

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

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

C.M.A.No.1852 of 2017
and
C.M.P.No.10081 of 2017

M/s.United India Insurance Co. Ltd.,
Pallivasal Street,
Perambalur.

.... Appellant/2nd Respondent

vs

1.G.Gnanaguru
2.G.Hemalatha
3.G.Amudha
4.V.Soundaravalli
5.C.Gopal

.... Respondents/Petitioners & 1&4 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 27.09.2016 made in MCOP.No.545 of 2015 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Perambalur.

For Appellant : Mr.T.Bhaskaran

For Respondents : Mr.D.Gobinath for R1 to R4
R5 - Not ready

J U D G M E N T

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

The challenge in this appeal is, by the Insurance Company, to the award of the Motor Accident Claims tribunal, Perambalur, granting a sum of Rs.1,03,91,624/- as compensation for the death of V.Govindaraju who died in a motor accident that occurred on 12.11.2010.

2. According to the claimants, who are the wife, son, daughter and mother of the deceased, when the deceased was riding his two-wheeler bearing registration No.TN-45-R-5539 near East Gate of Bharat Heavy Electrical Ltd., Trichy on the extreme left side of the road another motor cycle belonging to the 5th respondent bearing registration No.TN-45-AY-6612, insured with the appellant Insurance Company came from South to North driven by its driver in a rash and negligent manner, with a view to avoid the speed brake swerved to right and dashed against the deceased. As a result of the impact, the deceased was thrown off the vehicle and sustained grievous injuries. The deceased was immediately taken to the Bharat Heavy Electrical Ltd., Hospital where he breathed his last despite treatment.

3. Terming the rash and negligent driving of the rider of the motor cycle bearing registration No.TN-45-AY-6612 as the cause for the accident, the claimant sought compensation from the insurer of the said vehicle viz., appellant Insurance Company. The deceased was working as a Manager in Bharat Heavy Electrical Ltd., and drawing a salary of Rs.94,446/- per month. It is also claimed that he was on the verge of promotion as Senior Manager. Claiming that the death of the said Govindaraju in the motor accident had resulted in monetary loss as well as loss of consortium and loss of love and affection the claimants sought for a compensation of Rs.1,00,00,000/-.

4. The claim was resisted by the Insurance Company contending that the accident occurred due to the negligence of the deceased, since he attempted to cross the road without noticing the on coming vehicle. The details of employment and salary as set out in the claim petition were also denied by the Insurance Company.

5. The Tribunal on appreciation of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the two-wheeler bearing registration No.TN-45-AY-6612. On coming to the said conclusion, the Tribunal relied upon the evidence of PW2 who was examined as eye witness and the fact that on the basis of the FIR, the Police have registered a case in Crime No.123 of 2010 against the rider of the two-wheeler bearing registration No.TN-45-AY-6612.

6. On quantum, the tribunal fixed the income of the deceased at Rs.94,446/- per month based on the pay slip produced as Ex.P5. The Tribunal however took the income of the deceased at Rs.1,13,600/- per month for the purposes of deciding the loss of dependency. Deducting 1/4th towards personal expenses and applying the multiplier of '11' the Tribunal awarded a sum of Rs.99,96,624/- towards loss of dependency.

7. The Tribunal also awarded a sum of Rs.2,50,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.15,000/- towards transportation, Rs.30,000/- towards funeral expenses. The Tribunal also apportioned the compensation between the claimants. Aggrieved by the quantum of compensation the Insurance Company has come forward with this appeal.

8. We have heard Mr.D.Bhaskran, learned counsel appearing for the appellant Insurance Company and Mr.T.Gobinath, learned counsel appearing for the respondents 1 to 4. The 5th respondent has not appeared either in person or through counsel despite service of notice.

