BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.275 of 2018
and
CMP(MD)Nos.3916 and 5148 of 2018

The Divisional Manager,
United India Insurance Company Ltd.,
having its Office at LIC Office,
Near Gandhiji Road,
Thanjavur. : Appellant/2nd Respondent

Vs.

1.Madhavi
2.Valarmathi
3.Sivakumar
4.Vimala : R1 to R4/Petitioners
5.Senbaiyan : 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award made in MCOP No.500 of 2017, dated 09.10.2017 by the Motor Accident Claims Tribunal (Special District Judge), Thanjavur.

For Appellant : Mr.N.Dilip Kumar
For R1 to R4 : Mr.G.Karnan
For 5th Respondent : Mr.N.Ilango

JUDGMENT

[Judgment of the Court was made by T.KRISHNAVALLI, J]

Assailing the award passed by the Motor Accident Claims Tribunal (Special District Judge), Thanjavur, in MCOP No.500 of 2017, dated 09.10.2017, the Insurance Company has preferred this appeal.

2.The respondents 1 to 4/claimants as the legal-heirs of the deceased Arunachalam filed MCOP No.500 of 2017 claiming compensation of Rs.25,00,000/-. The case of the claimants is that on 28.12.2016 at 19.30 hours, while the deceased Arunachalam was proceeding in a two wheeler bearing registration No.TN-49-AP-5818, at that time, the driver of the tractor bearing registration No.TN-49-BH-7360, who drove in front of the deceased, applied sudden break and due to which, the said Arunachalam lost control over his vehicle and dashed on the back side of the tractor and sustained severe injuries and after taking treatment in the Government Hospital, he succumbed to the injuries on 29.12.2016. The Inspector of Police, attached to Thanjavur Taluk Police Station has registered a case in Crime No.626 of 2016 under Section 304(A) of IPC against the driver of the tractor.

3.The claimants have stated that the deceased was 35 years at the time of accident and he was working as a Mason and Centering Master, thereby he was earning Rs.25,000/- per month. It is alleged that the said Arunachalam died only due to the negligence of the driver of the tractor.

4.The appellant/Insurance Company has filed a counter denying the allegations made in the claim petition and also contended that the accident occurred only due to negligence of the deceased. They also denied the age, income and occupation of the deceased and the manner of the accident and their liability to pay the compensation.

5.Before the Tribunal in order to establish their case, the claimants examined two witnesses as PW1 and PW2 and marked 20 documents as Exs.P1 to P20. On the side of the Insurance Company, no evidence was let in and no document was marked.

6.The Tribunal, after considering the oral and documentary evidence, came to the conclusion that the driver of the tractor was responsible for the accident and awarded compensation of Rs.14,43,000/- along with interest @ 7.5% p.a. Challenging the award, the present appeal is filed.

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

8.PW1, who is the wife of the deceased has deposed that the deceased died at the age of 35 year. Ex.P6 is the driving licence of the deceased would show that the date of birth of the deceased is 10.01.1981 and the deceased was 35 years and 11 months at the time of the accident. The tribunal, based on Ex.P6 fixed the age of the deceased as 35 years. PW1 has further stated that the deceased was working as Mason and Centering Master and he was earning Rs.25,000/- per month. However, they have not produced any salary certificate, so, the tribunal assessed the income of the deceased as Rs.6,500/- per month and awarded compensation of Rs.12,48,000/- towards loss of income.

9.It is mainly argued on the side of the appellant Insurance Company that the accident was not happened due to the rash and negligent driving of the driver of the tractor and the driver of the tractor only gave the complaint in the police station and the case was registered against the deceased Arunachalam and only the deceased Arunachalam, who drove his vehicle in a rash and negligent manner, dashed against the parked vehicle and invited the accident and the accident has occurred only due to the negligence of the deceased. Hence, the 2nd respondent Insurance Company is not liable to pay any compensation.

