IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM:

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

CMA.No.3414 of 2017
and CMP Nos.21647 of 2017 & 7759 of 2018

Shriram General Insurance Co. Ltd.,
Nagappa Complex, 2nd Floor,
1076, Mettupalayam Road,
Coimbatore. ... Appellant

-vs-

1. Parameswari

2. Govilaveni

3. K.Vadivel

4. C.Kittusamy

5. Vellingiri Andavar Textiles (P) Ltd.,
Rep by its Managing Director,
having Reg. Office: at 2/1,
Avinashi Road, Chinniampalayam,
Coimbatore District 641 062.

6. M/s.ALTN & Co.
Sabari Towers,
28, KRR Layout,
Mangalam Road, Tiruppur 4. ... Respondents

R5 & R6 suo motu impleaded vide Court order
dated 28/06/2018 made in CMP No.7759/2017
in CMA No.3414/2017 (NKKJ & KRJ)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 31.03.2016 made in MCOP.No.1509 of 2013 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Court), Tiruppur.

For Appellant : Mr.S.Dhakshamoorthy

For Respondents: Mr.N.Manokaran for RR 1 & 2

No appearance for RR 3 to 6

J U D G M E N T

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

The challenge in the Appeal is to the award of the Motor Accident Claims Tribunal, Coimbatore, dated 31.03.2016, in and by which, the Tribunal had awarded a sum of Rs.33,50,000/- as compensation for the death of one K.Sundaram in the motor accident that occurred on 01.07.2012 at about 10 p.m.

2. The case of the claimants before the Tribunal was that on 01.07.2012 at about 10 p.m., the deceased Sundaram was riding the Motor Cycle bearing Registration No.TN-38-R-7732 with his friend one Sandeep kumar as a pillion rider. While they were proceeding in north to south direction on the Puliamatti to Annur main road, on to the extreme left side of the road, the Tractor, bearing Registration No.TN-40-C-6994, belonging to the 2nd respondent driven by the 3rd respondent, which was parked on the right side of the road, suddenly took off without light and dashed against the Motor Cycle. Due to the impact, both the deceased Sundaram and his friend were thrown out of the Motor Cycle and Sundaram suffered grievous head injuries and died on the spot.

3. It is claimed that the deceased aged about 48 years and he was working as a Manager in Vellangiri Andavar Mills at Irugur, drawing a monthly salary of Rs.30,000/-. Contending that the accident occurred due to a rash and negligent driving of the Tractor by the 3rd respondent, the claimants have come out with a claim petition claiming Rs.40,00,000/- as compensation.

4. The Claim Petition was resisted by the 3rd respondent insurer of the Tractor, claiming that the owner and the insurer of the Motor Cycle driven by the deceased Sundaram are also necessary parties. They are also contended that the deceased Sundaram was not having a valid driving licence and he was also responsible for the accident. The claim that the accident occurred due to the rash and negligent driving of the tractor was disputed. The details of the income of the deceased was claimed to be exaggeraed and the quantum of compensation claimed was also denied.

5. The Motor Accident Claims Tribunal, Coimbatore on an analysis of the evidence of the eye witness P.W.3 and the contents of the FIR, taking note of the fact that the case was registered against the driver of the Tractor in crime No.370 of 2012 by Annur Police, concluded that the accident had happened due to the rash and negligent driving of the Tractor by the 3rd respondent. On the question of quantum, the Tribunal relied upon Ex.P16, which is a salary Certificate issued by the employer as well as Ex.P5, which is an ex-parte order of the Competent Authority, under the Employees Provident Scheme, fixed the monthly income at Rs.30,000/-. After deducting 1/3rd for personal expenses, the Tribunal arrived at the loss of dependency at Rs.20,000/- per month. Applying the multiplier of 13, the Tribunal arrived at the loss of dependency at Rs.31,20,000/-. The Tribunal awarded a sum of Rs.1,00,000/- each for loss of consortium and loss of love and affection, Rs.25,000/- for funeral expenses and Rs.5,000/- for the loss of estate, totaling to Rs.33,50,000/-. It is this award that is challenged before us by the Insurance Company, as excessive.

6. We have heard Mr.S.Dhakshnamoorthy, learned counsel appearing for the appellant /Insurance Company and Mr.N.Manokaran, learned counsel appearing for the respondents 1 and 2. Though respondents 3 to 6 have been served, they have not chosen to appear either in person or through counsel.

