

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2303 of 2019
and
C.M.P.No.10221 of 2019

M/s. Oriental Insurance Company Limited,
No.4, Bharathidasan Road,
2nd Floor, Cantonment Road,
Tiruchy. Appellant/2nd Respondent

vs.

1.Vidhya

2.Gana Sri (Minor)

3.Adithya (Minor)

4.Amaravathi 1 to 4 Respondents/Petitioners

5.Arumugam5th Respondent/1st Respondent

(Minors R2 & R3 rep by mother & NE 1st Respondent.

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in MCOP.No.117 of 2012, dated 04.08.2018 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur.

For Appellant : Mr.R.Mohan Babu
for Mr.N.Vijayaraghavan

For Respondents 1 to 4 : Mr.Ma.P.Thangavel

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the insurance company

challenging the award dated 04.08.2018 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Thiruppur in MCOP.No.117 of 2012.

Brief facts leading to the filing of this appeal:

2. A person by name Ramachandran died on 28.12.2011 as a result of an accident caused by a tractor bearing registration No.TN45-AZ-5563 owned by the fifth respondent and insured with the Appellant. The accident happened when the deceased Ramachandran was riding his motor cycle bearing registration No.TN39-BA-7228 and was proceeding from South to North direction in P.N.Road, near Poyampalayam check post, opposite to petrol bunk, when the insured tractor coming in the opposite direction dashed against the two wheeler and the deceased Ramachandran sustained grievous injuries all over his body which resulted in his death.

3. The dependents of the deceased are his wife, two minor children and his mother. They preferred a claim before the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur in MCOP.No.117 of 2012 against the fifth respondent as well as the Appellant insurance company, seeking a compensation of Rs.50,50,000/- which was restricted to Rs.50,00,000/- by the claimants.

4. The Motor Accident Claims Tribunal by its award dated 04.08.2018 passed in MCOP.No.117 of 2012 directed the Appellant insurance company to pay the claimants a sum of Rs.40,02,300/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. The Tribunal also determined that out of the total compensation of Rs.40,02,300/-, the first claimant was entitled to a sum of Rs.15,02,300/-, the second and third claimants were each entitled to a sum of Rs.10,00,000/- and the fourth claimant was entitled to a sum of Rs.5,00,000/-.

5. Aggrieved by the Award dated 04.08.2018 passed in MCOP.No.117 of 2012, this appeal has been filed by the insurance company.

6. Heard Mr.R.Mohan Babu, learned counsel appearing for the Appellant and Mr.Ma.P.Thangavel, learned counsel appearing for the respondents 1 to 4.

Discussion:

7. The appellant insurance company has only questioned the quantum of compensation awarded by the Tribunal and has not challenged the adverse finding of negligence against the driver of the insured tractor. Hence, the finding of negligence by the Tribunal has attained finality.

8. The Appellant insurance company has challenged the impugned Award on the ground that the quantum of compensation awarded by the Tribunal is excessive. According to them, the compensation awarded by the Tribunal towards pecuniary loss and compensation awarded towards other conventional heads is not in accordance with settled principles of law.

9. This Court has perused and examined the impugned Award as well as the materials and evidence available on record.

10. Before the Tribunal, the claimants have filed 17 documents which were marked as Ex.A1 to Ex.A17 and three witnesses were examined on their side viz., PW1 - the wife of the deceased, PW2 - an eye witness to the accident and PW3 - the authorized representative of A.K.R.textiles where the deceased was an employee. On the side of the Appellant insurance company, neither any witness was examined nor any document filed.

11. The deceased was working as a fabric manager at A.K.R.Textiles, 52 Kumar Nagar, Valayamkudi main road, Thiruppur and was aged 38 years at the time of the accident. The monthly income of the deceased at the time of the accident has been proved by the claimants through EX.A5, being his salary certificate. PW3-Samydurai, the authorised representative of A.K.R.Textiles has also deposed before the Tribunal that the deceased was earning a gross monthly income of Rs.15,700/- at the time of the accident. The authorisation letter for samydurai given by the employer A.K.R.Textiles was marked as Ex.A15 and the identity card of Samydurai was marked as Ex.A14.