10.It is seen from the records that the First Information Report was registered only against the driver of the tractor. No contra evidence was adduced on the side of the second respondent. Further, in this case, PW1 and PW2 are the eye witnesses to the occurrence. PW2 deposed that the driver of the tractor has suddenly applied brake and due to which, the deceased lost control over his vehicle and dashed against the back side of the first respondent tractor. In this case, the 2nd respondent has stated that the accident has occurred due to the carelessness on the part of the deceased. To prove it, the driver of the tractor was not examined and in this regard only the second respondent has to prove that the tractor was stopped on the left side of the road with proper signal. But there is no evidence to show that the tractor was stopped on the left side of the road with proper signal. PW2 categorically deposed that since the driver of the tractor suddenly applied brake, the deceased lost control over his vehicle and dashed against the back side of the tractor. The duty is cast upon the Insurance Company to prove that whether the tractor was stopped after taking precautionary steps. But the Insurance Company has failed to examine the driver of the tractor.

11.It is settled law that the First Information Report is not a conclusive proof. It is to be noted that in this case, the driver of the tractor without following the traffic rules, had applied sudden brake and the negligence on the part of the deceased is that he lost his control and dashed against the tractor. Further, no contra evidence was let in on the side of the 2nd respondent. Hence, it is held that the accident was happened only due to the negligence on the part of the driver of the tractor, who applied sudden brake at night hours without showing any signal. Therefore, this court is of the considered view that the accident was occurred due to the negligence on the part of the driver of the 1st respondent. Hence, the argument put forth on the side of the 2nd respondent stating that the accident had occurred due to the negligent on the part of the deceased is not at all acceptable. Therefore, it is held that the Insurance Company is liable to pay the compensation to the claimants.

12.Perusal of the records would reveal that the deceased was working as a Mason and Centering Master and he was getting a salary Rs.25,000/- per month, but no proof was filed on the claimants. Considering the above facts and keeping in view of the decision of the Hon'ble Apex Court, the tribunal has fixed the notional income of the deceased at Rs.6,500/- per month and by adding 50% towards future prospect, arrived at the monthly income at Rs.9,750/- and after deducting 1/3rd towards his personal expenses, the loss of dependency was arrived at Rs.6,500/- per month and by applying proper multiplier '16', awarded Rs.12,48,000/- (Rs.6,500/- 12 x 16) towards loss of income.

13.It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In the instant case, the tribunal has added 50% towards future prosepcts instead of 40%. Hence, we are of the considered view that 40% has to be added towards future prosecuts to calculate the income of the deceased.

14.Admittedly, the deceased died at the age of 35 years and as per the decision of the Hon'ble Supreme Court reported in **2017 (6) CTC 493** *(National Insurance Company Limited vs. Pranay Sethi and others)*, the claimants are entitled for addition of 40% towards future prospects. By doing so, the monthly loss of income of the deceased is calculated at Rs.9,100/- (Rs.6,500/- + 2,600/-). After deducting 1/3rd towards his personal and living expenses, the monthly income is arrived at Rs.6,067/- (Rs.9,100/- x 1/3). By applying proper multipler 16, this court awards **Rs.11,64,864/-** (Rs.6,067/- x 12 x 16) towards loss of income. In addition to that, as per the decision in **Pranay Sethi's case**, this Court awards Rs.40,000/- towards loss of consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.12,34,864/**- together with interest @ 7.5% p.a.

15.In the result, this Civil Miscellaneous Appeal is disposed of on the above terms. The award is reduced to **Rs.12,34,864/-** from Rs.14,43,000/-. The appellant Insurance Company is directed to deposit the modified amount together with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the first claimant being the wife of the deceased is entitled to withdraw Rs.8,34,864/- and the 2nd claimant being the mother of the deceased is entitled to withdraw Rs.4,00,000/- with accrued interest and costs, without filing any formal petition before the tribunal. The excess amount, if any, shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Special District Judge,
   (Motor Accident Claims Tribunal),
   Thanjavur.

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

+ 1 CC TO Mr.N.TAMILMANI, ADVOCATE IN SR No. 72588
+ 1 CC TO Mr.G.KARNAN, ADVOCATE IN SR No. 72558
+ 1 CC TO Mr.N.DILIPKUMAR, ADVOCATE IN SR No. 72879

ER
TE/RP/SAR-1 : 09/08/2018 : 5P/7C

CMA(MD)No.275 of 2018
12.07.2017