7. Mr.S.Dhakshnamoorthy, learned counsel appearing for the Insurance Company would submit that Ex.P.16 salary certificate has been given in a letter head and P.W.4 who was examined to prove the same has admitted that they deduct tax at source if the salary exceeded the limits prescribed under the Income Tax Act. He would further contend that the order of the Competent Authority under the Payment of Gratuity Act Scheme, being an ex-parte order, the Tribunal, should not have relied upon it. The learned counsel would also point out that the witness, namely P.W.4 has admitted that salary was being paid to the deceased through voucher and no voucher has been produced. The learned counsel would also contend that though the witness admitted that there is a salary slip and the same has also not been produced. Pointing out the above deficiencies in the evidence, Mr.S.Dhakshnamoorthy, would contend that the Tribunal was not justified in fixing a sum of Rs.30,000/- as evidenced by Ex.P16 as the salary of the deceased Sundaram.

8. Mr.N.Manokaran, learned counsel appearing for the respondents 1 and 2 would submit that the deceased was a Diploma Holder in Textile Technology and he has been working in the

industry right from 1990 for more than 22 years till his death. He would also submit that the Tribunal was justified in taking the monthly income at Rs.30,000/-.

9. The respondents 1 and 2 have taken out in Application in CMP No.7759 of 2018 for production of additional evidence the 1st document is sought to be produced is orders of appointment issued to the deceased Sundaram by Karur Mills Ltd., on 21.05.1990, where he was appointed as a shift Supervisor at a salary of Rs.1,650/- per month. The second document a Certificate issued by Hamsaveni Spinners (P) Ltd., Coimbatore, wherein it is shown that the said deceased Sundaram had worked as a Shift Supervisor from 30.03.1988 to 21.05.1990 on the monthly salary of Rs.1,650/-. The third document is a letter issued by Karur Mills Limited, relieving the deceased Sundaram from their services with effect from 08.09.1990. The documents 4, 5 and 6 are interview call letters issued to the deceased Sundaram by The Narasimha Mills Ltd. and The Rajalakshmi Mills Limited. Document No.7 is the order of appointment issued by Salzer Spinners Ltd., to the deceased Sundaram appointing him as Spinning Master at a monthly Salary of Rs.7,000/- on 13.08.1999. Document No.8 is the salary certificate issued by the Amsam Spinning Mills (P) Ltd, on 18.08.2002 which shows that the deceased was drawing a salary of Rs.8,960/- and document No.9 is the salary certificate issued by the Vellingiri Andavar Textiles (P) Limited, showing the salary drawn by the deceased Sundaram from the year 2008 to June 2012.

10. This application is opposed by the Insurance Company claiming that no sufficient cause has been shown for non-production of these documents before the Tribunal.

11. In the affidavit filed in support of the application, it is stated that the 1st appellant had undergone heart surgery and after the death of her husband, who is the sole bread winner of the family, she has been facing lot of hurdles and obstacles, and it is only due to the unenviable situation in which she was left, she was unable to make a thorough search and retrieve the documents.

12. We are of the considered opinion that these documents now produced along with CMP No.7759 of 2018 will be helpful in determining the matter in controversy, namely the quantum of salary drawn by the deceased at the time of his death. We do not see any prejudice being caused to the appellant Insurance Company, by receiving these documents in evidence. We are therefore of the considered opinion that CMP No.7759 of 2018

should be allowed and the documents produced along with application should be received in evidence. Accordingly, CMP No.7759 of 2018 is allowed and the documents that are filed along with the said application are received in evidence, on the side of the respondents 1 and 2 herein and are marked as Exs.P18 to P26.

13. We have considered the submissions of the counsels appearing for the parties. We see some force in submission of the learned counsel for the Insurance Company that Ex.P.16 salary certificate cannot be taken as a sole basis for determination of the income of the deceased. Of course, the 1st respondent has approached the Competent Authority under the Payment of Gratuity Act Scheme and was able to obtain an order in which the income of the deceased was shown as 30,000/- rupees. The said order is an ex-parte order passed in the absence of the employer. Mr.N.Manoharan, would however, contend that the employer has complied with the ex-parte order and had deposited the Gratuity amount payable to the deceased Sundaram to the Bank account of the 1st respondent. P.W.4 through whom the Salary Certificate Ex.P16 was marked as deposed that though the employer is bound to deduct tax at source from the salary paid to the deceased Sundaram, the employer has not done so.

