BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.984 of 2017
and
C.M.P(MD) No.10248 of 2017

The Branch Manager,
United India Insurance Company Ltd.,
K.A.R. Towers, Ward 3, 2nd Floor,
Municipal Corporation Office Backside,
R.S.Road, Dindigul 624 001. ... Appellant/2nd Respondent

Vs.

1.Mariammal
2.Malarvizhi
3.Ramar ... Respondents 1 to 3/Petitioners
4.A.Thirupathi ... 4th Respondent/1st Respondent

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No.39 of 2015, dated 11.04.2017, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dindigul.

For Appellant	:	Mr.J.S.Murali
For Respondents	:	Mr.S.Pugalendhi for R.1 to R.3
For Respondent-4	:	No Appearance

JUDGMENT

This civil miscellaneous appeal has been filed challenging the award passed by the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Dindigul, in M.C.O.P.No.39 of 2015, dated 11.04.2017.

2. Heard the learned Counsel appearing on either side.

3. It is a case of fatal and the Tribunal has awarded a sum of Rs.7,17,060/- as compensation, against which, the appellant / Insurance Company is on appeal before this Court.

4. The manner of the accident, which occurred on 14.06.2015, is not in dispute, however, liability and quantum are disputed.

5. The learned Counsel for the appellant would submit that the accident took place when the deceased used to jog along with his dog, in a National Highway, viz., Trichy-Madurai Four way lane, which is meant for fast movement of vehicles and not for such kind of walking or jogging activities. Therefore, the learned Counsel would attempt to plead that the negligence is on the part of the deceased and the insurance company is not liable to pay compensation. He would further plead that the Tribunal, at least, should have fixed contributory negligence, instead of fixing 5% negligence on the deceased. Therefore, he prays for interference on this score.

6. Perusal of the impugned award shows that with regard to negligence, the Tribunal has elaborately discussed the same at paragraph Nos.9 & 10 of its judgment. Perusal of the FIR report, site map and other records shows that the fourth respondent's car, driven by one Nagaraj, dashed against the deceased, from backside, in the Highways adjacent to the Mud Road, where the Thar Road begins. Therefore, the learned Judge has fixed 5% negligence on the deceased, as he walked on the National Highways adjacent to the Mud road, where the Thar road begins, which, in my considered opinion is not correct after finding that the accident had taken place adjacent to the Mud road where Thar road begins and after finding that the fourth respondent's car, driven by its driver, dashed against the deceased from the backside. Therefore, in the opinion of this Court, the Tribunal ought not to have fixed 5% negligence on the deceased and ought to have fixed the entire liability on the Insurance Company.

7. The next ground raised by the appellant is on quantum. The learned Counsel, on this count, would submit that they are not disputing the monthly income, but, are questioning the future prospectus awarded by the Tribunal. In this regard, the learned Counsel would bring to the knowledge of this Court that as per postmortem certificate, the age of the deceased was 59 years at the time of accident and therefore, as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Ltd., v. Pranay Sethi and others, decided on 31.10.2017,*** maximum future prospectus would be 10%, however, the Tribunal has awarded 15% and therefore, he prays for interference.

8. The learned Counsel for the appellant would further submit that the Tribunal, other than loss of income, has awarded a sum of Rs.2,17,000/-, viz., Rs.1,00,000/- towards consortium; Rs.80,000/- towards love and affection; Rs.25,000/- towards funeral expenses and Rs.12,000/- towards transportation, which are nothing but conventional heads. As per ***Pranay Sethi's*** case (cited supra), the maximum compensation towards conventional heads would be Rs.70,000/- and therefore, he prays for interference on this score also.

9. Perusal of record would fortify the submissions made by the learned Counsel for the appellant. As per the settled position in law, maximum compensation towards conventional heads would be Rs.70,000/- and future prospectus for a person aged about 59 years would be 10.

10. Therefore, the compensation awarded by the Tribunal towards all heads, other than loss of income, is hereby deleted and a sum of Rs.70,000/- is awarded towards conventional heads.

11. Though the learned Counsel for the appellant would state that 15% has been given for future prospectus, instead of 10%, as per ***Pranay Sethi's*** case (cited supra), this Court has found that the learned Judge ought not to have fixed 5% negligence on the deceased in the circumstances of the case. I am, therefore, not inclined to interfere in the future prospectus given by the Tribunal, as the overall compensation under the head loss of income is reasonable. Accordingly, Rs.5,37,800/- awarded by the Tribunal towards loss of income is confirmed and Rs.70,000/- is awarded by this Court towards conventional heads. Since the liability fixed by the Tribunal remains untouched by this Court, the claimants are entitled for Rs.5,77,410/- (being 95% of Rs.6,07,800) as compensation.

12. At this juncture, it is represented by the learned Counsel for the appellant / Insurance Company that they had already deposited the entire amount, as per the award of the Tribunal.

13. In result,

- The compensation awarded by the Tribunal is reduced and fixed at Rs.5,77,410/- [Rupees Five Lakh Seventy Seven Thousand Four Hundred and Ten only];
- Since it is stated by the appellant / Insurance Company that they had already deposited the entire amount, as per the award of the Tribunal, the claimants are permitted to withdraw their respective shares from the deposited amount, with accrued interest @ 7.5% per annum from the date of petition till the date of deposit and costs, as apportioned by the Tribunal, without filing any formal application before the Tribunal; and
- The balance amount shall be refunded to the appellant / Insurance Company.

14. With the above modifications, this civil miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Special Subordinate Judge,
   Motor Accidents Claims Tribunal,
   Dindigul.

2. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 Copies)

+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 75502

GK
TE/RSK/SAR-2 : 05/10/2018 : 4P/5C

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