

In the High Court of Judicature at Madras

Dated : 08.10.2018

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The Honourable Mr. Justice K.K. SASIDHARAN
AND
The Honourable Mr. Justice R. SUBRAMANIAN

C.M.A.No.2311 of 2018

M/s MAGMA HDI General Insurance Company Limited,
Kolkata Magma House,
24, Park Street, Kolkata Appellant/3rd Respondent

vs

- 1) Palanisamy
- 2) Vasanthi Respondent 1 and 2
/1st and 2nd Petitioners
- 3) Govindaraj
- 4) Rathnavelu Respondents 3 and 4/
1st and 2nd Respondent

Prayer: Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree in MCOP No.398 of 2015 dated 18.08.2017 on the file of Motor Accidents Claims Tribunal, (II Additional District and Sessions Court), Tiruppur.

For Appellant : Mr. Mohandoss for
Mr. N. Vijayaraghavan

For Respondents: Mr. K.S. Kavi Arasu

JUDGMENT

(Judgment of the Court was delivered by R. SUBRAMANIAN, J.)

Challenge in this appeal by the Insurance Company, is to the Award dated 18.08.2017 in MCOP No.398 of 2015 passed by Motor Accidents Claims Tribunal, (II Additional District and Sessions Court), Tiruppur granting a sum of Rs.17,55,000/- for the death of one Jayaraj in the motor accident that had occurred on 12.09.2005.

2. Heard Mr. Mohandoss learned counsel for the appellant Insurance Company and Mr. K.S. Kavi Arasu, learned counsel for the respondent.

3. According to the claimants/respondents 1 and 2, on 10.02.2015, the deceased Jayaraj was travelling as a passenger in Tata Super Ace vehicle bearing Registration No.TN-36-AY-4164. The third respondent drove the said vehicle in a rash and negligent manner on Kovai to Erode NH-47 Bypass road from West to East and dashed against the Ashok Leyland Lorry bearing Registration No.TN-30-AM-1796 which was proceeding ahead of the Tata Super Ace. As a result of the collision, the deceased sustained grievous injuries on his head, both legs and fractures all over the body and died on the spot. The claimants also contended that the deceased was a Mason and earning a sum of Rs.12,000/- per month and claimed compensation of Rs.30,00,000/-.

4. The claim petition was resisted by the appellant Insurance Company contending that the third respondent did not have a valid driving licence. According to the appellant Insurance Company, the deceased was an unauthorised passenger in a goods vehicle. The insurance company also denied the correctness of the particulars relating to the age, avocation and income of the deceased as set out in the claim petition.

5. In order to prove their claim, the claimants examined P.W.1 and P.W.2 and Exs.P.1 to P.7 were marked. No oral or documentary evidence was let in on the side of the insurance company.

6. The Tribunal, after considering the oral and documentary evidence came to the conclusion that the accident was caused due to rash and negligent driving of TATA Super Ace vehicle insured with the appellant Insurance Company and accordingly, the Tribunal fixed the entire liability on the Insurance Company. This appeal is filed by the insurance company, challenging the said award.

7. Mr.Mohandoss, learned counsel appearing for the insurance company would contend that the deceased was an unauthorised passenger in a goods vehicle. Unfortunately for him, there was neither a plea nor evidence regarding the status of the deceased. We therefore reject the argument of the counsel for the appellant regarding liability of the Insurance Company.

8. In quantum, the Tribunal took the monthly notional income of the claimant as Rs.10,000/- and by adding 50% towards future prospects, fixed the income of the deceased as Rs.15,000/-. After deducting 1/2 towards personal expenses (15,000-7,500) the Tribunal arrived Rs.7,500/- as loss of contribution by the deceased to his family. The Tribunal, based

on the age of the deceased, namely, 19 years, applied the multiplier of "18" and calculated the loss of dependency at Rs.16,20,000/- (7,500 x 12 x 18)/-

