IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28.08.2018

JUDGMENT PRONOUNCED ON : 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.424 of 2007
&
Connected Miscellaneous Petitions

1. A. Santhi
W/o Late Arumugam

2. A Jayasree
D/o Late Arumugam

3. A Sugandhi .. Appellants/Claimants
D/o Late Arumugam
(Appellants 2 & 3 are declared as major and the first appellant mother was discharge from the guardianship as per order dated 11/09/2018)

Vs

1. G. Pandu
S/o Govindasamy
Tindivanam

2. National Insurance Co.Ltd
Pondicherry

3. V. Amsavalli
Tindivanam

4. United India Insurance Company Limited,
Tindivanam ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.02.2006 made in MCOP No.154 of 2002 on the file of Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Villupuram.

For Appellant : Mr.S. Krishnasamy

For Second Respondents : Mr. S. Arunkumar

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Villupuram in MCOP No.154 of 2002, the appellants herein who are the petitioners in the claim petition filed this appeal, in which they prayed to modify the award. In the Claim Tribunal, the appellants 1 to 3 had filed a claim petition under Section 166 of Motor Vehicles Act, in which they seek a compensation of Rs.7,18,000/-. The appellant No.1 is the wife of the deceased Arumugam and the appellant No.2 and 3 are the children of the deceased. After elaborate enquiry, the Claims Tribunal awarded the compensation of Rs.3,82,000/- with interest at the rate of 7.5% per annum, against which the present appeal has been preferred.

2) In the claim Tribunal, the case of the appellants 1 to 3 is as follows.

2.1. On 31.10.2001, while the deceased Arumugam travelled in a bus bearing Reg.No.TN 32 Y 4699, owned by the 3rd respondent insured with the 4th respondent at about 7.45 am, in Banruti Taluk, near Anna Nagar, a Lorry bearing Reg.No. TN 09 F 3567 owned by the 1st respondent insured with the 3rd respondent came in a opposite direction in a great speed and dashed against the right side of the bus, in which the petitioner was travelled. During the time of accident, the petitioner was directly hit by the Lorry, as a result of which, he sustained multiple grievous injuries and died on the spot.

2.2. In the claim Tribunal, it was decided that the 1st and 2nd respondents jointly and severally liable to pay the compensation of Rs.3,82,000/-. Further, the claim against the 3rd and 4th respondents are dismissed. Today, when the appeal is taken up for consideration, the Counsel appeared for the 2nd respondent fairly considered and did not dispute the liability. In other words, he submits the compensation arrived at by the claim Tribunal is found correct.

3) The learned Counsel appeared for the appellant would contend that in the trial Court, without adding the future prospects of the deceased, and without considering the fact that the deceased having 4 acres of land, the claim Tribunal arrived the lesser compensation, which has to be necessarily enhanced.

4) On going through the quantum arrived at by the claim Tribunal, it was held that the Tribunal determined the income of the deceased as Rs.3000/- per month. It is an admitted fact that the deceased is having 4 acres of agricultural land. PW 1 is the wife of the deceased gave evidence that from the said land, her husband was earning Rs. 12,000/- per month. In

order to dispute the said evidence, nobody was examined on the side of the respondent. However, since the land possessed by the deceased is in the same position, we can not come to the conclusion that the dependents of the deceased had arrived the loss from the agricultural income due to the death of the deceased. Further more, the accident had happened in the year of 2001. In the said circumstances, I am of the opinion that Rs.3000/- determined as the monthly income need not to be changed. Hence, considering the background of the deceased, it would appropriate to determine Rs.3,000/- as monthly income of the deceased.

5) On go through the future prospects, it is necessary to follow the Judgment of the Constitution Bench in the case of National Insurance Company Limited Vs Pranay Sethi and Others reported 2007 ACJ 2700, in which our Honourable Apex Court has held that if a person is a self-employed in the age of 40 years, 40 % of the future prospects has to be added for calculating the loss of dependency. On go through the Post Mortem Certificate, which was marked as Ex.P.2, it establishes that the deceased is aged about 40 years at the time of accident. Therefore, total monthly income of the deceased comes to

Total Monthly Income :: Rs.3,000 + Rs.1,200 (40%)
:: Rs.4,200

6) Now coming to the point of deduction, it is an admitted fact hat the deceased died in the accident after leaving his wife and his two children. So the size of the family is 3. Hence, by following the Sarla Verma Vs Delhi Transport Corporation reported in (2009) 6 SCC 121, it is necessary to deduct the 1/3rd of the monthly income towards the personal income of the deceased. Accordingly, after deducting 1/3rd of the monthly income towards personal expenses, the monthly income of the deceased would come as Rs.2,800/-

7) In regard to the Multiplier, in Delhi Transport Corporation case stated supra, our Honourable Apex Court has held that, if a person is died in the age of 36 to 40, the appropriate multiplier to be applied for calculating the compensation is 15. In this case also, as already discussed that the age of the deceased at the time of accident was 40 years. Hence, the appropriate multiplier for calculating the loss of dependency is 15. Accordingly, the pecuniary loss is calculated as follows.

Loss of Income :: Rs.2800 x 12 (months) x 15 (multiplier)
:: Rs.5,04,000/-

8) Now on go through the conventional heads as per the case of the appellant, the accident had occurred in the year of 2001. Hence, it is necessary to add Rs.5000/- towards funeral

expenses, Rs.25,000/- towards loss of consortium to the 1st appellant and Rs.5000/- towards loss of estate. Accordingly, the appellants 1 to 3 are entitled the compensation as follows.

SL.NO	PARTICULARS	AMOUNT (IN.RS)
1.	Towards Loss of dependency	5,04,000.00
2.	Towards Funeral Expenses	5,000.00
3.	Towards loss of consortium to the 1st appellant	25,000.00
4.	Towards Loss of Estate	5,000.00
	Total	5,39,000.00

9) Hence, the compensation arrived by the Claim Tribunal is modified to the extent of Rs.5,39,000/- and the appellants 1 to 3 are entitled to equal share. This Court wants to mention here that, at the time of award passed by the Claim Tribunal during 2006, the age of the appellants 2 and 3 are 11 years and 9 years respectively. Now, we are crossing the year 2018. So the 2nd and 3rd appellants would attain the majority. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. The Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank account of the appellants through RTGS/NEFT within a period of one week.

10) In the result, the Civil Miscellaneous appeal is partly allowed. Consequently, the connected Miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

Vrn

To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Villupuram.

+2cc to Mr.D.Bhaskaran, Advocate SR.No.63516,59065

+1cc to Mr.S.Arunkumar, Advocate SR.No.63626

+1cc to Mr.S.Krishnasamy, Advocate SR.No.63212

Civil Miscellaneous Appeal No.424 of 2007

GJ(CO)

GMY(12/11/2018)