

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM:

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

C.M.A. No.818 of 2018

The Divisional Manager,
United India Insurance Company Ltd.,
No.13A, Nethaji Road, Manjakuppam,
Cuddalore - 1. Appellant/2nd Respondent

-vs-

1.Kalaimani
2.Porkodi
3.Thenmozhi
4.Manimoshi Respondents 1 to 4/
Claimants 1 to 4

5.Vinayaga Transport,
69, Thanthamuffiappan Street,
Chennai - 1. 5th Respondent/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree passed in MCOP.No.2296 of 2013 dated 06.06.2016 on the file of the (Principal District Judge), The Motor Accident Claims Tribunal, Cuddalore District.

For Appellant : Mr.J.Chandran

For Respondents : R.Meenal for R1 to R4

J U D G M E N T

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

The challenge in this appeal is to the award of a sum of Rs.13,00,000/- for the death of one Dhandapani in a motor accident that occurred on 02.06.2013. The deceased was aged 84 years and the accident occurred when he was riding his TVS

Scooty Pep (two wheeler) bearing registration No.TN-31-AH-2979. The lorry owned by the 5th respondent insured with the appellant Insurance Company driven in a rash and negligent manner by its driver dashed against the two wheeler resulting in his death. Terming the rash and negligent driving of the lorry as the cause of accident, the claimants who are son and married daughters of the deceased had sought for a compensation of Rs.20,00,000/-.

2. The claim petition was resisted by the Insurance Company contending that the deceased was driving the two wheeler without a driving license and the accident was caused due to his own negligence. The income claimed was also disputed by the Insurance Company.

3. The Tribunal considering the evidence on record concluded that the accident occurred due to the rash and negligent driving of the lorry. In coming to the said conclusion the Tribunal relied upon the records in criminal case in Crime No.268 of 2013. The fact that the Insurance Company did not examine any witnesses on its side was also taken into account in reaching the said conclusion.

4. On the quantum, the Tribunal took the income of the deceased at Rs.27,464/- being the pension drawn by him as a retired Government servant and deducted 1/4th towards his personal expenses. Applying a multiplier '5' the Tribunal arrived at total loss of dependency at Rs.12,35,800/-. The Tribunal awarded a sum of Rs.10,000/- each to the claimants towards loss of love and affection and Rs.25,000/- towards funeral and transportation expenses. Thus, the total award worked out to Rs.13,00,880/-. Aggrieved the Insurance company has come forward with this appeal.

5. Heard Mr.J.Chandran, learned counsel appearing for the appellant Insurance Company and Mrs.R.Meenal, learned counsel appearing for the claimants. The owner of the lorry viz., 5th respondent had remained exparte before the Tribunal, hence, notice to the 5th respondent is dispensed with in this appeal.

6. Mr.J.Chandran, learned counsel appearing for the appellant Insurance Company would restrict his arguments only to the quantum of compensation awarded. He would rely upon the judgment of the Hon'ble Supreme Court in New India Assurance Co. Ltd., Vs. Vinish Jain reported in 2018 (1) TN MAC 365, wherein, the Hon'ble Supreme Court had pointed out that the deduction for

personal expenses should be to the tune of 50% in a case where the deceased was aged about 78 years, since all his legal representatives were married daughters residing elsewhere along with their husbands.

7. Mrs.R.Meenal, learned counsel appearing for the respondents/ claimants would rely upon the judgment of the Hon'ble Supreme Court in Manjuri Bera Vs. Oriental Insurance Company Ltd., and another reported in 2007 (10) SCC 643, to contend that the married daughter would still be a dependent on father. There is no dispute regarding the status of the married daughter being dependent on the father. However, while calculating the extent of dependency, the deduction to be made for personal expenses by the deceased would depend on the actual dependency.

8. In the case on hand, we find that all the claimants viz., children of the deceased are aged above 50 years. The deceased himself was aged 84 years at the time of the accident. Therefore, the actual dependency would be less. Hence, following the judgment of the Hon'ble Supreme Court in New India Assurance Co. Ltd., Vs. Vinish Jain cited supra, we adopt deduction of 50% towards personal expenses of the deceased. Thus worked the compensation would be as follows:-

Annual Income of the deceased	= Rs.3,29,568/-
(Less) 50% towards personal expenses	= Rs.1,64,784/-
Annual dependency	= Rs.1,64,784/-
The total dependency	= Rs.1,64,784/- x 5 = Rs.8,23,920/-

9. The Tribunal has awarded Rs.40,000/- towards loss of love and affection. We find that the said award is very low. We therefore award Rs.25,000/- each to four claimants for loss of love and affection. The Tribunal has awarded Rs.25,000/- towards funeral and transportation expenses. The same is sustained. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is awarded under the said head. Thus, the total compensation payable works out to Rs.9,63,920/- and the same is rounded off to Rs.9,64,000/-. The Tribunal has granted 8% interest we sustain the said grant.

10. In view of the above, the appeal is partly allowed. The compensation is modified to Rs.9,64,000/- with interest at 8% per annum from the date of petition till date of deposit. It is stated that the Insurance Company has deposited the entire amount. The compensation shall be apportioned between the claimants equally. The claimants are entitled to withdraw their share of the compensation with proportionate interest and costs. The balance amount shall be refunded to the Insurance Company. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
Principal District Judge, Cuddalore.

+1 cc to Mr.J.Chandran, Advocate Sr.No.73130

+1 cc to M/s.R.Meenal, Advocate SR.No.73219

C.M.A. No.818 of 2018

KJI (CO)
CSL/28.11.2018

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