IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A. No.2219 OF 2017
& C.M.P. Nos.11781 of 2017 & 4800 of 2018

M/s.SBI General Insurance
Company Limited,
New No.64, Old No.149,
Ground Floor, Mezzannie,
Greams Road, Chennai - 600 006. .. Appellant / 2nd respondent

Versus

1.V.Saraswathi
2.Venkat @ Venkatesan ..Respondents 1 & 2/ petitioners

3.EBM Papst India Pvt. Limited,
No.26/3, G.N.T.Roadways,
Kodungaiyur, Chennai - 600 118.
..3rd Respondent / 1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 15.12.2016 made in M.C.O.P.No.2657 of 2014 on the file of the Motor Accidents Claims Tribunal [II Court of Small Causes], Chennai.

For Appellant : Mr.R.Mohan Babu
for M/s.M.B.Gopalan Associates

For Respondent
Nos.1 and 2 : Mr.F.Terry Chellaraja

J U D G M E N T

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

Aggrieved over the award passed by the Motor Accidents Claims Tribunal [II Court of Small Causes], Chennai in M.C.O.P.No.2657 of 2014 dated 15.12.2016, the Insurance Company, who is the second respondent in the above said M.C.O.P. has preferred this Appeal to set aside the award passed by the Claims Tribunal as erroneous.

2. The case of the claimants/respondents 1 and 2 is as follows:

2.1. On 20.02.2014 at about 10.15 hours., while the deceased [Rajesh @ Rajendran] was riding his motor cycle bearing Registration No.TN-22-K-9880 in Greenways Road, near Door No.69, a Car bearing Registration No.TN-05-T-8991 driven by its driver, owned by the third respondent insured with the appellant driven in a rash and negligent manner at high speed hit against the motor cycle, due to which, the deceased sustained multiple fatal injuries and died on the spot.

2.2. Subsequently, being the dependants of the deceased [Rajesh @ Rajendran], his parents had filed the Claim Petition under Section 166 of the Motor Vehicles Act and Rule 3 of the Motor Accidents Claims Tribunal Rules, claiming compensation of Rs.25,00,000/- for the death of Rajesh @ Rajendran. After elaborate enquiry, the Claims Tribunal came to the conclusion that the alleged accident had happened due to the rash and negligent act of the Car driver, which was insured with the appellant and awarded compensation of Rs.15,71,000/- with interest at the rate of 7.5% per annum, against which, the present Appeal has been preferred.

3. In the Claims Tribunal, the first claimant [Saraswathi] was examined as P.W.1. and one G.Meenakshi, who is the eye-witness for the alleged occurrence was examined as P.W.2. Ex.P.1 to Ex.P.5 were marked on the side of the claimants. On the side of the respondents, one Sudhakar, who is the driver of the offending vehicle was examined as R.W.1 and one document was exhibited as Ex.R.1.

4. Today, we heard the arguments advanced by Mr.R.Mohan Babu, learned counsel appearing for the appellant and Mr.F.Terry Chellaraja, learned counsel appearing for respondents 1 and 2.

5. During the course of arguments, the learned counsel appearing on either side did not dispute the liability of the insurer and also accepted the findings of the Tribunal with regard to the rash and negligent act of the driver, who drove the Car. So, the only issue to be decided in this appeal is the quantum of compensation.

6. Admittedly, the deceased [Rajesh @ Rajendran] was a bachelor and the parents of the deceased are the claimants. P.W.1 [Saraswathi], the mother of the deceased in her evidence stated that the age of the deceased at the time of accident was 18 years and he was working as a mechanic and earning Rs.10,000/- per month, but to prove the same, no document was produced in support of her evidence. So, on considering the other circumstances, the claims Tribunal fixed the monthly income of the deceased as Rs.8,000/- per month.

7. In this regard, the learned counsel appearing for the appellant would submit that the deceased was a school student and his age was only 14 years at the time of accident. In support of his claim, the copy of the Transfer Certificate issued in favour of the deceased was marked as Ex.P.5 in the Claims Tribunal. The said document proves that the age of the deceased at the time of accident was only 14 years. So, the evidence given by P.W.1 with regard to the employment of the deceased is false. Hence, we do not agree with the view taken by the Claims Tribunal that the deceased earned Rs.8,000/- as monthly income. Therefore, in order to calculate the Loss of Dependency, the monthly income of the deceased is fixed as Rs.6,000/-.

