THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2018

CORAM :

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

C.M.A. No. 3522 of 2017
and CMP.No.22577 of 2017

M/s.TATA AIG General Insurance Company Limited,
No.1, Ethiraj Salai, Egmore,
Chennai -600 008.
..Appellant/2nd Respondent

Vs.

1.Dhanalakshmi
2.Vignesh Sowmiyakumari (Minor)
3.Mahalakshmi (Minor)
4.Sriraman (Minor)
(Respondents 2 to 4 Minors Rept.
by Mother & NF 1st respondent)

5. Arumugam
... Respondents 1 to 5/Petitioners

6. S.Murugesan ... 6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 21.07.2017 made in MCOP. No. 7521 of 2014 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai to deal with Special Subordinate Court No.2, Chennai.

For Appellant : Mr.Mohan Babu
for M/s.M.B.Gopalan Associates

For Respondents 1 to 5 : Mr. Amar D. Pandiya

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

Aggrieved over the award passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in MCOP. No. 7521 of 2014 dated 21.07.2017, the Insurance Company/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the award passed by the Claims Tribunal as erroneous.

2. The case of the respondents in the Claims Tribunal is that on 18.09.2014 at about 15.30 hrs, while the deceased Nachiappan driving the vehicle bearing registration no.TN-63-K-8658 along with his wife in Karaikudi to Chokkanathapuram Road, Pattamangalam Villaku Madagupatti, Sivagangai District, a Car owned by S.Murugesan insured with the appellant bearing registration no.TN-59-AX-7662 proceeding in the same direction in a rash and negligent manner and dashed behind the vehicle driven by the deceased, due to which the deceased sustained multiple injuries, admitted in the Government Hospital, Sivagangai. Inspite of necessary treatment given in the Government Hospital, he died. Thereafter, being dependants of the deceased Nachiappan, the respondents 1 to 5 herein have filed the claim petition before the Claims Tribunal.

3. Subsequently, being the dependants of the deceased Nachiappan, the respondents 1 to 5 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.30,00,000/-. Admittedly, the first respondent is the wife of the deceased, the respondents 2 to 4 are minor children born to the deceased through the 1st respondent, the 5th respondent is the father of the deceased. The Claims Tribunal after examining the first respondent as PW1 and after marking eight documents as Exhibits P1 to P8 had passed the award for Rs.14,15,100/-(Rupees Fourteen Lakhs Fifteen Thousand and One Hundred Only).

4. Today, we heard the arguments advanced by Mr.Mohan Babu, learned counsel appearing for the appellant and Mr. Amar D.Pandiya, learned counsel appearing for the respondents 1 to 5.

5. In the claims tribunal in order to show the negligence of the driver who drove the car, the trial Court has examined the first respondent as PW1 and perused the exhibits viz., the copy of the First Information Report and Charge Sheet, which were marked as Exhibits P1 & P2 respectively. As per the evidence of PW1, only by rash and negligent act of driver of the car, the alleged accident was happened. In order to deny the said fact, no witnesses have been examined. Accordingly, the conclusion arrived by the claims tribunal that the alleged accident had happened only due to the rash and negligent act of the driver of the car is confirmed in this appeal also.

6. Now, the learned counsel appearing for the appellant made a submission before this Court that without any proof, the Claims Tribunal determined the monthly income of the deceased as Rs.6,500/- per month, which is erroneous. Further he added that

the award passed by the claims tribunal is exorbitant and liable to be set aside.

7. In this aspect, on going through the evidence given by the first respondent, it appears that the deceased was working as Mason at the time of accident, further she deposed that the deceased earned a sum of Rs.750/- per day. The said evidence was not disputed by the appellant by way of putting the evidence. In this connection, it is necessary to refer the judgment of the Hon'ble Apex Court in the case of Syed Siddiq Ali and Others Vs. Divisional Manager, United India Insurance Co.Ltd 2014 (1)TN MAC page 459(SC), wherein the Hon'ble Apex Court had determined Rs.6,500.- per month is the income for the vegetable vendor. So, considering the present cost of living, it is reasonable to come to a conclusion that a Mason can earn Rs.750/- per day. However, in order to prove the evidence given by the first respondent, no documents were adduced, no witnesses are examined on the side of the petitioner to prove the employment of the deceased. Accordingly, considering the prevailing circumstances, this Court determine Rs.9,000/- per month as monthly income of the deceased Nachiappan. Accordingly, the monthly income of the deceased fixed by the Claims Tribunal is modified to the extent of Rs.9,000/- per month.

8. 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 a self employed an addition of 10% of the established income should be the warrant where the deceased was between the age of 50 to 60 years. In this case as per the evidence of PW1, the age of the deceased at time of the accident is 52 years. The exhibit P2 - the true copy of the charge sheet and Exhibit P3 - Post-mortem Certificate also evidences the same. So, with regard to calculating the future prospectus, 10% of the monthly income of Rs.9,000/- is added for calculating the pecuniary loss.

9. 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.

10. Now, with regard to the multiplier, the Hon'ble Apex Court in the judgment of Sarala Verma's case (cited supra), has held that if the person having the age of 51 to 55 years, the multiplier of 11 has to be the appropriate multiplier for

calculating loss of dependency. In this case also, as per Exhibit P2, post-mortem certificate, the age of the deceased is 52.

11. Further, as per the Hon'ble Apex Court in the judgment of Praney Sethi's case (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/-). Accordingly, this Court added Rs.70,000/- towards the conventional heads as above.

12. Now on going through the other particulars available in the Claims Tribunal, it is seen that at the time of the death of deceased, the deceased was having three minor children and aged father. Losing love and affection is nothing but akin to loss of consortium. So, we decided to award Rs.50,000/- each to the respondents 2 to 4 under the head of loss of love and affection and Rs.25,000/- to the 5th respondent under the same head. Accordingly, we modify the award passed by the Claims Tribunal under the said head.

13. In the light of the above discussions, the total compensation is calculated as follows;

The annual income of the deceased would be Rs.1,08,000/- (9000 x 12). Adding a component of 10% for future prospects, the income would stand at Rs.1,18,800/-. Deducting an amount of one fourth towards personal expenses, the loss of dependency per annum works out to Rs. 89,100/-. Applying a multiplier of 11 the total loss of dependency would work out to Rs.9,80,100/-. Further, this Court added an additional amount of Rs.70,000/- towards conventional heads and Rs.1,75,000/- towards loss of love and affection.

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

i.	Loss of dependency	:	Rs.9,80,100/-
ii.	Loss 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 to 4 herein .	:	Rs. 1,50,000/-
vi.	Loss of Love and Affection by the 5th respondent herein .	:	Rs. 25,000/-
	Total Compensation	:	Rs. 12,25,100/-

14. Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount, with interest and costs

directly through NEFT or RTGS as directed by 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 & 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 thereafter. The shares in respect 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. The 1st respondent, being the mother of the respondents 2 to 4, is permitted to withdraw the quarterly interest from the said deposit.

15. In the result, the Civil Miscellenous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.14,15,100/- is reduced to Rs.12,25,100/-. 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(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.

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

+1cc to Mr.M.B.Gopalan Associates, Advocate SR.No.29298
+1cc to Mr.S.Ravikumar, Advocate SR.No.28740

C.M.A. No. 3522 of 2017
and CMP.No.22577 of 2017

SKS(CO)
GN(08/06/2018)