12. The Tribunal has rightly considered Ex.A5, Ex.A14 and Ex,A15 and only thereafter has fixed the monthly income of the deceased at the time of the accident as Rs.15,700/-. We therefore, do not find any infirmity in the said finding of the Tribunal.

13. The Tribunal has added 50% towards loss of future prospects which is high as it is not in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. Since the deceased was working in a private concern and he is not in permanent employment, the Tribunal ought to have added only 40% towards

loss of future prospects instead of 50%. Accordingly, the loss of future prospects is reduced to 40% from 50%.

14. The Tribunal has rightly applied 15 multiplier, since the deceased was aged 38 years at the time of the accident which is in accordance with the decision of the Hon'ble Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC).

15. Since the dependents of the deceased are admittedly 4 in number, the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased following sarla verma judgment referred to supra. But the Tribunal has erroneously deducted only 30% towards personal expenses of the deceased. Accordingly we are modifying the deduction towards personal expenses of the deceased from 30% to 25%.

16. As per Pranay Sethi Judgment, the loss of consortium payable to the wife of the deceased is Rs.40,000/- and towards loss of love and affection to the children and mother of the deceased is Rs.40,000/- each. But the Tribunal erroneously without following Pranay sethi judgment referred to supra, has awarded a sum of Rs.2,00,000/- as loss of consortium to the first claimant/wife of the deceased and Rs.4,00,000/- at the rate of Rs.1,00,000/- each to all the claimants which is excessive Accordingly, we are revising the compensation payable to the first claimant towards loss of consortium to Rs.40,000/- and the compensation payable to the claimants 2 too 4 towards loss of love and affection at Rs.40,000/- each, total amounting to Rs.1,20,000/-

17. The Tribunal ought not to have awarded any compensation towards mental agony to the claimants as they have been adequately compensated under the heads loss of consortium and loss of love and affection. We therefore, disallow the compensation to the claimants under the head mental agony.

18. The Tribunal has not awarded any compensation to the claimants towards loss of estate which they are entitled to as per pranay sethi judgment referred to supra and the same is assessed at Rs.15,000/-.

19. The Tribunal has awarded a sum of Rs.25,000/- as compensation towards funeral expenses which is on the higher side as pranay sethi judgment has fixed the same only at Rs.15,000/-. Accordingly, we are fixing the compensation payable towards funeral expenses at Rs.15,000/-.

20. As regards the compensation awarded by the Tribunal towards transportation charges is concerned, the same is confirmed as it is in accordance with settled principles of law.

21. For the foregoing reasons, the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award
Loss of earning capacity	29,67,300/- (15,700 + 50% = 23,550 - 30% = 16,485 x 12 x 15)	29,67,300/- (15,700 + 40% = 21,980 - 25% = 16,485 x 12 x 15)
Loss of consortium	2,00,000/-	40,000/-
Loss of love and affection	4,00,000/-	1,20,000/-
Funeral Expenses	25,000/-	15,000/-
Mental Agony to the claimants	4,00,000/-	Set aside
Transport	10,000/-	10,000
Loss of Estate	..	15,000/-
Total	40,02,300/-	31,67,300/-

22. In view of the modification in the impugned award, the first respondent being the wife of the deceased is entitled to Rs.12,50,000/-, the second and third respondents, being the minor children of the deceased each are entitled to Rs.7,50,000/- and the fourth respondent, being the mother of the deceased is entitled to Rs.4,17,300/-.

Conclusion:

23. For the foregoing reasons, the Appeal is partly allowed and rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The Appellant insurance company is directed to deposit the modified award amount of Rs.31,67,300/- along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.117 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective share of award amount to the first and fourth respondent as per the Judgment of this Court through

RTGS within a period of four weeks thereafter. Since the second and third respondents are minors, their respective share of award amount shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-i)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Tiruppur.

2.The Section Officer,
VR Section, High Court,
Chennai.

+lcc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 84665

+lcc to Mr.P.Thangavel, Advocate, S.R.No. 84251

C.M.A.No.2303 of 2019

GMR (CO)
GN (01/09/2020)

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