8. Now, on going through the findings of the Claims Tribunal with regard to the Loss of Dependency, the Claims Tribunal has added 50% of the monthly income towards Future Prospects and deducted 50% of the monthly income towards Personal and Living Expenses. Thereafter, applying the multiplier 18, calculated the Loss of Dependency as Rs.12,96,000/-. Further, the Claims Tribunal awarded Rs.2,00,000/- towards Loss of Love and Affection, Rs.50,000/- towards Loss of Estate, Rs.25,000/- towards Funeral Expenses and ordered the appellant to pay the said amount to the claimants.

9. As already discussed, now in order to decide this appeal, we have determined the income of the deceased as Rs.6,000/- per month. Coming to the Future Prospects, it is necessary to follow the judgment of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, the Honourable Apex Court has held that if a person is self-employed and under the age of 14 years, 40% of the established monthly income to be the Future Prospects for calculating the Loss of Dependency. Therefore, the total monthly income of the deceased is calculated as follows:

Total Monthly Income	::	Rs.6,000/- (+) 40% (Rs.6,000/-)
	::	Rs.6,000/- (+) Rs.2,400/-
	::	Rs.8,400/-

10. Coming to the Personal and Living Expenses, the size of the family is to be taken into account for calculating the Personal and Living Expenses. Admittedly, the deceased was a minor. The Claim Petition was filed by the parents of the deceased. So, it is appropriate to deduct 50% of the total income towards Personal and Living Expenses of the deceased. Hence, after deducting 50% of the income towards Personal and Living Expenses, the monthly income of the deceased would be Rs.4,200/- [Rs.8,400 - 50%].

11. In respect of the choice of multiplier, at the time of accident, the deceased [Rajesh @ Rajendran] was aged about 14 years. Taking into consideration of the age of the deceased, the Tribunal had adopted multiplier 18 for calculating the loss of dependency. Now on going through the judgment of our Honourable Apex Court in SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121, if a person is of the age of 14 years at the time of death, the appropriate multiplier for calculating the Loss of Dependency is 18. Accordingly, the Loss of Dependency is calculated as follows:

Loss of Dependency :: Rs.4,200 x 12 x 18
:: Rs.9,07,200/-

12. With regard to the conventional damages, the Tribunal awarded Rs.2,00,000/- towards Loss of Love and Affection, Rs.50,000/- towards Loss of Estate, Rs.25,000/- towards Funeral Expenses. Even though the said amounts awarded by the Tribunal are excessive, the claimants being the parents of the deceased had lost their son at the age of 14 years. Losing one's son would be very painful and the claimants have been deprived of their son's love and affection at an elderly age. Since "Loss of Love and Affection" is akin to "Loss of Consortium" given to the wife, this Court fixes Rs.80,000/- towards Loss of Love and Affection to the claimants. Following the judgment of the Honourable Apex Court in Pranay Sethi's case, Rs.15,000/- is awarded towards Loss of Estate and Rs.15,000/- towards Funeral Expenses. Accordingly, the claimants/respondents 1 and 2 are entitled to the compensation as follows:

Head	Amount (Rs.)
Loss of Dependency	9,07,200.00
Funeral Expenses	15,000.00
Loss of Estate	15,000.00
Loss of Love and affection	80,000.00
Total	10,17,200.00

Hence, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.10,17,200/-. The claimants / respondents 1 and 2 are entitled to equal share in the said amount.

13. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Accordingly, the award of the Tribunal [i.e.,] Rs.15,71,000/- is reduced to Rs.10,17,200/-.

14. The appellant / Insurance Company is directed to deposit the entire award amount along with interest and costs

before the Tribunal, as per the modified award passed by this Court, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of respondents 1 and 2 / claimants through RTGS/NEFT within a period of one week thereafter.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently connected Miscellaneous Petitions are closed. There shall be no order as to costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

sri
To

The Motor Accidents Claims Tribunal
[II Court of Small Causes],
Chennai.

Copy to
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.M.B. Gopalan Associates sr 32632.
+1 CC to Ms.M. Malar, Advocate sr 31943.

C.M.A. No.2219 OF 2017

SAI(CO)
SP(11/10/2018)