THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.04.2018
CORAM :
THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN
C.M.A. No. 3528 of 2017
and CMP.No.22617 of 2017

Shriram General Insurance Co.Ltd.,
No.4, Mokambika Complex, 2nd Floor,
Lady Desika Road, Mylapore,
Chennai-600 004. ..Appellant/2nd Respondent

Vs.

1.G.Malathi
2.Mior G.Raghul Gandhi
3.Minor Rama Shree
4.K.Chandra
(Respondents 2 & 3 Minors Rept.
by their Next Friend and Natural Guradian
the 1st Petitioner)

5. V.Sakkarapani ..Respondents/Petitioner

Prayer: Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 29.04.2017 made in MCOP. No. 704 of 2015 on the file of Motor Accident Claims Tribunal,II Court of Small Causes, Chennai.

For Appellant : Mr.S.Dhakshinamoorthy
For Respondents 1 to 4 : Mr. S.Ravikumar

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. 704 of 2015 dated 29.04.2017, the Insurance Company/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the award passed by the Claims Tribunal as erroneous.

2. In the claims tribunal, the respondents 1 to 4 herein have filed the claim petition under Section 166 of Motor Vehicles Act and Rules 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.30,00,000/- for the death of one J.Gopalakrishnan who died in a road accident. Admittedly, the first respondent is the wife of the deceased, the 2nd and 3rd

respondents are minor children of the deceased and the 4th respondent is the mother of the deceased. After elaborate enquiry, the Claims Tribunal awarded a sum of Rs.24,50,000/- as compensation for the death of the said J.Gopalakrishnan.

3. The case of the respondents 1 to 4 herein in the Claims Tribunal is that on 25.11.2014 at about 6 hrs, the husband of the first respondent herein J.Gopalakrishnan who was riding a Bicycle near the land belonging to Perumal at Killana Nagar to Ulundhai Road, a tractor owned by the 5th respondent herein bearing registration no.TN72 AA 6206 insured with the appellant, proceeding in the same direction in a rash and negligent manner and hit behind the deceased's bicycle, due to which the deceased sustained head injury and died on the same day, for which a case has been registered by the Inspector of Police, G3 Melmaruvathur Police Station, Kancheepuram District in Crime No. 524 of 2014 for the offences under Sections 279,337,338 and 304(A) of IPC.

4. Today, we heard the arguments advanced by Mr.S.Dhakshinamoorthy, learned counsel appearing for the appellant and Mr. S.Ravikumar, learned counsel appearing for the respondents 1 to 4.

5. The learned counsel appearing for the appellant submitted that this appeal has been filed only in order to challenge the quantum fixed by the Claims Tribunal and not against the findings of the Tribunal with regard to the negligence of the 5th respondent.

6. On the other hand, the learned counsel appearing for the respondents 1 to 4 would submit that this appeal does not have any merits.

7. Now on considering the rival submissions by either side, it is necessary to find out whether the determination of the Claims Tribunal with regard to the loss of dependency and other amounts awarded under different heads are according to the guidelines given by the Hon'ble Apex Court and other Courts or not.

8. On going through the documents and evidence relied by the Claims Tribunal, it appears that at the time of giving evidence as PW1, the 1st respondent herein had deposed that her husband is the owner-cum-driver of Tata Ace and earning Rs.1,000/- per day, for which she did not exhibit any documents to show that the deceased is the owner of Tata Ace Vehicle. However, she exhibited the driving license of the deceased as Ex.P5 and Bank Pass Book of the petitioners as Exhibit P7, through which, it was proved by the first respondent that the deceased was earning Rs,1,000/- per day. This aspect has not

been disputed by the insurance company in the claims tribunal, thereby we also confirm the findings arrived by the Tribunal and fix the notional income as Rs.10,000/-

(*)

10. 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.

