BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018
CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)No.1006 of 2018
and
C.M.P(D)No.10537 of 2018

Branch Manager,
Iffco-Tokio General Insurance Company Ltd.,
Preetham Plaza,
Chandragandhi Nagar,
Ponmeni,
Madurai District. ... Appellant/Respondent No.2

vs.

1.Vasantha
2.Sathiyaraja
3.Maruthupandian
4.Vijayakumar ... Respondents Nos.1 to 4/ Petitioners
5.Jeyamurugan ...Respondent No.5/Respondent No.1
6.Danalakshmi
7.Minor Nizanth
(The 7th respondent represented through his mother, guardian and the next friend the 6th respondent) ...Respondents 6 & 7/ Respondents 3 & 4

Prayer: The appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award, dated 15.12.2017 made in M.C.O.P.No.2 of 2016, passed by the Motor Accident Claims Tribunal/Subordinate Judge of Aruppukottai.

For Appellant : Mr.V.Sakthivel
For R1,R2 and R4 : Mr.G.Mariappan

JUDGMENT

Being aggrieved by the award passed by the Motor Accident Claims Tribunal (Sub Court), Aruppukottai, in M.C.O.P.No.2 of 2016, dated 15.12.2017, the appellant Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.2 of 2016. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation, for the death of one Subbiah.

3.The Tribunal considering the pleadings, oral and documentary evidence let in by the parties held that the accident had occurred due to rash and negligent driving of the driver of the Auto belonging to the fifth respondent and fixed the notional income of the deceased at Rs.9,000/- per month, added 15% towards future prospects and after deducting 1/4th of income towards personal expenses and applying multiplier '9', awarded a total sum of Rs.11,73,350/- as compensation under different heads.

4.Challenging the quantum of the compensation awarded by the Tribunal, the appellant has come out with the present Civil Miscellaneous Appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing the notional income of the deceased at Rs.9,000/- per month and erred in relying on Ex.P.28 Salary Certificate. The Tribunal ought to have seen that the said document was prepared only for the purpose of the case in order to get more compensation. The age of the deceased was 63 years at the time of accident and admittedly, he retired 13 years ago. The Tribunal erred in fixing the age of the deceased at 60 years and awarding 15% towards future prospects. The multiplier applied by the Tribunal is not correct. The Tribunal has awarded exorbitant amount under different heads and prayed for reducing the compensation awarded to the respondents 1 to 4.

6.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the appellant has not let in any evidence to prove the age of the deceased was 63 years at the time of accident. The Tribunal has considered the post mortem certificate, which was marked as Ex.P2 and rightly fixed the age of the deceased at 60 years. The amounts awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

7.I have heard the learned counsel appearing for the appellant and the respondents 1 to 4 and perused the materials available on record.

8.From the materials on record, it is seen that the respondents 1 to 4 have produced Ex.P.28 to prove the income of the deceased at the time of accident. The learned counsel appearing for the appellant contended that the said document was prepared only for the purpose of the case in order to get more compensation. The appellant has not let in any evidence to disprove the case of the respondents that the deceased was earning Rs.320/- per day. The Tribunal considering the nature of the alleged work done by the deceased and Ex.P28, fixed the notional income of the deceased at Rs.9,000/- p.m., There is no error in the said finding.

9.The Tribunal fixed the age of the deceased at 60 years as per the post morterm certificate Ex.P.2. As rightly pointed out by the learned counsel for the respondents 1 to 4 that the appellant has not produced any evidence to show that the deceased was aged 63 years at the time of accident. The Tribunal has granted 15% enhancement for future prospects. As per the judgment reported in **2009(2)TN MAC 1 (SC) *Sarla Verma v. Delhi Transport Corporation,*** if a person self employed or on a fixed salary and age between 50 to 60, the claimants are entitled to only 10% enhancement for future prospects. The Tribunal erred in granting 15% towards future prospects.

10.For the above reason, the amounts awarded for loss of income is modified as follows:-

9,000 + 900 (10% of 9,000) - 1/4th =7,425 x 12 x 9=8,01,900/-.

11.As far as the amounts granted by the Tribunal under different heads are concerned the same are excessive and contrary to the judgment of the Hon'ble Apex Court referred to above. Hence, the amounts granted under different heads are set aside and the respondents 1 to 4 are entitled to only Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

12. For the above reason, the amounts awarded by the Tribunal are modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	8,38,350	8,01,900	reduced
2.	For Transportation to the hospital	10,000	-	Set aside
3.	For funeral expenses	25,000	15,000	reduced
4.	For attendant charges	5,000	-	Set aside
5.	For damages to clothes	5,000	-	Set aside
6.	For Ambulance expenses	10,000	-	Set aside
7.	For pain and suffering	30,000	-	Set aside

8.	For loss of love and affection to the respondents 2 to 4	50,000 x 3=1,50,000	-	Set aside
9.	For loss of consortium to the first respondent	1,00,000	40,000	reduced
10.	For loss of estate	-	15,000	awarded
	Total	Rs.11,73,350	Rs.8,71,900	By reducing a sum of Rs.3,01,450/-

13. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The respondents 1 to 4 are entitled to a sum of **Rs.8,71,900/-** along with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realisation and costs. The appellant Insurance Company is directed to deposit the award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.2 of 2016, on the file of the Motor Accidents Claims Tribunal (Sub Court), Aruppukkottai, within a period of **eight weeks** from the date of receipt of copy of this judgment;

14.On such deposit being made, the respondents 1 to 4/claimants are entitled to withdraw their shares as per the ratio of apportionment made by the Tribunal, less the amount already withdrawn, if any, with interest and costs by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS I)

To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Aruppukottai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. 2Copies

+1CC to Mr.V.SAKTHIVEL , Advocate SR.No. 92641.
+1CC to Mr.G.MARIAPPAN , Advocate SR.No. 93040.

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DS/ /SAR- (08.03.2019) 5P 6C