IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.688 of 2011

The Authorised Signatory,
M/s. Cholamandalam MS General Insurance Co. Ltd,
2nd Floor, N.S.C. Bose Road,
Chennai – 600 001.
.....Appellant/2nd Respondent

Vs

1.Jothi,
w/o. Sivasubramanian,
2.Surendiran (minor)
s/o.Sivasubramanian,
(minor Respondents 2 & 3 rep by Mother and Near friend 1st Respondent)
3. Ragul(Minor),
s/o.Sivasubramanian, ..Respondents 1 to 3/Petitioners 1 to 3
4. Krishnan,
s/o. Kannan. ..4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 08.12.2010 made in M.C.O.P. No. 567 of 2009 on the file of the Motor Accident Claims Tribunal / III Additional District Court, Presiding officer, Pondicherry.

For Appellant : Mr. N.Vijayaraghavan

For Respondents : M/s S. Sathia Chandran for R1 to R3
R4 - Ex-Partee

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal, Pondicherry (III Additional District Judge) in M.C.O.P.No. 5627 of 2009, the appellant herein, who is the second respondent in the claim petition filed this appeal, in which, he is seeking the relief to set aside the order passed by the Claims Tribunal. In the Claim Tribunal, the respondents 1 to 3 had filed a Claim Petition under Section 166 of the Motor Vehicles Act, in which, they claimed compensation of Rs.20,00,000/-. for the death of Siva Subramanian. The respondent No.1 is the wife of the deceased, the respondent 2 and 3 are the children born to the deceased. After, elaborate enquiry, the Claims Tribunal awarded a compensation of Rs.10,60,000/- with interest, at the rate of 7.5% per annum, against which, the present appeal has been preferred.

2) Herein after for the shake of convenience, the party to this appeal are called as per the litigative status in the Claim Tribunal.

3) In the Claims Tribunal, the case of the claimants is as follows:

4) On 24.07.2008 at about 01.30 P.M., when the deceased proceeded in his two wheeler bearing registration No. PY 01 AK 7840 near to Kamban Nagar bus stop, Reddiarpalayam, Villianur main Road, from west to east, the driver of the 1st respondent drove the Tipper lorry bearing registration No. TN 32 T 5540 in a rash and negligent manner, and dashed against the deceased. As a result of which, the deceased fell down and died on the spot itself. At the time of accident, the deceased was aged about 37 years and he was running a grocery shop at Abisegapakkam, Pondicherry, and earned Rs.10,000/- per month.

5) The learned counsel appearing for the 2nd respondent would contend that, at the time of the accident the driver of the tipper lorry,drove his vehicle after observing the road rules, but the deceased drove his two wheeler , in a rash and negligent manner and hit against the lorry. He would further contend the claim tribunal determined the income of the deceased is Rs.8,000/-per month for calculating the compensation which is exorbitant. Thereby, quantum of compensation arrived by the Claim Tribunal is an excessive one, accordingly he prayed to allow this appeal.

6) Now, on going through the findings arrived at by the claim tribunal, it is true that the Claim Tribunal has held that only due to the rash and negligent act of the driver of the vehicle, owned by the 1st respondent the accident had occurred. In the Claim Tribunal in order to show the negligence of the driver of the lorry, the copy of the First Information Report registered in Crime No. 589 of 2008 dated 24.07.2008 is marked as Ex.P1, in which it was alleged only the driver of the tipper lorry came in a rash and negligent manner and dashed against the two wheeler, in which the deceased was travelled. The evidence of P.W.2 who is the eye witness to the occurrence has corroborated the averments mentioned in the First Information Register. In the said circumstances, in order to dispute the negligence, on the side of the respondents, nobody has been examined. So, without showing any materials, the arguments advanced by the 2nd respondent, cannot be accepted to decide this issue in their favour. Thereby, the findings arrived by the Claim Tribunal is affirmed by this court.

