THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM :

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

C.M.A. No. 3246 of 2017
and CMP.No.20235 of 2017

IFCO-TOKIO
General Insurance Company Ltd.,
Branch Office, J.H Floor,
2nd Floor, New No.24, Old No. 302,
LIC Colony Road, Salem -636 004. ..Appellant/2nd Respondent

Vs.

1.Latha
2.Minor. ManiBharath
3.Minor.JeyaPradeep
4.Chinnaponnu ..Respondents 1to5/Petitioner 1to5
5.Nallappan

6.Anandhakumar

7.Palanivel ..1st Respondents/1st Respondent & 3rd Respondent

(Set Ex.Party before the Trial Court)
(R2 & R3 declared as majors as per I.A.NO.1815/2015, dated 24.2.2016)

Prayer: Civil Miscellaneous Appeal is filed to set aside the order and Decreetal order made in MCOP. No. 668 of 2011,dated 03.04.2017 on the file of the Motor Accidents Claims Tribunal (Sub Court), Sankagiri and allow this appeal.

For Appellant : Mrs.K.Saraswathi
For Respondents: No Appearance



JUDGMENT
(Judgment of this Court made by R.Pongiappan.J.)

Aggrieved over the award passed by the Motor Accident Claims Tribunal /Subordinate Judge, Sankagiri in MCOP. No. 668 of 2011 dated 03.04.2017, 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. In the claims tribunal, the respondents 1 to 5 herein have claimed compensation for the death of Manickam in the motor accident.

3. The case of the respondents 1 to 5 herein in the tribunal is that on 05.08.2011 at about 5 pm the deceased Manickam was riding his TVS-50 bike bearing Registration No.TN28-C-7808 towards Mattampatty from Konganapuram on the extreme left side near Erumaipatty bus stop, Edapadi Taluk. At that time, without abiding the road regulations, the driver of the Ape Auto bearing Registration No. TN34-A-2938 came from opposite side in a rash and negligent manner and hit against the deceased. Due to the accident, the deceased Manickam sustained serious fractures in head, fore head, face and all over the body and after admitting in the Vinayaka Mission Hospital, Seeragapdy, Salem inspite of giving necessary treatments, the said Manickam had died due to the severe fractures in the head.

4. In the claim petition, the owner of the Ape Auto Anandakumar was added as first respondent. In this appeal, he is arrayed as sixth respondent. Further, the previous owner of the said Auto, Palanivel, who is having policy in his name, was added as third respondent in the claim petition and in this appeal, he is arrayed as seventh respondent.

5. Heard Mrs. K.Saraswathi, learned counsel appearing for the appellant.

6. The claims tribunal came to the conclusion that only because of the rash and negligent act of the 6$^{th}$ respondent, the alleged accident had occurred. In this regard Mrs.K.Saraswathi, the learned counsel appearing for the appellant fairly admit the findings of the Tribunal and she had not disputed the negligence committed by the Auto driver/6$^{th}$ respondent herein. Accordingly, we also confirm the findings arrived by the claims tribunal. Now, the only submission of the learned counsel appearing for the appellant is with regard to the quantum.

7. In the claims tribunal, after discussing various guidelines of the Hon'ble Apex Court, the Presiding Officer decided that the respondents 1 to 5 herein are entitled for compensation of Rs.20,02,000/- with interest of 7.5% per annum.

8. Before arriving at the said decision, the Tribunal after considering the evidence given by the first petitioner, who is the wife of the deceased as PW1, on considering the evidence of PW2 Appusamy,who lodged the complaint before the police

authority and further considering the evidence of PW3 Jayachandran, who was working as conductor in the bus where the said deceased Manickam was working as Driver, came to the conclusion that the deceased Manickam was earning Rs.9,000/- per month.

9. With regard to this issue, before the tribunal, in order to dispute the said aspect, nobody was examined on the side of the appellants. However, it is normal that in the year 2011, a driver can easily earn Rs.9,000/- per month. This court also considered the said aspect, particularly the demand of driver and held that the fixation of Rs.9,000/- per month towards income by the claims tribunal is exactly correct one. Secondly, in order to calculate the Loss of dependency, the claims tribunal added 30% of the monthly income as future prospects.

10. In this occasion, 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 a person having age between 40 and 50 years and having permanent job, 30% of income to be added as future prospects.

11. In this case also, as per Exhibit P2- Post-Mortem certificate, the age of the deceased at the time of the accident was 40 and as per the evidence of PW3, the deceased was permanently working as driver. Therefore, adding of 30% of annual income to calculate future prospects by the Tribunal is found correct.

12. Further, in order to deduct the personal and living expenses, the Tribunal decided to deduct one fourth of the total annual income. With regard to this aspect, the Hon'ble Apex Court in the case of Sarla 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 of the deceased. Thus, the Claims Tribunal has rightly followed the said ratio.



13. Now, with regard to the multiplier, the Tribunal took multiplier 14 for calculating the loss of dependency. In this occasion also, it is necessary to refer the judgment of the Hon'ble Apex Court in Sarla Verma's Case (stated supra), in which the Hon'ble Apex Court has held that if the person having the age of 41 to 45 years, the multiplier of 14 has to be taken into account for calculating loss of dependency.

14. Subsequent to the calculation of loss of dependency, the claims tribunal have added Rs.1,00,000/- towards loss of consortium, Rs.4,00,000/- towards love and affection, Rs.2,000/- towards medical expenses and Rs.25,000/- towards Funeral Expenses.

15. Now the said quantum is challenged by the appellant counsel by quoting the judgment of Pranay Sethi's case (supra). In the said case, our Hon'ble Apex Court held that after calculating the loss of dependency, 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/-).

16. Accordingly, we have decided that the annual income of the deceased would be Rs.1,08,000/- (9000 x 12). Adding a component of 30% for future prospects, the income would stand at Rs.1,40,400/-. Deducting an amount of one fourth towards personal expenses, the loss of dependency per annum works out to Rs.1,05,300/-. Applying a multiplier of 14, the total loss of dependency would work out to Rs.14,74,200/-. 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 added an amount of Rs.1,00,000/- towards loss of love and affection for the respondents 2 & 3, who are the minors and Rs.2,000/- towards medical expenses.

Hence the total compensation is quantified as follows;

| | | |
|---|---|---|
| Loss of dependency | : | Rs.14,74,200/- |
| Los of Estate | : | Rs. 15,000/- |
| Loss of Consortium | : | Rs. 40,000/- |
| Funeral Expenses | : | Rs. 15,000/- |
| Loss of Love and Affection | : | Rs. 1,00,000/- |
| Medical Expenses | : | Rs. 2,000/- |
| Total Compensation | : | Rs.16,46,200/- |

17. Accordingly, 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 1,4 & 5 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 Petition is partly allowed and the award passed by the Tribunal to the tune of Rs.20,02,000/- is reduced to Rs.16,46,200/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namley, 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)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
the Motor Accidents Claims Tribunal,
Subordinate Court, Sankagiri.

2. The Section Officer, VR Section,
High Court, Madras. (2 copies)
Sankagiri.

+ 1 cc to Mr.C.R. Krishnamoorthy, Advocate Sr.24813



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BR(CO)
EU(05/09/2018)