THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

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

C.M.A. No. 304 of 2017
and CMP.No.2197 of 2017

The Divisional Manager,
M/s. New India Assurance Co.Ltd.,
No.14/7, K.G. Swamy Complex,
Bagalur Road,
Hosur -635 109. ..Appellant

Vs.

1.Rani
2.Minor. Dhanush
3.Minor. Pavwan
4.Kamala
(Respondents 2 & 3 Minors Rept.
By Mother & NF 1st respondent)

5.Kumar ..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988 to set aside the decree and judgment dated 25.11.2015 made in MCOP. No. 147 of 2014 on the file of Motor Accident Claims Tribunal, Special District Judge, Krishnagiri.

For Appellant : Mr.J.Chandran
For Respondents 1 to 4 : Mr.C.Prabakaran

JUDGMENT

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

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri in MCOP. No. 147 of 2014 dated 25.11.2015, the Insurance Company/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the award.

2. In the claims tribunal, the respondents 1 to 4 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.2,50,00,000/- restricted to Rs.60,00,000/- for the death of one Mohan died in the road accident. After elaborate enquiry, the claims tribunal awarded a sum of RS,25,62,000/- towards fair and just compensation to the respondents 1 to 4 herein and further directed the appellant and the 5th respondent herein to pay the said amount with 7.5% from the date of filing the petition till date of deposit within 60 days from the date of order and in default the said amount should be paid with interest at the rate of 9% after 60 days till the date of deposit.

3. The case of the respondents 1 to 4 herein in the Claims Tribunal is that on 23.01.2014 the deceased Mohan was proceeding in a Hero Honda Motor Cycle bearing registration no. TN 29-AE-5567 on the left side of kaarimangalam Morappur Road near Mottur Rice Mill bus stop, a lorry bearing registration No. TN30-K-9646 owned by the 5th respondent and insured with the appellant herein came in a rash and negligent manner without observing the road rules and hit against the motor cycle. Due to the said accident, the deceased Mohan was thrown out from the vehicle and sustained fatal injuries on vital parts. Even after giving necessary first aid, he died on his way to hospital.

4. The alleged accident occurred only due to rash and negligent act of the driver employed under the 5th respondent. On the alleged accident a case has been registered by the Kaarimangalam Police in Crime No. 17/2014 for the offences under Sections 279, 304(A) of IPC. After the said accident, being wife of the deceased, the 1st respondent herein had filed a claim application before the Tribunal for herself and on behalf of their children, the 2nd & 3rd respondents herein, who are minors, born out of their wedlock. The mother of the deceased was added as 4th respondent herein, claiming dependency of the deceased.

5. Today, we heard the arguments advanced by Mr.J.Chandran, learned counsel appearing for the appellant and Mr.C.Prabakaran, learned counsel appearing for the respondents 1to 4.

6. Mr.J.Chandran, learned counsel appearing for the appellant fairly submitted that he is not going to challenge the findings of the Claims Tribunal with regard to the negligence of the driver, who drove the lorry bearing registration no. TN30-K-9646. However, he has submitted that he would challenge only the quantum fixed by the Claims Tribunal.

7. With regard to the submissions made by the learned counsel appearing for the appellant, it is necessary to consider the following factors for arriving of a just compensation.

> i. Monthly income of the deceased, ii. Future Prospects, iii. Annual dependency, 4. Multiplier to be adopted for calculating pecuniary loss and other compensation under the conventional heads.
>
> 8. On going through the award passed by the Claims Tribunal, it is seen that based on the evidence given by the first respondent as PW1 and on considering the evidence given by the Auditor as PW2 and other relevant documents exhibited through the said witnesses, the Claims Tribunal came to the conclusion that Rs.16,000/- is monthly income of the deceased.

9. In the Claims Tribunal, it was mentioned that the deceased was running a Firm in the name of Amman Fruits Products. In order to substantiate the same, the registration certificate of the said Amman Fruits Factory was marked as Ex.P3. Further, the Auditor's account statements and Bank Account statement of the said Firm were marked as Exs P.8 & P.9 respectively. With regard to these aspects, the learned counsel appearing for the appellant submitted that the documents which were marked as Ex.P8 & P9 in the Claims Tribunal are bogus ones and they were prepared only for the purpose of claiming excessive compensation.

