IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018

Pronounced on : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal No.626 of 2009
and M.P.No.1 of 2009

M/s.United India Insurance
Company Limited, Neyveli-3 .. Appellant/2nd Respondent

Vs.

1.Panchalai
2.Kasturi
3.Minor.Sathiya
4.Minor.Sathishkumar
(R3 and R4 are minors rep.by their
mother and guardian 2nd respondent Kasturi)
5.K.Selvaraj
(R5 set exparte in the Lower Court)
..Respondents/Petitioners 1 to 4/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and decree dated dated 25.11.2004 made in M.C.O.P.No.19 of 2004 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.3), Vridhachalam.

For Appellant : Ms.N.Mala

For Respondents 1 to 4 : No Appearance

JUDGMENT

The appellant-insurance company is aggrieved by the fair and decretal order dated 25.11.2004 passed by the Motor Accident Claims Tribunal (Fast Track Court No. 3) at Virudachalamin M.C.O.P No. 19/2004.

2. By the impugned order the Tribunal has awarded to the respondent Nos.1 to 4 herein a sum of 9,60,000/- together with interest at 9%. from the date of claim till the date of payment.

3. The family lost its sole bread winner aged 42 years in an accident. At that point of time the dependents were his aged mother, dependent unemployed wife and two minor children aged 9 and 12 years respectively who have been arraigned as Respondent Nos 1 to 4 in this appeal.

4. To appreciate the issue involved in the facts of the case, the facts relevant to the present case are as follows:-

i) On 28.6.2003, the deceased Paramasivam while riding his TVS-50 was hit from behind by a tipper lorry bearing registration number T.N.30 S 5064 driven in a rash and negligent manner belonging to the 5^{th} respondent. It was insured with the appellant herein at that time.

ii) The deceased Paramsivam died on the spot of the accident. A third person by name Thanagavel Woodyar who witnessed the accident filed FIR on the same date.

iii) The deceased Paramasivam left behind his dependants class 1 heirviz., his aged mother, widowed wife and two minor children aged 9 and 12 years.

iv) Under these circumstances a claim petition dated 27.11.1997 was filed by the above legal heirs of the deceased under section 166 before the Tribunal for a compensation of

Rs.10 lakhs from the appellant and the 5th respondent owner of the lorry.

v) The said Paramasivam was the sole bread earner of the family and ran an electrical shop, Peerless Agency and delivered sugar-cane by running a tractor -trailer and carried on agricultural acitivty in his 15 acres of land.

vi) It was claimed that he earned a sum of Rs. 15,000 per month and another sum of Rs.2,50,000/- per annum from agriculture crops from 15 acres of land.

5. Before the Tribunal, the 2nd respondent-claimant,the wife of the deceased Paramasivam deposed evidence and filed 18 documents as exhibits to substantiate the loss of income.

6. Before the Tribunal, it was argued on behalf of the Respondents 1 to 4-claimants that the family was unable to carry on the business carried out by the deceased Paramasivam and that the tractor and trailor were also seized by the police as the 2nd respondent herein by mistake hired a driver who did not have a valid license.

7. Before the Tribunal, the appellant-Insurance company blamed the deceased Paramasivam for rashly negligently driving the motorcycle and getting killed in front of a lorry which was coming from behind.

8. The appellant contested the claim on the ground that the lands, tractors and trailers were still with the claimant's and therefore there was no deprivation of income.

9. The Tribunal considered the evidence on income from electrical shop at Rs.3000/- per month based on Exs.P.11 to P.14. Income from the Peerless Agency of the deceased was arrived as Rs.1,000/- p.m. from Ex.P.15 and another sum of Rs.4000/- per month was arrived from Ex.P.16 as income from running tractor-trailer in sugar-cane fields and from the agricultural crops from his land.

10. Thus, a sum of Rs.8,000/- was arrived as the monthly income of the deceased Paramasivam.

11. The Tribunal considered the age of the deceased 42 years and therefore applied 15 multiplier to arrive at Rs.14,40,000/-.

12. One third from the said amount was deducted as personal expenses which the deceased would have spent for himself and therefore the balance amount of Rs.9,60,000/- was awarded to the claimants.

13. The appellant-insurance company has challenged the compensation on the ground that the Tribunal erred in concluding that the deceased was earning a sum of Rs.8000/- per month and in that normal rule of deprivation of income does not apply to cases where agricultural income is a source of income. In other words, the appellant company wants to reduce the amount awarded by 50%.

14. This appeal was listed on several occasions and the case was directed to be listed on 13.07.2018 for being heard finally. On 13.07.2018, only the learned counsel for the appellant appeared.

15. Though notice was served on respondents 1 to 4 and their names were printed in the cause list, there was no representation for the respondents 1 to 4. Therefore, this case was taken up for hearing.

16. Having considered the facts, evidence and the submission it is noticed that the Tribunal has not awarded compensation on other conventional heads of compensation as well.

17. The Tribunal while awarding compensation to the family of the deceased Paramasivam has awarded a sum of Rs.9,60,000/- only by applying the multiplier of 15.

18. The appellant-insurance company wants to distance itself from its responsibility cast under the Motor Vehicles Act, 1988 and has filed the present appeal in a bid to deny the compensation award.

19. Several heads of compensation under which the family of an accident victim are entitled to get compensation have not been considered by the Tribunal.

20. The amount quantified by the Tribunal appears to be inadequate and is not a just compensation under section 166 of the said Act even as per the rulings of the Courts that prevailed at that point of time when the impugned order was passed.

