IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2073 of 2003
and CMP.Nos.17701/2004, 21005/2004 and 12638/2003

The New India Assurance Co.Ltd.,
Namakkal. ..Appellant/R3

Versus

1.Saraswathy
2.Thenmozhi,
[2nd respondent declared as major and the 1st respondent is discharged from the guardianship of the 2nd respondent vide order of Court dated 22.11.2004 and made in CMP.No.17701/2004]

3.Minor.Karthigayan
(Rep.by his Guardian, mother Saraswathy)
4.Laxshmi ...RR1 to 4/Petitioners 1 to 4
5.P.Murugesan ...R5/R1
6.K.Thirunavkkarasu ...R6/R2

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.02.2002 made in M.C.O.P.No.341 of 1997 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharapuram, Periyar District.

For Appellant : Mr.K.Padmanabban
For Respondents: Mr.S.Kaithamalai Kumaran [for RR1 to 4]

J U D G M E N T

The Appellant/Insurance Company has filed this appeal against the judgment and decree dated 28.02.2002 made in M.C.O.P.No.341 of 1997 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharapuram, Periyar District.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants is that on 10.01.1996 as the deceased was riding his two wheeler bearing Registration No.TN-33-X-3834, the 1st respondent vehicle bearing Registration No. TAN-8839 came at high speed in a rash and negligent manner dashed on the two wheeler of the deceased

near Sivasathi Gas Company in Kangayam to Coimbatore road around 11.30 a.m., causing fatal injuries to the deceased-Nataraj, who died subsequently in the hospital. The accident occurred due to the negligence of the vehicle driver bearing Registration No.TAN-8839 of the 1st respondent which was insured with the 3rd respondent. The deceased was aged 42 years and was employed as a clerk in Kangayam Co-operative Society. Further, he owned 10 acres of land in his village, doing agricultural work in that land. He was also running coconut oil mill business. Thus, he was earning Rs.14,000/- per month in all. The petitioners/claimants who are the wife, children and mother of the deceased were dependant on his earnings. Due to the sudden loss of breadwinner of the family the petitioners/claimants are suffering. Thus, they seek a sum of Rs.10,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 3rd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners/claimants. The 1st respondent vehicle driver was not responsible for the accident. It was only due to the negligence of the deceased, the accident occurred. The age, avocation and income of the deceased is not admitted. The claim of the petitioners/claimants is exorbitant. Thus, the 3rd respondent/Insurance Company seeks dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.Ws.1 and 2 produced documents Exs.P.1 to P.13 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. After analysing the evidence on record, the Tribunal, found that the negligence of the 1st respondent vehicle driver alone caused the accident passed an award for a sum of Rs.4,43,000/- payable by the respondents to the petitioners/claimants. Aggrieved over the said finding of the Tribunal, the 3rd respondent/Insurance Company has come forward with the present appeal.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the 3rd respondent/Insurance Company contends that the Tribunal failed to appreciate the evidence on record properly. The Tribunal wrongly fixed the monthly income of the deceased at Rs.3,500/- without any basis. Further the fact that the oil mill business was not in name of the deceased and no proof of income was produced for the same was not considered by the Tribunal. The amount provided by the Tribunal under different heads is highly excessive. The multiplier adopted is not proper. Thus, the 3rd respondent/Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioners/claimants contends that the deceased apart from

working as a clerk in the Co-operative Society was doing oil mill business in the name of his wife and he was also carrying on agricultural work in 10 acres of his land. All the business and agricultural work was managed by the deceased only. Thus, his death has caused untold difficulty to the petitioners/claimants, in carrying on the agricultural work as well as the oil mill business. Hence, the petitioners/claimants is suffering from loss of income. The award passed by the Tribunal is just and proper. There is no need to set aside the award. Thus, the petitioners/claimants seek dismissal of the appeal.

8. The Tribunal, on the basis of P.W.2 eye-witness account as well as contents of Ex.P.1 - F.I.R, Ex.P.6 - Charge sheet which was laid against the 1st respondent vehicle driver only, found his negligence alone was the cause of the accident. Further, it is clear from Ex.P.7 - Copy of the judgment passed in the Criminal Court that the 1st respondent vehicle driver alone is responsible for the accident. As such, the conclusion of the Tribunal, on the basis of above said evidence and document that the negligence of the 1st respondent vehicle driver alone caused the accident is appropriate and the same is confirmed.