11. Now, with regard to the multiplier, the Hon'ble Apex Court in the judgment (stated supra), has held that if the person having the age of 36 to 40 years, the multiplier of 15 has to be taken into account for calculating loss of dependency. In this case also, as per Exhibit P2, post-mortem certificate, the age of the deceased is 39.

12. Further, the Tribunal has awarded Rs,2,50,000/- towards the loss of love and affection and Rs.50,000/- towards loss of estate and Rs.1,00,000/- towards loss of consortium.

13. In this regard, now 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/-). Accordingly, we modify the conventional heads as above.

14. 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 two minor children and an aged mother. Losing loss of love and affection is akin to 'Loss of Consortium'. So, we decided to award Rs.50,000/- to the 2nd & 3rd respondents under the head of loss of love and affection and Rs.25,000/- to the 4th respondent under the same head. Accordingly, we modify the award passed by the Claims Tribunal under the said head.

(*)

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

i.	Loss of dependency	:	Rs.20,25,000/-
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 respondent 4 herein .	:	Rs. 25,000/-
	Total Compensation	:	Rs.22,20,000/-

16. 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 & 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.

(*)

ak dt.10.4.2018

Being Mentioned

This petition having been posted on this day "For Being Mentioned" in pursuance to the order of this Court dated 19/6/2018 and made herein in the presence of the above said Advocate, this Court made the following order:-

(ORDER OF THE COURT WAS MADE BY N.KIRUBAKARAN, J.)

The matter is listed today for being mentioned stating that 50% of monthly income has been added towards "Future Prospects", whereas, as per the dictum laid down by the Hon'ble Apex Court in the case of ***National Insurance Company Limited v. Pranay Sethi***, considering the age of the victim, only 40% has to be added towards "Future Prospects". However, by mistake while calculating the compensation, 50% has been added towards future prospects. Therefore, the mistake which has crept in the order dated 10.04.2018 has to be rectified and accordingly, it is corrected as 40% instead of 50%.

2.Hence, registry is directed to replace paragraphs 9, 15 and 17 of the order dated 10.04.2018 with the following:-

*"9.Now, in order to calculate the future prospects, it is necessary to refer the judgment 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 having a permanent job and below the age of 50 years, 40% of the monthly income to be added as future prospects. In this case, as per the evidence of PW1, the deceased was a owner of a vehicle and having permanent job, thereby 40% monthly income is added for calculating the pecuniary loss.*

15.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/-. Deducting an amount of one fourth towards personal expenses, the loss of dependency per annum works out to Rs.1,26,000/-. Applying a multiplier of 15 the total loss of dependency would work out to Rs.18,90,000/-. 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.

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

i.	*Loss of dependency*	*:*	*Rs.18,90,000/-*
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 & 3 herein*	*:*	*Rs. 1,00,000/-*
vi.	*Loss of Love and Affection by the respondent 4 herein*	*:*	*Rs. 25,000/-*
	Total Compensation	*:*	*Rs.20,85,000/-*

17.In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.24,50,000/- is reduced to Rs.20,85,000/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namely, 7.5% per annum and the apportionment shall be as ordered by the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs."

3.Registry is directed to carry out the aforesaid corrections and issue fresh order copy to the parties.

Pgp dt.19.6.2018

Sd/-
Assistant Registrar(CS-V)
dt.28.5.2018

(*)Corrected as per order dt.19.6.2018 made in CMA.3528/2017

Sd/-
Assistant Registrar(CS V)
dt.12.11.2018

//True Copy//

Sub Assistant Registrar

ak

To
The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

To be substituted to the order already despatched on 11.7.2018

Copy to
The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.S.RAVIKUMAR, Advocate, S.R.No.26172, **39044**
+1cc to Mr.S.DHAKSHNAMOORTHY, Advocate, S.R.No.26537

C.M.A. No. 3528 of 2017
and CMP.No.22617 of 2017

VG II(CO)
TR(30/05/2018)
sm:14.11.2018