

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM:

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

CMA.No.2425 of 2017
and
CMP.No.13085 of 2017

The New India Assurance Company Ltd.,
No.45, Moore Street, Chennai.

.... Appellant/2nd Respondent

-vs-

1.T.Suthanthira Valli
2.S.Thiraviyam
3.M.Venkatesan

... Respondents/Petitioners & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 25.07.2016 made in MCOP.No.5271 of 2013 on the file of the Motor Accidents Claims Tribunal - II, Court of Small Causes Chennai.

For Appellant : Mr.R.Neethi Perumal

For Respondents: Mr.F.Terry Chella Raja
for Mr.V.Venkatesan for R1 and R2
R3 - Not ready notice

J U D G M E N T

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

The challenge in this appeal is to the award of the Motor Accident Claims Tribunal, Chennai dated 25.07.2016 made in MCOP.No.5271 of 2013.

2. The respondents 1 and 2 had filed the claim petition seeking a compensation of Rs.30,00,000/- for the death of their son T.Gopinath in a road accident on 27.03.2013. It is the case of the claimants/ respondents 1 and 2 that the deceased was riding a motor cycle bearing registration No.TN-01-AR-9777 at about 20.30 hours on 27.03.2013 with one Dakshinamoorthy as pillion rider proceeding from Chetpet to Pudupet on the Western

side of Marshal Road, Egmore, Chennai. While so, the car bearing Registration No.TN-10-Q-8403 driven by one Santhosh Balaji which was proceeding towards South from the North came on the wrong side of the road i.e., Western side and hit the motor cycle, as a result of the impact both the driver as well as the pillion rider were thrown off the vehicle and they sustained grievous injuries. The rider viz., T.Gopinath died on the way to hospital as a result of the injuries sustained. Claiming that the accident took place due to the rash and negligent driving of the driver of the car belonging to the 3rd respondent insured with the appellant Insurance Company, the claimants sought for a sum of Rs.30,00,000/- as compensation for the death of their son.

3. The 3rd respondent owner of the vehicle remained exparte. The Insurance Company resisted the claim contending that the rider of the motor cycle viz., deceased Gopinath also contributed to the accident because of his rash and negligent driving. It is stated that the car was being driven slowly and cautiously and he was attempting to take a right turn to enter the building, the motor cycle came and dashed against the car. It was also contended that the compensation claimed is highly excessive.

4. The Tribunal on examination of evidence on record took note of the contents of Ex.P1, FIR filed against the driver of the car by the Traffic Investigation Wing concluded that the accident occurred due to the rash and negligent driving of the car by its driver. The Tribunal also found that there is no contra evidence on the side of the Insurance Company to disprove the narration of facts made in the FIR.

5. On the quantum, the Tribunal fixed the monthly income of the deceased notionally at Rs.10,000/- and considering the fact that the deceased was a student of B.Com., added 50% of the income towards future prospects and arrived at a monthly income of Rs.15,000/-. Considering the number of dependents and based on the judgment of the Hon'ble Supreme Court in Sarala Varma and others Vs. Delhi Transport Corporation and another, reported in 2009 (5) Law Weekly 561, the Tribunal deducted 50% towards personal expenses and arrived at a monetary loss of dependency at Rs.7,500/-. Adopting the multiplier of 18, the Tribunal arrived at the loss of dependency/ monetary loss at Rs.16,20,000/-. The Tribunal granted a further sum of Rs.2,00,000/- at Rs.1,00,000/- each to the claimants for loss of love and affection. A sum of Rs.50,000/- was allowed on the head of loss of estate, apart from a sum of Rs.25,000/- towards funeral expenses. Though a sum of Rs.22,000/- was claimed towards damage to the motor cycle, the Tribunal awarded Rs.5,000/- on that head. In all the Tribunal awarded a total sum of Rs.19,00,000/- as compensation. Aggrieved, the Insurance Company has come forward with this Appeal.

6. We have heard Mr.R.Neethi Perumal, learned counsel appearing for the appellant Insurance Company and Mr.F.Terry Chella Raja, learned counsel appearing for Mr.V.Venkatesan, for the respondents 1 and 2. Since the 3rd respondent remained exparte before the Tribunal, notice to the 3rd respondent is dispensed with.

7. Mr.R.Neethi Perumal, learned counsel appearing for the appellant would contend that the Tribunal was in error in taking a sum of Rs.10,000/- as notional income for a student. He would submit that the accident had occurred in 2013 and the notional monthly income should have been taken only at Rs.6,000/-. He would also contend that the Tribunal was not justified in granting a sum of Rs.2,00,000/- towards loss of love and affection. Relying upon the judgment of National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the learned counsel would contend that the conventional damages would be only at the rate of Rs.40,000/- per claimant.

8. Mr.F.Terry Chella Raja, learned counsel appearing for the respondents 1 and 2/ claimants would contend that even Rs.10,000/- fixed by the Tribunal is on the lower side. He would invite our attention to the judgment of the Division Bench of this Court in Balamanohari Vs. Sri Venkateswara College of Engineering and others reported in 2018 (2) TN MAC 81, wherein the Division Bench has approved the fixation of notional income at Rs.20,000/- for an engineering student.

9. We have considered the rival submissions. Admittedly the deceased was a student of Commerce and he was in the final year. Though the Tribunal had fixed the notional income at Rs.10,000/- it had taken note of the future prospects and added 50% to it and fixed the monthly income at Rs.15,000/-. After having deducted 50% towards personal expenses, the Tribunal has fixed a monthly loss of dependency at Rs.7,500/-. We do not find that the said figures adopted by the Tribunal are on the higher side.

10. No doubt true the Division Bench in Balamanohari Vs. Sri Venkateswara College of Engineering and others reported in 2018 (2) TN MAC 81, had upheld the fixation of Rs.20,000/- as notional income. The Division Bench had only directed addition of 40% towards future prospects, whereas in the case on hand the Tribunal had added 50% towards future prospects. Apart from the above, the deceased in the case before the Division Bench in Balamanohari Vs. Sri Venkateswara College of Engineering and others reported in 2018 (2) TN MAC 81, was an engineering student. Engineering being a professional course the fixation of notional income at Rs.20,000/- came to be upheld.

11. We therefore find that the fixation of Rs.10,000/- as monthly income and adoption of 50% towards future prospects does not call for interference at our hands. The Tribunal has however awarded a sum of Rs.2,00,000/- towards the loss of love and affection. The larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) held that the conventional damages like loss of consortium and loss of love and affection cannot be above Rs.40,000/-. Therefore, we find that the award of Rs.2,00,000/- towards loss of love and affection is on the higher side and the same is reduced to Rs.80,000/- at Rs.40,000/- each for the claimants. The other heads of compensation awarded by the Tribunal viz., loss of estate, funeral expenses, compensation for damages caused to the motor cycle are all upheld.

12. In the result, the appeal is partly allowed, the compensation awarded under the head of loss of love and affection is reduced to Rs.80,000/- and the total award is thus reduced to Rs.17,80,000/- instead of Rs.19,00,000/-. The 1st petitioner being the mother of the deceased will get Rs.11,00,000/- and the 2nd petitioner father will be entitled to Rs.6,80,000/-. The other directions of the Tribunal in respect of deposits are confirmed. There will be no order as to costs in this appeal. Consequently, the connected Miscellaneous Petition is also closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal - II,
Court of Small Causes
Chennai.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.V. Venkatesan, advocate sr 55936.

CMA.No.2425 of 2017

SR(CO)
SP(20/09/2018)