7) Secondly, on going through the quantum of compensation arrived by the Claim Tribunal, it was held that the Tribunal determined the income of the deceased is Rs.8,000/- per month. On the other hand, the first claimant in this case, gave evidence as P.W.1 that, the deceased was running a grocery shop and earned Rs. 10,000/- per month. In order to, dispute the said evidence, on the side of the appellant, nobody was examined. However, the Claim Tribunal determined Rs.8,000/- is the income per month, for calculating the compensation. Now, on going through the Ex.P19, it appears the deceased Siva Subramanian doing the agricultural work, apart from running the grocery shop. Further, Ex.P20 discloses that the deceased is one of the candidate contested in the panchayat election. Apart from the other two documents, on the side of the claimants, no documents have been produced to show the income of the deceased. In the said circumstances in the year of 2006 our Hon'ble Apex Court in Syed Shathick case fixed Rs.6,500/- per month is the income for vegetable vendors. Now, in a case in our hand that, alleged occurrence had happened, in the year of 2009. In the said circumstances, considering the surrounding circumstances, it would be appropriate to determine Rs.7,000/- as a monthly income of the deceased.

8) Now, on going through the "Future Prospects" it is necessary to follow the judgment of our Hon'ble Apex Court 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 40, 40% of the Future Prospects has to be added for calculating the loss of dependency. Now on going through the Ex.P4 postmortem certificate of the deceased dated 27.09.2010, it appears that the age of the deceased, at the time of the accident is 38 years. Therefore, the total monthly income of the deceased is calculated as follows:

Total Monthly Income	::	Rs.7,000/-(+) 40% (Rs.2,800)
	::	Rs.9,800/-

9) Now, coming to the point of deduction, it is an admitted fact that the 1st claimant, in the Claim Petition is the wife of the deceased and the 2nd and 3rd claimants are the sons born to the deceased. So, the size of the family is 3. Therefore, following the case of Sarla verma 1/3 of the monthly income has to be deducted towards the personal expenses of the deceased. Accordingly, after deducting 1/3 of the monthly income, pecuniary loss is calculated as follows [Rs.9,800/ - 1/3rd of monthly income] - 3266 - 6534/-.

Total Monthly income	::	Rs.9,800/-
1/3rd of monthly income	::	Rs.3,266/-
Balance	::	Rs.6,534/-

10) So, after deducting 1/3rd of the monthly income towards the personal expenses, the pecuniary loss to claimant per month is comes to Rs.6,534/-. With regard to the multiplier, in the same judgment reported in (2006) 6 SCC 121, our Honourable Apex Court has held that if a person is died in the age of 36 to 40, the proper multiplier is 15. In this case, as already discussed, the age of the deceased at the time of the accident was 38 years. Hence, the appropriate multiplier for calculating the loss of dependency is 15. Accordingly, the pecuniary loss to the family of the deceased is as follows:

Loss of Income	::	Rs. 6,534 X 12 months X 15th multiplier
	::	Rs. 11,76,120/-

11) Now, on going through the conventional heads, as per the case of the NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS, it is necessary to add Rs. 15,000/- towards "Funeral Expenses" and Rs.15,000/- towards "Loss of Estate". Moreover, in this case, the first claimant lost her husband. So, Rs.40,000/- to be added towards the head of consortium to the wife. Accordingly, the claimants are entitled to the compensation as follows:

Loss of dependency	::	Rs.11,76,120/-
Loss of Estate	::	Rs.15,000/-
Loss of Funeral Expenses	::	Rs.15,000/-
Loss of consortium	::	Rs.40,000/-
Total	::	Rs.12,46,120/-

12) Hence, the compensation arrived by the Claim Tribunal is modified to the extend of Rs.12,46,120/- rounded up to 12,50,000/-. The Claimants/respondents 1 to 3 are entitled to equal share.

13) Further, amount awarded in favour of 2nd and 3rd claimants have to be deposited, in any one of the nationalized bank, till they attained the majority, the first claimant who is the mother of the 2nd and 3rd petitioner is permitted to withdraw the interest once in 3 months.

14) Accordingly, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.12,50,000/-. The modified compensation of Rs.12,50,000/- has to be apportioned among the claimants equally. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. Though the Insurance Company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.10,60,000/- is enhanced to Rs.12,50,000/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature

and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognized by the Honourable Supreme Court in Nagappa V. Gurdayal Singh reported in 2004(2) TN MAC 398 (SC).

15) The appellant/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 of receipt of the copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the bank account of first claimant through RTGS/NEFT with in a period of one week.

16) In the result, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

sbn

To

1. The Motor Accident Claims Tribunal
   III Additional District Judge, Presiding officer
   Pondicherry.

2. The Section officer
   VR Section, High court, Madras(2copies)

+1 CC to Mr.S. Sathiachandran, Advocate sr 61132.
+1 CC to M/s. M.S. Gopalan, sr 61454.

C. M. A. No.688 of 2011

SKV(CO)
SP(31/10/2018)