10. On perusal of the marked documents, it is seen that in the auditors accounts statement, which was marked as Ex.P8, it is not having any signature of concerned Income Tax Authorities. More over, as per the particulars available in the bank statements, the deceased was having Terminal Account, Cash Credit Account, which would not reflect the earnings of the Firm. So we fairly believe that those documents were created only for the purpose of claiming excessive compensation and hold that those documents are not relevant for calculating monthly income of the deceased. Accordingly, we hold that the deceased was not having any permanent job for the purpose of calculating monthly income. As per Exhibit P7, the Family Card of the deceased, the age of the deceased is 34. The alleged accident had happened in the year 2014. Hence, on considering the prevailing circumstances and on considering the observations of the Hon'ble Apex Court in the case of Neeta Vs. The Divisional Manager, MSRTC, Kolhapur reported in 2015 (1) TN MAC 161 (SC), this Court determines Rs.8,500/- as monthly income of the deceased.

11. Now, in order to calculate 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, the Hon'ble Apex Court has held that if the deceased was self employed and below the age of 40 years, 40% of the monthly income to be added as future prospects, in order to calculate the pecuniary loss. As already discussed, the age of the deceased at the time of his death was 34 years. Hence, by adding 40% of the monthly income, the future prospects would be Rs.11,900/- (8,500 + 3400).

12. Further, in order to calculate the personal and living expenses, 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, has observed that if dependants are 4 to 6, one fourth of the total income to be deducted towards the personal and living expenses. Accordingly, we decided to deduct one fourth of the total annual income for calculating personal and living expenses.

13. Now, with regard to the multiplier, the Hon'ble Apex Court in the judgment (cited supra), has held that if the deceased having the age of 31 to 35 years, the multiplier of 16 has to be taken into account for calculating loss of dependency. In this case also, as per Exhibit P7, Family Card, the age of the deceased is 34, hence the appropriate multiplier is fixed as 16.

14. On going through the conventional heads, as per the Hon'ble Apex Court in the judgment of Praney Sethi's case (cited supra), addition of Rs.70,000/- would be required to be added on account of conventional heads of loss of estate (Rs.15,000/-), loss of consortium (Rs.40,000/-) and funeral expenses (Rs.15,000/-). In this case for the above conventional heads, the Tribunal had awarded a sum of Rs. 1,00,000/- to the wife of the deceased towards loss of consortium, a sum of Rs.25,000/- towards funeral expenses and the same is modified as Rs.70,000/- as per the said Judgment of the Hon'ble Apex Court.

15. Further, on going through the other circumstances, we observe that loss of love and affection is nothing but akin to loss of consortium, thereby the amount granted by the tribunal, namely Rs.50,000/- each to the 2nd & 3rd respondents and Rs.25,000/- for the 4th respondent under the head of love and affection is confirmed. Moreover the Claims Tribunal has awarded Rs.5,000/- towards transportation expenses, and the same is modified as Rs.10,000/- and Rs.3,000/- towards loss of damages to clothes is confirmed.

16. Accordingly, we have decided that the annual income of the deceased would be Rs.1,02,000/- (8500 x 12). Adding a component of 40% for future prospects, the income would stand at Rs.1,42,800/-. Deducting an amount of one fourth towards personal expenses, the loss of dependency per annum works out to Rs.1,07,100/-. Applying a multiplier of 16, the total loss of dependency would work out to Rs.17,13,600/-. Further, this Court added an additional amount of Rs.70,000/- towards conventional heads and Rs.1,25,000/- towards loss of love and affection and Rs.10,000/- towards transportation expenses and Rs.3,000/- for the loss of damages to clothes and other articles.

Hence, total compensation payable to the claimants is as hereunder:

i.	Loss of dependency	:	Rs.17,13,600/-
ii.	Los of Estate	:	Rs. 15,000/-
iii.	Loss of Consortium	:	Rs. 40,000/-
iv.	Funeral Expenses	:	Rs. 15,000/-
v.	Loss of Love and Affection by the respondents 2 & 3 herein .	:	Rs. 1,00,000/-
vi.	Loss of Love and Affection by the 4th respondent herein .	:	Rs. 25,000/-
vii.	Transporation Expenses	:	Rs. 10,000/-
viii.	Loss of damages to cloths and other articles	:	Rs. 3,000/-
	Total Compensation	:	Rs. 19,21,600/-

17. Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount, with interest and costs, 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 & 4 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 from the date of receipt of a copy of this order. The shares in respect of the respondents 2 & 3, who are minors, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till they attain majority. The 1st respondent, being the mother of the 2nd & 3rd respondents, is permitted to withdraw the quarterly interest from the said deposit.

18. In the result, the Civil Miscellenous Appeal is partly allowed and the award passed by the Tribunal to the tune of

Rs.25,62,000/- is reduced to Rs.19,21,600/-. The said amount shall carry the rate of interest of 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(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Krishnagiri

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.26916
+1cc to Mr.J.Chandran, Advocate, S.R.No.27572

C.M.A. No. 304 of 2017
and CMP.No.2197 of 2017

KJI(CO)
GSP(17/07/2018)