14. We find that the Division Bench had earlier directed the employer as well as Auditor of the employer to be impleaded as parties/respondents to this Appeal and directed to issue notice to them. Despite service of notice, they have not chosen to appear either through counsel or in person. While, we accept the submission of the learned counsel for the Insurance Company/appellant that Exs.P5 and P16 cannot be from the basis for determination of the salary that has been paid to the deceased Sundaram by his Employer. We cannot shut our eyes to the other evidence that is available on record. Admittedly, the deceased was a Diploma Holder in Textile Technology and he has been working as a shift Supervisor and in other capacities in various Spinning Mills in the area since 1988. The documents produced by way of Additional evidence, namely Exs.P18 to P26 demonstrate that the deceased Sundaram had vast experience in textile manufacturing process. Taking into account the vast experience as well as the salary paid to similarly placed persons, we are of the considered opinion that the monthly salary of the deceased could be safely fixed at Rs.22,500/-.

15. Though, the Tribunal has taken the income at Rs.30,000/- it has not taken note of the future prospects. We are therefore of the opinion that 25% of the salary should be added towards

future prospects as per the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2017 (2) TNMAC 609 (SC).

16. In view of the above said judgment the compensation payable is worked out as follows:

Monthly Income	=	22,500
Add 25% towards Future Prospects	=	5,625
Less 1/3 personal expenses	=	9,375
Total	=	18,750

Monthly loss of dependency would be Rs.18,750/-. The total loss of dependency applying the multiplier of 13 as suggested by the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, reported in 2009 INSC 756 would be as follows:

Rs.18,750/- X 12 X 13 = Rs. 29,25,000/-

The total compensation is worked out as follows:

S.No.	Heads	Amount
1.	Loss of Dependency	Rs.29,25,000/-
2.	Loss of consortium	Rs. 40,000/-
3.	Loss of Love and affection	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
5.	Loss of Estate	Rs. 5,000/-
	TOTAL	Rs.30,25,000/-

18. In view of the above discussion, the appeal is partly allowed. The total compensation payable is fixed at Rs.30,25,000/- with interest at 7.5% per annum from the date of petition till date of payment. No Costs, Consequently, the connected miscellaneous petition is closed.

19. The claimants being the wife and the daughter of the deceased will share the compensation equally as directed by the Tribunal. It is stated by the learned counsel for the appellant Insurance Company that the claimants have withdrawn 80% of the compensation already deposited to the credit of the MCOP No.1509 of 2013, Motor Accident Claims Tribunal, Coimbatore. The claimants will be entitled to withdraw the balance amount, as per the compensation awarded above. The remaining amount shall be paid over to the Insurance Company by the Tribunal.

List of Exhibits marked on the side of the Respondents 1 & 2:

Sl. No.	Exhibits	Date	Description of Documents
1	Ex. P18	21.05.1990	Appointment order issued by the Karur Mills Ltd
2	Ex.P19	25.05.1990	Salary cum Conduct Certificate issued by Hamsaveni Spinner Pvt Ltd.
3	Ex.P20	08.09.1990	Relieving order issued by the Karur Mills Ltd.
4	Ex.P21	10.08.1990	Appointment order issued by the Narasimha Mills
5	Ex.P22	24.11.1990	Interview letter issued by the Rajalakshmi Mills Ltd
6	Ex.P23	27.12.1990	Interview letter issued by the Rajalakshmi Mills Ltd
7	Ex.P24	13.08.1999	Appointment order issued by the Salzer Spinners Ltd
8	Ex.P25	18.08.2002	Salary Certificate issued by Amsam Spinning Mills
9	Ex.P26	09.04.2018	Salary Certificate issued by the Velliyangiri Andavar Textiles Pvt. Ltd.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Special Subordinate Court,
Tiruppur.

Copy to:

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

+1cc to Mr.S.Dhakshamoorthy, Advocate sr.no.56815
+1cc to Mr.N.Manokaran, Advocate sr.no.56658

CMA.No.3414 of 2017
and CMP Nos.21647 of 2017 & 7759 of 2018

nr 09/10/2018