21. The Hon’ble Supreme Court in Nagappa vs. Gurudayul Singh (2003) 2 SCC 274 held that it is the duty of the courts and Tribunal to award just compensation.

22. The Motor Vehicles Act, 1988 is a social piece of legislation and has been enacted with an intent and object to facilitate claimants to get redress for losing a family member or for injuries at an early date as observed inBimla Devi and others vs. Satbir Singh and others (2013) 14 SCC 345.

23. Here is a case where the family lost the sole bread winner aged 42 years and at that point of time the dependents were his aged mother, dependent unemployed wife and two minor children aged 9 and 12 years respectively.

24. The compensation awarded is not a just compensation as several conventional heads of compensation has not been factored by the Tribunal. The appeal is of the year 2009 and the accident took place in the November, 2004. The contesting respondent’s are not present to press for their right to claim just compensation.

25. Therefore this is a fit case for applying the principles of Order XLI Rule 33 of CPC to the facts of the present casefor enhancing the compensation on account of the following reasons:-

i) Several conventional heads of the compensation while considering claim petition has not been considered by the Tribunal while awarding the compensation.

ii) On account of the inability of the claimants to articulate their right to get just compensation both before the Tribunal and this Court.

26. The conventional head under which compensation are

awarded in the case of fatal accidents are funeral expenses, loss of consortium and loss of estate. Accordingly, the amount awarded by the Tribunal is liable to be enhanced.

27. Recently, the Hon'ble Supreme Court in National Insurance Co., Ltd., vs. Pranay Sethi and Others 2017(2) TN MAC 609(SC). settled the proposition that in the case of fatal accident, claimants are also entitled to claim compensation on future prospects to income in addition to loss of income apart from other conventional heads compensation .

28. Therefore, considering the age of the deceased Paramasivam was 42 years at the time of death, another 25% is to be added to the loss of income towards future prospects. Accordingly, the amount of compensation awarded is to be enhanced.

29. At the same time, the multiplier of 15 adopted is not correct in view of the decision of the Hon'ble Supreme Court in National Insurance Co., Ltd., vs. Pranay Sethi and Others, 2017 (2) TN MAC 609 SC and Sarla Verma Vs DTC (2009) 6 SCC 121.

30. The multiplier is to be applied as the deceased was aged 42 years at the time of death as per Ex.P.3-Post Mortem Certificate.

31. Accordingly, 25% is to be added to the monthly income towards future prospects to arrive at just compensation.

32. Similarly, compensation is to be enhanced on account of other conventional heads which the Tribunal has not awarded.

33. Therefore, the amount of compensation awarded under various heads are modified as follows:-

Sl.No.	Heads of compensation and calculation thereof:	Just Compensation

1.	a) income per month:	8,000/-p.m	
	b) Addition to loss of income for determination of future prospect. (25% of Rs.8,000)	2,000/-	
	c) Amortized loss of income together with future prospects per annum: (Rs.10,000/-x12)	1,20,000/-.	
	d) Total loss of income applying multiplier of 14. (Rs.1,20,000/- x 14)	Rs.16,80,000 /-	
	e) after deducting 1/3 from Rs.16,80,000/- towards personal expenses of the deceased. (Rs.16,80,000/- x 1/3)	Rs.11,20,000 /-	Rs.11,20,000/ -
2.	Loss of estate		Rs. 15,000/-
3.	Loss of consortium		Rs. 40,000/-
4.	Funeral expenses		Rs. 15,000/-
5.	Loss of care and guidance to minor children		Rs. 50,000-/-
	Total.		Rs.12,40,000/ -

34. In sofar as interest is concerned, granted by the Tribunal at the rate of 9% p.a. is on the higher side and the same is reduced to 7.5% p.a.

35. Thus, the impugned order is modified and the compensation already awarded by the Tribunal is enhanced to Rs.12,40,000/- from Rs.9,60,000/- together with interest at the rate of 7.5% from the date of claim.

36. In the result, it is ordered as follows:-

(i) The Civil Miscellaneous Appeal is dismissed.

i i) The respondents/claimants are directed to pay the additional court fee for the enhanced award amount before the Tribunal.

ii) The appellant/Insurance Company is directed to deposit the above said amount of Rs.12,40,000/-after deducting the amount already paid / deposited before the Tribunal together with interest at 7.5% p.a.from the date of claim petition till the date of payment within three months of this order.

ii) On such deposit, the respondents 3 and 4 who would have already attained majority as on date of this order are also entitled to withdraw their proportionate shares of compensation along with the respondents 1 and 2.

vi) Registry is directed to issue the certified copy of the order to the respondents to enable them to comply within the time stipulated herein. Consequently, connected miscellaneous petition is closed. No cost.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

kkd

To

1. The Presiding Officer,Motor Accident Claims Tribunal,
(Fast Track Court No.3), Vridhachalam.
2. The Section Officer, VR Section, High Court, Madras (2 Copies)
3. Panchalai, W/o Poomalai, Kalloor, Tittagudi, Taluk

4. Kasturi, W/o Paramasivam, Kalloor, Tittagudi, Taluk
5. Minor.Sathiya, D/o Paramasivam, Kalloor, Tittagudi, Taluk

6. Minor.Sathishkumar, S/o Paramasivam, Kalloor, Tittagudi, Taluk

+1cc to M/s.N.Mala, Advocate SR.No.53493

C.M.A.No.626 of 2009
and M.P.No.1 of 2009

NMI CO)
GMY(24/12/2018)