9. Mr.D.Bhaskran, learned counsel appearing for the Insurance Company would contend that the Tribunal erred in deducting 1/4th towards personal expenses, in view of the fact that the daughter Hemalatha was married even at the time of the accident. He would also fault the Tribunal for adding a lump sum towards future prospects. He would further contend that the Tribunal should have deducted a certain amount towards income tax. We find much force in the contentions of the learned counsel for the Insurance Company.

10. Mr.T.Gobinath, learned counsel appearing for the respondents is unable to controvert the contentions of the learned counsel for the Insurance Company. He would dispute the fact that the 3rd claimant, Hemalatha, daughter of the deceased was married at the time of the accident. When the matter came up on 20.09.2018, in view of the dispute regarding date of marriage of the 3rd claimant, Hemalatha, we had directed the learned counsel for the claimants viz., the respondents 1 to 4 to produce the marriage certificate of the said Hemalatha. Today, when the matter was taken up for hearing, Mr.T.Gobinath would fairly submit that the daughter was married at the time of the accident and therefore, the Tribunal was not justified in deducting only 1/4th towards personal expenses. We find that the Tribunal's calculation of loss of dependency is flawed on more than one aspect. We therefore rework the loss of dependency as follows:

Last drawn salary	= Rs.	94,446/-
Add : 15% towards future prospects	= Rs.	14,167/-

	= Rs.	1,08,613/-

Annual Income	= Rs.	1,08,613 x 12
	= Rs.	13,03,356/-
Less : Income Tax	= Rs.	2,35,006/-

Annual income after tax = Rs.10,68,350/-

11. Though the proper multiplier suggested by the Hon'ble Supreme Court in Sarla Verma & Others vs. Delhi Transport Corporation & Another, reported in 2009(2) TN MAC (1) (SC), is '11', since the deceased had only 9 years of service left, we apply split multiplier.

If split multiplier is applied the loss of pecuniary benefits would be,

Rs.10,68,350/- x 9

Rs.96,15,150/-

For the remaining 2 years,

The loss of pecuniary benefits = $\frac{1}{2}$ x Annual loss of dependency x 2

2

1

= $\frac{1}{2}$ x 10,68,350 x 2

2

= Rs.10,68,350/-

Thus, the total loss of dependency = Rs.96,15,150/- + Rs.10,68,350/-

= Rs.1,06,83,500/-

Of this amount, 1/3rd is to be deducted towards personal expenses of the deceased.

Rs.1,06,83,500/-

Less: 1/3rd towards personal expenses = Rs. 35,61,166/-

Total loss of dependency = Rs. 71,22,333/-

Loss of consortium = Rs. 40,000/-

Loss of love and affection for the two minor children and mother = Rs. 1,20,000/-

Funeral expenses = Rs. 15,000/-

Loss of estate = Rs. 15,000/-

Total compensation = Rs. 73,12,333/-

12. In view of the above, the appeal is partly allowed. The award of the Tribunal is modified as Rs.73,12,333/- which is rounded off to Rs.73,13,000/-. The award will carry interest at 7.5% per annum.

13. The award is apportioned as follows:-

1. The mother of the deceased viz., 4th respondent would take Rs.8,13,000/- with proportionate interest.
- 2.
3. The wife of the deceased viz., the 1st respondent would take Rs.25,00,000/- with proportionate interest and entire costs.
- 4.
5. The children of the deceased viz., respondents 2 and 3 will each take Rs.20,00,000/- with proportionate interest.

14. It is seen that pursuant to the interim order of this Court dated 30.06.2017, the Insurance Company has deposited a sum of Rs.86,88,267/-. The Insurance Company is directed to deposit the balance amount, if any, within a period of four (4) weeks from the date of receipt of a copy of the judgment and on such deposit the claimants would be entitled to withdraw their respective shares of the compensation. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Perambalur.

Copy to:

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.66536

+1cc to Mr.T.Gobinath, Advocate, S.R.No.66547

C.M.A.No.1852 of 2017

SAI (CO)
GSP (12/11/2018)