THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A. No. 2816 of 2017

and CMP.No.16115 of 2017

Shriram General Insurance Co.Ltd.,
No.66, City Complex, Thirumalaipillai Road,
T.Nagar,
Chennai-600 017. ...Appellant/2nd respondent

Vs.

1.C.Ambika
2.M.Chakkarapani ... Respondents 1 & 2/Claimants

3.P.Murugan ...3rd respondent/1st respondent

Prayer: Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 01.12.2016 made in MCOP. No. 764 of 2013 on the file of Motor Accident Claims Tribunal (II Additional District Judge), Poonamalle and dismiss the above claim.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents 1&2 : M/s.F.Terry Chellappa Raja

For Respondent 3 : Given up.

JUDGMENT

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

Aggrieved over the award passed by the Motor Accident Claims Tribunal /(II Additional District Judge), Poonamalle in MCOP. No. 764 of 2013 dated 01.12.2016, the Insurance Company/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the same.

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2. The respondents 1 & 2 herein have filed the claim petition under Section 166 of Motor Vehicles Act and Rule 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.19,30,000/- restricted to Rs.15,00,000/- for the death of one C.Ashok Kumar, who is the son of the respondents herein.

3. The case of the respondents 1 & 2 herein in the claim petition is that on 15.05.2013 at about 11.pm the deceased C.Ashok Kumar drove the lorry bearing registration No. TN 20 AE 3876 from south to north direction in Tambaram-Puzhal Bye-pass Road. Since the lorry became fault, the deceased invited the mechanic and was assisting the mechanic by showing torch light from the backside of the lorry. At that time, a lorry bearing registration no. TN 22 AV 7979 owned by the third respondent herein came in a rash and negligent manner and hit the deceased, thereby he died at the spot itself.

4. In order to substantiate the same, the claims tribunal perused the First Information Report, death certificate and post-mortem certificate which were marked as Ex.P1, Ex.P3 and Ex.P4 respectively through the 1st petitioner when she was examined as PW1.

5. Today, we heard the arguments advanced by Mr.S.Dhakshnamoorthy, learned counsel appearing for the appellant and Mr. F.Terry Chella Raja learned counsel appearing for the respondents 1&2.

6. Now, the claims tribunal after elaborate enquiry came to the conclusion that the alleged accident had happened only due to the rash and negligence act of the driver, who drove the lorry bearing registration no. TN 22 AV 7979. According to the submissions made by the learned counsel appearing for the appellant, he did not dispute the findings of the Tribunal with regard to the negligence of the driver, who drove the offending vehicle, thereby, we also confirm the findings arrived by the claims tribunal with regard to the liability.

7. With regard to the quantum, the learned counsel appearing for the appellant made a submission that the claims tribunal without following the prevailing situations in the year 2013, calculated the notional income of the deceased as Rs.12,000/-, which is incorrect.

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8. On the other hand, the learned counsel appearing for the 1st respondent has made a submission that being a driver of the lorry, the deceased can easily earn Rs,15,000/- per month. Considering the rival submissions made by both the counsels and on considering the circumstances in and around the lorry business, it could be seen that now a days there is a high demand for lorry drivers. Accordingly, we determine the notional income of deceased as Rs.10,000/- per month. Consequent to fixing of the notional income, on going through the award passed by the claims tribunal, it is seen that future prospects of the deceased was not added for calculating the loss of dependency.

9. In this regard, in the Claims Tribunal, the post-mortem certificate of the deceased was marked as Exhibit -P5. According to the said certificate, the age of the deceased at the time of his death was fixed as 26 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 if the deceased was self employed and died at the age of below 40 years, 40% of the notional income can be added as future prospects for calculating loss of dependency. Accordingly, this Court adds 40% of the monthly income, which would be at Rs.14,000/-.

10. Subsequent to that, in order to calculate the loss of dependency, we have to deduct the income towards personal and living expenses of the deceased, for which, it is necessary to refer 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, wherein, it was observed that, if the deceased was a bachelor and the claimants are the parents, 50% of the total income to be deducted to calculate the personal and living expenses. In the present case also, the claimants are the parents of the deceased.

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11. With regard to the multiplier, the Hon'ble Apex Court in the same judgment has considered various issues and came to the conclusion that if the age of the deceased is 26 years, the approximate multiplier is 17.

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12. Now for adding conventional heads, it would be necessary to comply with the principles laid down in 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. Accordingly, this Court adds Rs.15,000/- towards the loss of estate and Rs,15,000/- towards Funeral Expenses instead of Rs.50,000/- fixed by the Claims Tribunal.

13. This Court further considers that since the deceased is the only son of the petitioners in the claim petition, the love and affection lost cannot be compensated by way of any money. Due to the death of their only son, the petitioners' have lost all their things and even no person is available for completing their final rites. In this connection, we have decided that some amount to be given for loss of love and affection. Accordingly, Rs.50,000/- is determined towards loss of love and affection.

14. Accordingly, we have decided that the annual income of the deceased would be Rs.1,20,000/- (10000 x 12). Adding a component of 40% for future prospects, the income would stand at Rs.1,68,000/-. After deducting 50% from the total income towards personal and living expenses, the loss of dependency per annum works out to Rs.84,000/-. Applying a multiplier of 17, the total loss of dependency would work out to Rs.14,28,000/-. Further, this Court added an additional amount of Rs.30,000/- as per the decision of the Hon'ble Apex Court as stated supra under the conventional heads of loss of estate (Rs.15,000/-), and funeral expenses (Rs.15,000/-). This Court also further added an amount of Rs.50,000/- towards loss of love and affection.

Hence the total compensation is quantified as follows;

Loss of dependency	:	Rs.14,28,000/-
Los of Estate	:	Rs. 15,000/-
Funeral Expenses	:	Rs. 15,000/-
Loss of Love and Affection	:	Rs. 50,000/-
Total Compensation	:	Rs.15,08,000/-

15. Hence, the appellant/Insurance Company is directed to deposit the entire award amount, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 & 2 herein are permitted to withdraw their

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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.

16. In the result, the Civil Miscellenous Appeal is partly allowed and the award granted by the Tribunal to the tune of Rs.24,12,000/- is reduced to Rs.15,08,000/-. The said amount shall carry the rate of interest at 7.5% per annum and the apportionment shall be as ordered by the Tribunal. Consequently, the connected Miscellenous Peitions is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
II Additional District Judge,
Poonamalle.

+1cc to Mr.S.Dhakshnamoorthy, Advocate Sr.25506
+1cc to Ms.M.Malar, Advocate Sr.25672

C.M.A. No. 2816 of 2017
and CMP.No.16115 of 2017

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srg 08/06/2018

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