IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.4137 of 2008

The National Insurance Company Limited,
No.7, Raja Street, Gobichettypalayam. ..Appellant/2nd Respondent

Versus

1.Sarasu
2.Chinnathangammal alias Muthulakshmi
3.Baluswamy
4.Pazhaniswamy
5.Revathy ..Respondents 1 to 5/ Petitioners 1 to 5
6.M.Ramachandran ..6th Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed against the award and decree dated 13.04.2007 made in M.A.C.T.O.P.No.505 of 2005 on the file of the Motor Accident Claims Tribunal, Sub ordiante Judge, Gobichettypalayam.

For Appellants : Ms.N.B.Surekha
For Respondents : Mr.A.V.Arun [for R1 to R5]
Not Ready in Notice [R6]

J U D G M E N T

The appellant/Insurance Company has filed this appeal against the judgment and decree dated 13.04.2007 made in M.A.C.T.O.P.No.505 of 2005 on the file of the Motor Accident Claims Tribunal, Subordinate ante Judge, Gobichettypalayam.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners is that on 17.08.2005 at about 10 a.m., when the deceased was trying to cross the Gobichettypalayam-Erode Main Road near Reliance Petrol Bunk, the Tourist Taxi bearing Registration No.TCY9399 driven by the 1st respondent at a high speed in rash and negligent manner came from East to West dashed against the deceased Ponnuswamy causing him grievous injury on head and legs which ultimately resulted in his death. The petitioners who are the wife, children of deceased Ponnuswamy contends that the accident occurred only due

to negligence of the 1st respondent/driver. At the time of accident, the deceased was aged 58 years and was earning Rs.8,000/- per month from agricultural and rice merchant business. Thus, the petitioners seek compensation of Rs.15,00,000/- from the respondents who are the driver, owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the petitioners by filing counter, the 2nd respondent/Insurance Company contends that the age, occupation, monthly income of the deceased as claimed by the petitioners was not correct. The accident occurred only due to the negligence of the deceased and not due to driver of the 1st respondent vehicle. The claim of the petitioners about the age, avocation and income of the deceased is not correct. The claim of the petitioners is very exorbitant. Since the negligence of the deceased alone caused the accident the 2nd respondent is not liable to pay any compensation. Thus, the 2nd respondent/Insurance Company seeks dismissal of the petition.

4. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced Exs.P.1 to P.14 to prove their claim. On the side of the respondents, neither oral evidence was adduced nor documentary evidence was produced.

5. The Tribunal, on the basis of available material on record found the 1st respondent driver responsible for the accident and awarded a sum of Rs.3,94,000/- as compensation to the petitioners. Aggrieved over the said findings of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. Heard both sides counsel and perused the available materials on record.

7. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal wrongly appreciated the evidence and concluded that the driver of the 1st respondent vehicle was responsible for the accident. The Tribunal, failed to consider the fact that there is no eye-witness to the occurrence and the accident occurred only due to the negligence of the deceased. Further, it failed to consider the fact that as the son of deceased was aged 30 years at the time of accident, there will be no loss of agricultural income. The Tribunal ought to have file the age of deceased as 65 years and the multiplier adopted by the Tribunal is not correct. The other reasons given by the Tribunal for awarding such a huge sum as compensation is unsustainable. Hence, the 2nd respondent/Insurance Company seeks

to entertain the appeal and set aside the award passed by the Tribunal.

8. Per contra, the learned counsel for the petitioners/claimants contends that the deceased was the sole breadwinner of the family and his death has caused severe loss to the family. The petitioners were entitled to the compensation as awarded by the Tribunal, which was granted only after considering the material on record properly. According to the petitioners, no ground is made out to interfere with the award passed by the Tribunal. A perusal of the award passed by the Tribunal would go to show that the monthly income of the deceased was fixed at Rs.6,000/- and the annual income has been calculated at Rs.72,000/-. After deducting 1/3rd of the earnings towards personal expenses of the deceased, applying the multiplier of 8, the Tribunal assessed loss of dependency at Rs.3,84,000/- [(72,000-24,000)] and awarded a sum of Rs.10,000/- towards "Love and Affection".Thus, the total amount was quantified as Rs.3,94,000/-. The Tribunal, after considering the evidence on record, found that there is no documentary proof to prove that the deceased was earning Rs.8,000/- per month from Rice and Milk vending business and hence, fixed the notional monthly income at Rs.6,000/-.

9. The learned counsel for the appellant/Insurance Company contended that the notional monthly income fixed is on the very higher side.

10. According to the petition, the age of the deceased was 52 years. However, in Ex.P.7-Post Mortem report, his age was stated as 55. The 1st petitioner who deposed as P.W.1 stated in her evidence that the age of the deceased was 52 only, whereas P.W.2 deposed that the age of the deceased was 58 as told by P.W.1-Sarasu. In such circumstances, taking into consideration, that in Ex.P.7 - Post Mortem report, the age of the deceased is stated as 65 years, the same is accepted and the age of the deceased is fixed as 65 instead of 60 years fixed by the Tribunal. As rightly pointed out by the learned counsel for the 2nd respondent/Insurance Company, the correct multiplier is to be applied is 5 only.

11. Considering the fact that the deceased was doing agricultural and milk vending business, fixing of notional monthly income at Rs.6,000/- by the Tribunal is appropriate and no ground is made to interfere. Further, it is appropriate to deduct 1/3rd towards personal expenses and applying the correct

multiplier "5". The loss of dependency is calculated as under:-

Notional monthly income = Rs.6,000/-

1/3rd deduction towards personal expenses(2000)

Rs.6,000-1/3 (2000) = Rs.4000

By applying multiplier of 5,

Rs.4000x12x5 =Rs.2,40,000/-

Thus, a sum of Rs.2,40,000/- is granted as compensation under the head "Loss of dependency".

12. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], towards loss of estate, loss of consortium and funeral expenses, this court is inclined to modify the compensation as under:-

Loss of Estate = Rs.15,000.00
Loss of consortium = Rs.40,000.00
Funeral Expenses = Rs.15,000.00

Rs.70,000.00

Further, a sum of Rs.15,000/- is granted as compensation under the head "For Transport Charges" and "For Damages of Clothes" at Rs.5,000/-.

13. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income	3,84,000.00	2,40,000.00
2	For love and affection	10,000.00	-
3	Loss of Estate	-	15,000.00
4	Loss of consortium	-	40,000.00
5	Funeral Expenses	-	15,000.00
6	For Transport Charges	-	15,000.00
7	For Damages of Clothes	-	5,000.00
8	Total	3,94,000.00	3,30,000.00

14. In the result, the Civil Miscellaneous Appeal is Partly Allowed without cost as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.3,94,000/- to Rs.3,30,000/-.

(ii) 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.

(iii) In view of the above enhanced award amount, 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 six weeks from the date of receipt of a copy of this order.

(iv) The apportionment of the modified award amount is as under:-

1st respondent, 40%

2 to 5th respondents, 15% each.

(iv) On such deposit, the claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bri

To
1.The Motor Accident Claims Tribunal,
Sub ordiante Judge,
Gobichettypalayam..

+1 cc to Ms.N.B.Surekha Advocate sr 10113
+1 cc to Mr.A.V.Arun Advocate sr 9861

C.M.A.No.4137 of 2008

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