

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A. No. 2679 of 2017

and CMP.No.17838 of 2017

United India Insurance C.Ltd.,
No.134, Sillingi Buildings,
Greams Road, Chennai-600006.

..Appellants/2nd Respondent

Vs.

1.Mahalakshmi
2.Minor.Jayaprakash
3.Minor.Rajesh
4.Minor.Rajasekar
5.Angamuthu
6.Radha

... Respondents 1 to 6/Petitioners
(Minor petitioners rep.by this mother and
First Respondent)

7. D.Rangaraj

..7th Respondents/Owener of the vehicle

Prayer: Civil Miscellaneous Appeal is filed to set aside the Decree and Judgment dated 07.04.2017, passed in M.C.O.P. No.8157 of 2013 on the file of Motor Accidents Claims Tribunal -II, Court of Small Causes, Chennai and exonerates the liability of this appellant.

For Appellant : Mr.G.Udaya Sankar

For Respondents: Mr. K.Varadha Kamaraj

JUDGMENT

(Judgement of this Court made by R.Pongiappan.J.)

Aggreived over the award passed by the II Court of Small Causes (Motor Accidents Claim Tribunal) Chennai in MCOP. No. 8157 of 2013 dated 07.04.2017, the Insurance Company/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the same.

2. The respondents 1 to 6 herein have filed the claim petition under Section 166 of Motor Vehicles Act and Ruel 3 of

Motor Accident Claims Tribunal Rules, claiming compensation of Rs.20,00,000/- for the death of one Mr. Katturaja who died in the road accident.

3. The case of the respondents 1 to 6 herein in the tribunal is that on 30.06.2013 at about 10.30 p.m the deceased Katturaja was walking in Poonamallee High Road, opposite to Maduravoil Municipality from south to north direction. At that time, a Motor Cycle bearing Registration No. TN05 -AJ-9590, which came in a rash and negligent manner from west to east direction hit the deceased, thereby the deceased sustained fatal injuries and died on 01.07. 2013 at Government General Hospital, Chennai. The accident took place due to rash and negligent driving of the motor cycle rider alone. For the said accident, being the dependents of the deceased, the respondents 1 to 6 have filed a claim application and after elaborate enquiry, the Tribunal has passed the judgment in which Rs.24,03,000/- was awarded as compensation.

4. Today, when the appeal is taken up for hearing, we heard Mr.G.Udaya Sankar, learned counsel appearing for the Appellants and Mr. K.Varadha Kamaraj, learned counsel appearing for the respondents.

5. With regard to the liability, the learned counsel appearing for the Appellants did not raise any objections over the findings arrived by the Tribunal.

6. The only point in issue is the quantum of compensation awarded by the Tribunal. In the Tribunal, in order to determine the income of the deceased, it is contended that the deceased was working as a lorry driver and earning a sum of Rs.15,000/- per month. But with regard to this issue, the licence which was issued to the deceased, which is a crucial document to show the eligibility for the driver has not been produced and not marked as an exhibit. So, in the absence of evidence to prove the fact that the deceased was a driver, the Tribunal has determined the income of the deceased as Rs.8,000/- per month. We also agree with the stand taken by the Tribunal and fix the notional income of the deceased as Rs.8,000/- per month.

7. Secondly, with regard to the age of the deceased, it was fixed by the tribunal as 37 years at the time of his death based on the post-mortem certificate, which was marked as Exhibit -P3. So, in order to calculate the total compensation, the age of the deceased was fixed as 37 years. Now for calculating the future prospects, it is necessary to refer the judgement of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12, in which,

it was observed that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years.

8. In this case, since we have already decided that the age of the deceased is 37 years, future prospects will have to be calculated by including 40% of the income derived by the deceased.

9. Having regard to the deduction, it is necessary to see the judgment of the Hon'ble Apex Court in the case of Sarala Verma and Others Vs. Delhi Transport Corporation and another passed in Civil Appeal No. 3483 of

2008 Dated 15.04.2009, in which it was observed that if the members of the family is 4 to 6, we have to deduct one fourth of the total income towards the personal and living expenses of the deceased. In this appeal also, the dependants of the deceased is mentioned as six.

10. With regard to the multiplier, the Hon'ble Apex Court in the same judgment has considered various issues and came to the conclusion that for the age of the 37, appropriate multiplier is 15.

11. Finally with regard to the conventional compensation, the Full Bench Judgment of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017 -13 SCALE 12 has fixed the additional amount of Rs.70,000/- on account of the conventional heads.

12. Accordingly, we have decided that the annual income of the deceased would be Rs.96,000/- (8000 x 12). Adding a component of 40% for future prospects, the income would stand at Rs.1,34,400/-. Deducting an amount of one fourth towards personal expenses, the loss of dependency per annum works out to Rs.1,00,800/-. Applying a multiplier of 15, the total loss of dependency would work out to Rs.15,12,000/-. Further, this Court added an additional amount of Rs.70,000/- as per the decision of the Hon'ble Apex Court as stated supra i.e on account of the conventional heads of loss of estate (Rs.15,000/-), loss of consortium (Rs.40,000/-) and funeral expenses (Rs.15,000/-). This Court further adds an amount of Rs.5,000/- towards the transportation expenses. However on going through the

particulars available from the claim application, the deceased had left his two children and his mother as dependants. Loss of love and affection is nothing but akin to loss of consortium, so it is desirable to award Rs.75,000/- to the respondents 2 to 4 for the loss of love and affection.

The total compensation payable to the claimants is as hereunder:

Loss of dependency	:	Rs.15,12,000/-
Los of Estate	:	Rs. 15,000/-
Loss of Consortium	:	Rs. 40,000/-
Funeral Expenses	:	Rs. 15,000/-
Transportation Expenses	:	Rs. 5,000/-
Loss of Love and Affection by the respondents 2 to 4 herein .	:	Rs. 75,000/- - - - - -
Total Compensation :		Rs.16,62,000/- - - - - -

With regard to the order of Pay and Recovery passed by the Tribunal, we affirm the same without any hesitation.

13. Since the appellant Insurance Company has already deposited part of amount of Rs.14,70,324/- to the credit of MCOP. No. 8157 of 2013, this Court directs the appellant Insurance Company to deposit the balance amount of Rs.1,91,676/- with interest, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1, 5 and 6 are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed by this Court, in the ratio fixed by the Tribunal, within a period of two weeks thereafter. The shares of the respondents 2 to 4, who are minors, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till they attain majority. Further the 1st respondent being the mother of the respondents 2 to 4, is permitted to take quarterly interest in the fixed deposit made thereon.

14. In the result, the Civil Miscellenous Appeal is partly allowed and the award granted by the Tribunal to the tune of Rs.24,03,000/- is reduced to Rs.16,62,000/-. The said amount

shall carry the same rate of interest as awarded by the Tribunal, namely, 7.5% per annum and the apportionment shall be as ordered by the Tribunal. Consequently, the connected Miscellaneous Petitions is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

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

2. The Section Officer,
V.R Section,
High Court, Madras

+lcc to Mr. K.Varadha Kamaraj, Advocate sr.6243
+lcc to Mr.G.Udaya Sankar, Advocate sr.5997

C.M.A. No. 2679 of 2017

cnr(co)
nr 09/08/2019