

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM:

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

CMA No.817 of 2018 and
CMP No.6767 of 2018

United India Insurance Company Ltd.,
No.5, Gomathipuram New 1st Street,
Balaji Complex, Sankaran Koil Street,
Tirunelveli District.

.... Appellant

-vs-

1.S.Anoor Sridevi
2.Minor S.Maya Vishnu Priya
3.Minor S.Tamilarasan
(2nd and 3rd minors represented by
N.F/ Mother 1st respondent Anoor Sridevi)
P.Arukkani (Died)
4.S.Kannan
5.A.Mariappan

.... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.161 of 2014 on 16.08.2016 on the file of the learned Special District Judge, the Motor Accident Claims Tribunal Erode District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.T.Gowthaman

J U D G M E N T

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

Challenging the Award passed by the Motor Accidents Claim Tribunal, Erode in M.C.O.P.No.161 of 2014 dated 16.08.2016, the Insurance Company has come forward with this appeal.

2. The claim petition was filed by the wife, two minor children and mother of the deceased viz., Senthilkumar, who was employed

as a lorry driver. According to the claimants, the said Senthilkumar was employed as a Driver in the lorry bearing Registration No.TN-33-AB-3114. It is claimed that on 23.03.2013, the deceased had parked the said lorry near the place of occurrence and was taking rest under the lorry bearing Registration No.TN-76-W-6710 at Vellur Kunnum Village on the western side of Municipal Stadium in Moovatupuzha EEC Market, which is designated as parking lot for all National Permit lorries. At that time, the driver of the lorry bearing Registration No.TN-76-W-6710 insured with the appellant Insurance Company started the lorry without taking due care and run over the deceased. As a result of which, the said Senthilkumar suffered serious head injuries and died.

3. The Tribunal fixed the entire negligence on the part of the driver of the lorry bearing Registration No.TN-76-W- 6710. The Tribunal worked out the compensation on the basis that the deceased was earning a sum of Rs.10,000/- per month and after adding 30% for future prospects arrived at Rs.13,000/- as his monthly income. After deducting 1/4 towards his personal expenses i.e, Rs.3,250/-, the monthly contribution towards his family was fixed as Rs.9,750/-. The Tribunal adopted "14" multiplier and calculated pecuniary loss at Rs.16,38,000/-.

4. The Tribunal also granted a sum of Rs.1,00,000/- to the wife of the deceased for loss of consortium; Rs.40,000/- for loss of Love and Affection; Rs.25,000/- for Funeral Expenses and Rs.10,000/- for Transportation. Thus, the total compensation awarded by the Tribunal worked out to Rs.18,13,000/-. It is this Award, which is under challenge by the Insurance Company on the ground of negligence as well as quantum.

5. Mr.J.Chandran, learned counsel for the Insurance Company would contend that the deceased was solely responsible for the accident inasmuch as he was sleeping under another lorry. Taking us through the contents of the First Information Report as well as the evidence of P.W.3 viz., Ganesan, who is the eyewitness to the occurrence would contend that the deceased has no business to sleep under another lorry.

6. Per contra, Mr.T.Gowthaman, learned counsel for the claimants would contend that the area is specified as a parking lot and so it is common for the drivers to sleep next to or under the lorries and the driver of the lorry bearing registration No.TN-76-W- 6710 should have taken adequate precaution before starting the lorry.

7. We have examined the rival contentions.

8. We are of the opinion that both the deceased as well as

the driver of the lorry bearing Registration No.TN-76-W-6710 contributed to the accident. Considering the fact that the FIR itself has been lodged against the driver of the lorry bearing Registration No.TN-76-W- 6710 and the final report also blames the driver of the offending lorry for the occurrence, we are of the opinion that the contributory negligence can be fixed at 40% on the part of the deceased.

9. However, on the quantum, we find that the monthly income of the deceased has been fixed at Rs.10,000/-, which is very low. Admittedly, the deceased was a lorry driver. The Salary Certificate shows that he was drawing a sum of Rs.17,500/- per month (Rs.10,000 towards salary and Rs.250/- batta per day). If we take his monthly income at Rs.17,500/- and adding 30% towards future prospects, the monthly income would be Rs.22,750/-. The deceased had three dependants. Therefore, after deducting 1/3 of the said sum towards personal expenses, the loss of dependency works out to Rs.15,170/-. Adopting "14" as multiplier, the pecuniary loss is assessed at Rs.25,48,560/-. Though the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of Consortium, in view of the larger Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], loss of consortium is reduced to Rs.40,000/-. There are two minor children. Hence, a sum of Rs.80,000/- (Rs.40,000/- each) is awarded towards loss of love and affection to the minor children. The other amounts awarded by the Tribunal viz., Rs.25,000/- for Funeral Expenditure and Rs.10,000/- for Transportation is sustained. Adding all the above, the total compensation works out to Rs.27,03,560/-.

10. We have already fixed the contributory negligence on the part of the deceased at 40%. Hence, the claimants would be entitled to 60% of Rs.27,03,560/- which is equal to Rs.16,22,138/- and it is rounded off to Rs.16,25,000/-.

11. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is modified and it is reduced from Rs.18,13,000/- to Rs.16,25,000/- with 7.5% interest per annum and proportionate costs.

ii) The compensation is apportioned as follows:-

a) 1st respondent wife will be entitled to Rs.6,25,000/- with proportionate interest and entire costs.

b) Respondents 2 and 3 (minor children) will be entitled to Rs.5,00,000/- each with proportionate interest.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iv) The appellant - Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of eight weeks from the date of receipt of a copy of this judgment.

(v) The share of the minors is directed to be deposited in any one of the nationalised bank till they attain majority. The 1st respondent/Wife is permitted to withdraw her share of the award amount as ordered by this court. The first respondent is also permitted to withdraw the quarterly interest from out of the Fixed deposit.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

svki

To

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

Copy To :

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

+1cc to Mr.J.Chandran, Advocate SR.No.59358

CMA No.817 of 2018

GMV (09/10/2018)