IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.1262 of 2009
and
MP.No.1 of 2009

The Manager,
The New India Assurance Co. Ltd.,
No.45, Moore street,
Chennai - 600 001.
...Appellant/2nd respondent

vs.

1.C.Pandian
2.C.Chellathai
3.C.Selvaraj
4.S.Vijayalakshmi
5.A.Shanthi
6.S.Grahalakshmi
7.C.Chelladurai
8.C.Selvarani ... 1 to 8 Respondents/Claimants
9.M/s.B.L.Transports,
2nd Floor,
No.46, Moore street,
Chennai - 600 001.
... 9th Respondent/First Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 16.08.2007 passed in MCOP.No.603 of 2005 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Thiruvallore.

For Appellant : Mr.S.Ramalingam
For Respondents : Mr.S.N.Ravikumar for R1 to R8
No appearance for R9

J U D G M E N T

The appellant / New India Assurance Company Limited, Chennai is the second respondent in MCOP.No.603 of 2005 on the file of the Motor Accidents Claims Tribunal / Subordinate Judge, Thiruvallore. The respondents 1 to 8 filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.4,00,000/- for the death of their mother C.Panchavaranam in a road accident that took place on 06.06.2005.

2. The case of the claimants is that on 06.06.2005, when the deceased C.Panchavaranam was travelling as a pillion rider in a motorcycle bearing Registration No. TN 05 B 1875 from Bhavani Nagar to Thiru.V.K.Nagar, a speeding lorry bearing Registration No. TN 04 B 3465 belonging to the 9th respondent, hit the motorcycle, as a result of which, the deceased sustained grievous injuries and was immediately rushed to the Government Stanley Hospital, Chennai. However, she succumbed to injuries on 10.06.2005. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the 9th respondent was the cause of the accident and that since the said lorry was insured with the New India Assurance Company Limited, both the owner as well as the insurer are jointly and severally liable to pay compensation to them.

3. The learned Motor Accidents Claims Tribunal / Subordinate Judge, Thiruvallore after analysing the evidence on record, awarded a compensation of Rs.3,10,000/- to the claimants together with interest at the rate of 7.5% per annum. Aggrieved over the quantum of compensation awarded by the Tribunal, the New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.S.Ramalingam, learned counsel appearing for the appellant contended that in the claim petition the age of the eldest daughter of the deceased is mentioned as 38 years and the Tribunal without considering the same, had fixed the age of the deceased as 50 years and adopted multiplier of 13. He would further contend that when the deceased was not an earning member of the family and the claimants were not depending on her income, the Tribunal was wrong in fixing the monthly income of the deceased as Rs.2,500/-. He therefore prayed for scaling down the award passed by the Tribunal.

5. Per contra, the learned counsel appearing for the respondents 1 to 8 / claimants contended that in the absence of evidence, the age mentioned in the post mortem certificate (Ex.P3) should be taken up for determining the loss of income of the deceased and in the instant case, since the post mortem certificate (Ex.P3) clearly shows that the age of the deceased is 50, the Tribunal was right in adopting multiplier of 13. He would further contend that the Tribunal, in fact, awarded meagre amounts under the other heads and therefore, the award should be enhanced.

6. A perusal of the records shows that in the claim petition the age of the first respondent / first claimant / eldest daughter of the deceased is mentioned as 38 years. Therefore, the deceased could not be 50 years old on the date of the accident. As far as the present case is concerned, the age mentioned in the post mortem certificate cannot be taken into consideration, because, it is improbable for a woman to give birth to a child at the age of 12 years. Therefore, the age of the deceased in the instant case is fixed as 56 years. It is also to be noted that no age proof has been filed by the claimants. The contention of the claimants is that the deceased was working as a sales woman in a provisional stores, earning a sum of Rs.3,000/- per month. Accepting the contention of the claimants, the income of the deceased is fixed at Rs.3,000/- per month. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 10% should be added towards future prospects of the deceased which would come to Rs.3,300/-. It is seen that all the claimants are aged 30 and above and most of them are married and therefore 1/3 is deducted towards the personal expenses of the deceased and thus a sum of Rs.2,200/- is taken up for calculating "loss of income". Since the age of the deceased on the date of the accident is fixed at 56 years, the proper multiplier to be adopted in the instant case is 9 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Loss of income
= Rs.2,200/- x 12 x 9
= Rs.2,37,600/-

7. 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 love and affection" and "funeral expenses" respectively, 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 (SC). The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of income	Rs.2,37,600/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-

S.No.	Head	Amount granted by this Court
4.	Funeral expenses	Rs.15,000/-
Total		Rs.3,07,600/-

Thus the quantum of compensation awarded by the Tribunal is scaled down from Rs.3,10,000/- to Rs.3,07,600/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.3,10,000/- to Rs.3,07,600/-.

(iii) The present appellant / New India Assurance Company Limited is directed to deposit the entire compensation amount awarded by this Court i.e., Rs.3,07,600/- (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.603 of 2005 on the file of the Motor Accidents Claims Tribunal / Subordinate Judge, Thiruvellore within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1 to 8 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment granted by the Tribunal shall be kept intact.

(v) The appellant / New India Assurance Company Limited is entitled to withdraw the excess amount paid by them over and above the amount awarded by this Court.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The Subordinate Court,
Thiruvellore.

2. The Section Officer,
V.R Section,
High Court, Madras

+1cc to Mr.S.N.Ravikumar, Advocate sr.81874
+1cc to Mr.S.Ramalingam, Advocate sr.81836

CMA.No.1262 of 2009
and MP.No.1 of 2009

vba(co)
nr 04/03/2020