IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.3194 of 2007 & 926 of 2013

C.M.A.No.3194 of 2007 :

1.Kokila
2.Minor Balaji
(Rep. by mother and
Guardian Kokila)
3.Kalavathy ...Appellants /Claimants

vs

1.R.Venkatachalam

2.The Branch Manager,
The New India Assurance Co. Ltd.,
No.1, Bharathi Road,
Woodlands Complex,
Cuddalore - 1.

3.Rajendran

4.The Branch Manager,
The National Insurance Co. Ltd.,
Nethaji Road, Cuddalore - 1.
... Respondents/Respondents

C.M.A.No.926 of 2013 :

The National Insurance Co. Ltd.,
Cuddalore. ...Appellant /4th Respondent

vs.

1.T. Kokila

2.Minor Balaji
(Rep. by mother and
Guardian Kokila)

3.Kalavathi ...Respondents 1 to 3/Petitioners 1 to 3

4.Venkatachalam

5.M/s.New India Assurance Co. Ltd.,
No.1, Bharathi Road,
Woodlands Complex,
Cuddalore - 1.

6.Rajendran ... Respondents 4 to 6/Respondents 1 to 3

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 28.02.2007 passed in MCOP.No.452 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Sessions Court, Fast Track Court No.2, Cuddalore.

CMA.No.3194 of 2007:

Appellant	: Mr.S.Kalyanaraman
R1 & R3	: No appearance
R2	: Mrs.R.Sreevidhya
R4	: Mr.J.Chandran

CMA.No.926 of 2013:

Appellant	: Mr.J.Chandran
R1 to R3	: Mr.S.Kalyanaraman
R5	: Mrs.R.Sreevidhya
R4 & R6	: No appearance

C O M M O N J U D G M E N T

The National Insurance Company is the fourth respondent in MCOP.No.452 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Sessions Court, Fast Track Court No.2, Cuddalore. The claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the death of one Murugesan, husband of the first claimant, father of the second claimant and son of the third claimant in a road accident on 17.02.2002.

2. The parties are referred to as per their ranking before the Tribunal and at appropriate places their ranks in the present Civil Miscellaneous Appeal would also be indicated.

3. The case of the claimants in nutshell is as follows:
On 17.02.2002, the deceased Murugesan, along with his relatives and friends were travelling in a Tata Sumo Car bearing Registration No. TN 49 J 6399 and they were proceeding towards Bhavani on Salem - Sankagiri Road and at about 02.00 a.m, when they were nearing Seeragapatty village, a lorry bearing Registration No. TSF 5785 hit the Tata Sumo Car, as a result whereof, the deceased Murugesan sustained fatal injuries and was rushed to a nearby Hospital. Subsequently, he was admitted in

Manipal Hospital at Bangalore. However, he succumbed to injuries on 22.02.2002.

4. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the first respondent was the cause of the accident and that since the said lorry was insured with the second respondent / New India Assurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay compensation. The claimants also impleaded the owner and the insurer of the Tata Sumo Car bearing Registration No. TN 49 J 6399 as parties to the claim petition and according to the claimants in order to avoid multiplicity of proceedings, they are also shown as parties in the claim petition.

5. The owner of the lorry and the owner of the Tata Sumo Car remained absent before the Tribunal and therefore, they were set exparte. The second respondent / New India Assurance Company Limited and fourth respondent / National Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Additional Sessions Judge / Motor Accident Claims Tribunal, Fast Track Court No.2, Cuddalore after analysing the evidence on record, fixed the negligence on the part of the driver of the Tata Sumo Car and directed the owner of the Tata Sumo Car and the present appellant / National Insurance Company Limited to pay compensation of Rs.4,22,790/- together with interest at the rate of 7.5% per annum to the claimants. The Tribunal dismissed the claim petition as against the owner and the insurer of the lorry. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited filed C.M.A.926 of 2013 and the claimants filed C.M.A.No.3194 of 2007.

6. Mr.J.Chandran, learned counsel appearing for the National Insurance Company contended that the claimant has examined one of the inmates of the Tata Sumo Car as PW2, who has clearly deposed that the driver of the lorry was rash and negligent and the Tribunal without considering the same had fixed the entire negligence on the part of the driver of the Tata Sumo Car, merely based on the FIR.

7. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the New India Assurance Company Limited contended that twelve persons were travelling in the Tata Sumo Car and the Tribunal after analysing the oral and documentary evidence adduced on both sides had clearly held that the driver of the Tata Sumo Car was responsible for the accident. Therefore, she prayed for dismissal of the appeal, filed by the National Insurance Company.

8. In the instant case, the accident took place on the service road which had several pits and some repairing works were also going on. The evidence of PW2 is that the driver of the Tata Sumo Car was driving at a moderate speed and that the lorry which came on the opposite direction hit the Tata Sumo Car. However, FIR was registered against the driver of the Tata Sumo Car by the Sub Inspector of Police, Aataiyampatty Police Station. The learned Tribunal mainly based on the FIR had come to a conclusion that the driver of the Tata Sumo Car alone was responsible for the accident. Merely because the Tata Sumo Car was over loaded, entire negligence cannot be fixed on the driver of the Tata Sumo Car, especially, when this is a case of head on collision between the Tata Sumo Car and lorry. Therefore, composite negligence in the ratio 50 : 50 should be fixed on the drivers of both the vehicles.

9. A perusal of the records shows that the deceased was one of the partners in Balaji Readymades. A copy of profit & loss account for the year 2002 - 2003 was filed as Ex.P16 and the wife of the deceased who was examined as PW1 has deposed that she could not say the actual share of her husband in the partnership firm business. In the absence of evidence on record, the Tribunal fixed the notional income of the deceased as Rs.2,500/- per month. It is pertinent to point out that the accident took place in the year 2002 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.3,000/- as notional monthly income of the deceased would meet the ends of justice. The Tribunal did not also award any amount towards "future prospects" of the deceased, especially, when the deceased was aged 33 years on the date of the accident. As per the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects of the deceased. Since there are three dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.3,000/-
40% Future Prospects = Rs.1,200/-
Total = Rs.3,000/- + Rs.1,200/- = Rs.4,200/-
After 1/3 deduction = Rs.2,800/-

Loss of dependency
= Rs.2,800/- x 12 x 16
= Rs.5,37,600/-

10. Apart from the above said amount, the claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/-

towards "loss of estate", "loss of consortium" and "funeral expenses" respectively, as per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.5,37,600/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.6,07,600/-

Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,22,790/- to Rs.6,07,600/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

(i) CMA.No.926 of 2013 is allowed. No costs.

(ii) CMA.No.3194 of 2007 is partly allowed. No costs.

(iii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.4,22,790/- to Rs.6,07,600/-

(iv) The claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(v) The National Insurance Company Limited and the New India Assurance Company Limited are directed to deposit the enhanced compensation amount i.e., Rs.6,07,600/- jointly and severally (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.452 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Sessions Court, Fast Track Court No.2, Cuddalore within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the claimants are at liberty to withdraw the same as per the order passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Additional Sessions Judge,
Fast Track Court No.2,
Cuddalore.

Copy to

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

+1cc to Mr.S.Kalyanaraman, Advocate Sr.92267
+1cc to Mr.J.Chandran, Advocate Sr.92323
+1cc to Mrs.R.Sreevidhya, Advocate Sr.93303

CMA.Nos.3194 of 2007 & 926 of 2013

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srg 08/06/2020