborated through the averments made in the First Information Report. In the said circumstances, on the side of the respondent, none have been examined to deny the evidence of P.W.1, in respect to the negligence aspects. Even, the driver of the Van has not been examined, in order to prove the case of the respondents. Accordingly, this court affirmed findings arrived at by the claim Tribunal and came to the conclusion that only due to the rash and negligent act of the van driver, the alleged accident had happened. Therefore, being the owner and the insurer of the offending vehicle, both respondents are jointly and severally liable to pay the compensation.

10. Secondly, on going through the quantum arrived by the Claim Tribunal it was held that the Tribunal determined the income of the deceased as Rs. 1,875/- per month. On the other hand, the claimant in this case gave evidence that the deceased was working in a juice factory and earned Rs.100/- per day. However, the said evidence is not supported through the evidence of employer, hence it would necessary to see the judgment of our Honourable Apex Court in Syed Shathick case, in the said case in the year of 2006 itself the monthly income of the vegetable vendor is fixed as Rs.6,500/- In the said circumstances, in this case in order to dispute the evidence given by P.W.1, nobody was examined on the side of the respondent. Particularly with respect to the income of the deceased. Accordingly, it is necessary to fix Rs.3,000/- as the monthly income of the deceased.

11. Now, on going through the "Future Prospects", it is necessary to follow the judgment of the Constitution Bench in the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, our Honourable Apex Court has held that if a person is self -employed in the age of 48, 25% of the Future Prospects has to he added for calculating the loss of dependency. On going the Ex.P4 postmortem report, it appears, the Doctor who conducted the postmortem has stated that the deceased was aged about 48 years on the date of the accident. Therefore, total monthly income of the deceased is calculated as follows:-

Total Monthly Income:: Rs.3,000 + Rs. 750 (25%)
:: Rs.3,000 + Rs.750
:: Rs.3,750/-

12. Now, coming to the point of deduction, it is an admitted fact that the claimant alone is the dependent to the deceased. Therefore, it is necessary to deduct 50% towards her personal expenses, after deducting 50% towards Personal Expenses, the monthly income of the deceased comes to Rs.1,875/- [Rs.3750 - 50%].

13. With regard to the multiplier, in the case of SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121, our Honourable Apex Court has held that if a person is died in the age of 46 to 50 years, the appropriate multiplier is 13. In this case as already discussed that the age of the deceased at the time of accident was 48 years, hence the appropriate multiplier for calculating the loss of dependency is 13. Accordingly, the pecuniary loss of the family is fixed as follows:

Loss of Income :: Rs.1,875/- X 12 months X 17 multiplier
:: Rs. 2,92,500/-

14. Now, on going through the conventional heads as per the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, it is necessary to add Rs.15,000/- towards "Funeral Expenses" and Rs.15,000/- towards "Loss of Estate". Accordingly, the claimant is entitled to the compensation as follows:

Head	Amount (Rs.)
Loss of Dependency	2,92,500/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Total	3,22,500/-
Rounded off	3,23,000/-

Hence, the compensation arrived by the Claim Tribunal is modified to the extend of Rs.3,22,500/- rounded off to Rs.3,23,000/-

15. The rate of interest awarded by the Tribunal at 9% per annum is altered into 7.5%. Accordingly, the award of the Tribunal (i.e.,) 2,02,000/- is enhanced to 3,23,000/- and the 2nd respondent Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, if any within a period of four weeks from the date if receipt of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to

the Bank Account of the claimant through RTGS/NEFT with-in a period of one week, after collecting the Court fee for the enhanced compensation.

16. In the result, the Civil Miscellaneous Appeal is disposed of. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

sbn

To

1. The District Judge
   Motor Accident Claims Tribunal
   Thiruvannamalai.

+1 CC to Ms.M.Malar, Advocate sr 63634.
+1 CC to Mr.C.Paranthaman, Advocate sr 63627.

C. M.A. No.657 of 2011

NRL(CO)
SP(26/11/2018)