9. Further, the Tribunal awarded a sum of Rs.25,000/- towards funeral expenses; a sum of Rs.10,000/- towards transportation charges and Rs.1,00,000/- towards loss of love and affection to respondents 1 and 2/claimants and thus, the total award worked out to Rs.17,55,000/- with interest at 7.5% p.a. from the date of petition till the date of deposit. The break up of the details of the compensation awarded by the Tribunal is as follows:

Loss of income	: Rs. 16,20,000
Loss of love and affection to respondents 1 and 2	: Rs. 1,00,000
Funeral expenses	: Rs. 25,000
Transportation charges	: Rs. 10,000
	Rs. 17,55,000

10. Mr.Mohandoss, learned counsel for the appellant Insurance Company would contend that the Tribunal is not right in fixing the monthly notional income as Rs.10,000/-, which is on the higher side and the Tribunal should have added only 40% towards future prospects in view of the guidelines suggested by Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2018 (1) Law Weekly 331. He would also fault with the Tribunal for awarding a sum of Rs.1,00,000/- towards loss of love and affection.

11. Mr.K.S. Kavi Arasu, learned counsel for the claimants would submit that the award passed by the Tribunal is just and reasonable. He would also submit that that the Tribunal ought to have taken a higher income considering the avocation of the deceased as Mason.

12. We have considered the rival submissions and perused the materials available on record.

13. We find fixation of Rs.10,000/- as monthly income cannot be interfered with in view of the fact that the accident had occurred on 10.02.2015. However, we are unable to sustain addition of 50% towards future prospects. Considering the guidelines suggested by Hon'ble Supreme Court in National Insurance Company Limited v. PranaySethi and other,reported in 2018 (1) Law Weekly 331, the percentage of future prospects would be only 40%. Therefore, we add 40% towards future prospects thus the monthly income would be Rs.14,000/-. The

deceased left behind his parents. Therefore, after deducting $\frac{1}{2}$ towards personal expenses, loss of income would be Rs.7,000/- (Rs.14,000 - 7,000). Since the deceased was aged at 19 years at the time of accident by applying the multiplier "18" the loss of dependency would be Rs.15,12,000/- (7,000 x 12 x 18).

14. Further, the Tribunal has granted a sum of Rs.1,00,000/- towards loss of love and affection to the respondents 1 and 2/claimants, which in our view, is on the higher side. Hence, we reduce the award towards loss of love and affection to Rs.80,000/-. The Tribunal has not awarded any amount towards loss of estate. We award a sum of Rs.15,000/- towards loss of estate. The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses and Rs.10,000/- towards transport expenses and the same are sustained. Thus, the total compensation works out to Rs.16,42,000/-.

15. The details of the modified compensation as per the above discussion are as under:-

Loss of dependency	: Rs.	15,12,000
Loss of estate	: Rs.	15,000
Loss of love and affection	: Rs.	80,000
Funeral expenses	: Rs.	25,000
Transportation expenses	: Rs.	10,000

Rs. 16,42,000

16. In fine, the Civil Miscellaneous appeal is partly allowed and the award of the Tribunal is modified to Rs.16,42,000/- (Rupees Sixteen lakhs forth two thousand only), as against the compensation of Rs.17,55,000/- awarded by the Tribunal, with interest at 7.5% from the date of petition till the date of deposit.

17. The Insurance Company is directed to deposit the amount as modified by us within a period of four weeks from the date of receipt of a copy of this judgment. The apportionment between the claimants 1 and 2/parents of the deceased is as follows:-

(i) The second respondent-mother of the deceased is entitled to Rs.10,00,000/- with proportionate interest and entire costs.

(ii) The first respondent/father of the deceased is entitled to Rs.6,42,000/-with proportionate interest.

18. On such deposit, the claimants/respondents 1 and 2 are entitled to withdraw their respective shares by making necessary application before the Tribunal. There will be no order as to costs in this appeal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.Motor Accidents Claims Tribunal,
(II Additional District and Sessions Court),
Tiruppur.

2.The Section Officer,
VR Section, High Court,
Madras. (+2 Copies)

+1cc to Thiru N.Vijayaraghavan, Advocate Sr.69823

+1cc to Mr.K.S.Kaviarasu, Advocate Sr.69300

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mr[co]
srg 22/11/2018

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