9. The petitioners/claimants stated that the deceased was aged 43 years, employed as a clerk in Kangayam Co-operative Society and also carried on business as owner of "Jothi Karthkaya" Oil Mill, Kangayam and worked as agriculturist also. In the absence of any other document, relating the age of the deceased, on the basis of Ex.P.3 - Post mortem report, the Tribunal is justified in fixing his age as '43' years. For the said age, the multiplier to be applied is '13'. Even though the petitioners/claimants claimed that the deceased was carrying on the business of Oil mill, it is admitted by the petitioners/claimants that the same was in the name of the wife of the deceased only, which is also proved by Ex.P.8 - Registration certificate. As such, it cannot be said that the deceased was carrying on the business of oil mill. It is clear from Ex.P.9 - Salary certificate that the deceased was getting monthly salary of Rs.1,910/- from the Co-operative Society. There is no other proof regarding the agricultural land owned by him. Therefore, the Tribunal is justified in fixing the monthly income of the deceased at Rs.1,910/-. As the deceased was aged '43' years, it will be appropriate to add 30% of the income towards future prospects, as he was a permanent employee of the Co-operative Society. Thus, his monthly income will be, [Rs.1910+ (Rs.1910x30%)] = Rs.2483/-
As the number of dependants are 4 in number, it will be appropriate to deduct 1/4th of the income towards personal expenses of the deceased and the correct multiplier to be applied is '13'. Thus, the loss of dependency will be,

[Rs.2483-(Rs.2483 x 1/4) x 12 x 13] = Rs.2,90,628/-

Thus, a sum of Rs.2,90,628/- is granted as compensation under the head "Loss of Dependency".

10. The Tribunal has awarded amounts towards loss of consortium and funeral expenses at Rs.10,000/- and Rs.3,000/-. In view of the 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 consortium, loss of estate and for funeral expenses is awarded as Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively.

11. The learned counsel for the petitioners/claimants also contended that the 1st petitioner/claimant is the wife of the deceased, the 2nd petitioner/claimant is the daughter and the 3rd petitioner/claimant is the minor children of the deceased were lost their Love and Affection of the father and they are also entitled for loss of love and affection. Likewise, it is stated that the 4th petitioner/claimant - mother of the deceased, at her old age had lost the care and affection of her son. In support of the same, the learned counsel for the Petitioners/Claimants relied upon the Ruling of the Kerala High Court in the case of [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - [MACA.Nos.711 and 921 of 2010]. As the 2nd and 3rd petitioners/claimants are suffering due to loss of Love and Affection of the father, each of them is awarded Rs.20,000/- and for the 4th petitioner/claimant Rs.10,000/- is awarded. Accordingly, the Award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Dependency	4,20,000.00	2,90,628.00
2	Funeral Expenses	3,000.00	15,000.00
3	Loss of Estate	-	15,000.00
4	Love and Affection	10,000.00	50,000.00
5	Consortium	10,000.00	40,000.00
	Total	4,43,000.00	4,10,628.00

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

(i) The award of the Tribunal is reduced to Rs.4,10,628/- from Rs.4,43,000/-.

(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 modified award amount, the 3rd respondent/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 judgment.

(iv) The 3rd respondent/Insurance Company is also at liberty to get the refund of the excess amount, if it had already deposited the entire amount awarded by the Trial Court.

(v) The apportionment of the modified reduced award amount is as follows:

Petitioners/Claimants 1,2 and 3 - 30% each
4th Petitioner/claimant - 10%

(vi) On such deposit, the petitioners/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 filing of such application.

(vii) The share of the 3rd petitioner/claimant minor is directed to be deposited in any one of the nationalised bank till he attain majority. The 1st petitioner/guardian of the 3rd petitioner/claimant is permitted to withdraw the accrued interest once in three months.

Consequently, connected miscellaneous petitions are closed. No costs.

bri

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
The Subordinate Judge,
Motor Accident Claims Tribunal,
Dharapuram,
Periyar District.

+1cc to Mr.K.Padmanabhan, Advocate SR.NO.51804
+1cc to Mr.A.K.Kumarasamy, Advocate SR.NO.51743

EV(CO)
sm:19.9.2018