IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.2008 of 2015
and
M.P.No.1 of 2015

The Branch Manager,
Represented on behalf of the
National Insurance Co.Ltd.,
Having his Branch Officer at No.63,
Rasi Plaza, West Pradhakahnam Road,
Karur. ... Appellant/2nd Respondent

Vs

1.V.Senthamilselvi
2.Minor. Jai Avinash
3.Minor. V. Avanthika
4.Chidambaram
5.Pappathi ..Respondents 1 to 5/Petitiners 1 to 5
6.S.Samiappan ...6th Respondent/1st Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 09.09.2014 made in M.C.O.P.No. 307 of 2012 on the file of the Motor Accidents claims Tribunal, Sub Court, Mannargudi.

For Appellant : Mr.S.Arunkumar
For R1 to R5 : Mr.S.P.Yuvaraj
For R6 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 09.09.2014 made in M.C.O.P.No. 307 of 2012 on the file of the Motor Accidents claims Tribunal, Sub Court, Mannargudi.

2. The Brief facts of the case are as follows;
On 02.05.2012 at about 02.30 P.M, when the deceased Mr.Veeramani was riding his T.V.S.Flame, bearing Registration No. TN.50.X.9607 and Mr. Raja was travelling as a pillion

rider, when they were proceeding Vaduvur- Mannargudi main road, a Tarass lorry bearing its Registration No. TN.47.AA.4759, came in the opposite direction in a rash and negligent manner, without any sound or horn and not obeying traffic rules, dashed against the motor cycle and caused the accident. Due to the said accident the rider Mr.Veeramani and the pillion rider Mr.Raja died on the spot. Hence, the Legal heirs of Mr.Veeramani have filed the claim petition, claiming a sum of Rs.60,00,000/- as compensation and the Tribunal awarded a sum of Rs.54,79,760/- as compensation to the respondents 1 to 5.

4. Aggrieved against the said awards the Insurance Company has preferred this appeal, in the grounds of appeal the appellant/Insurance Company has contended that the Tribunal erroneously awarded huge amount of Rs.54,79,760/- as compensation. The Tribunal failed to note that the salary certificate which was marked as Ex.P12 for the month of April, 2012, does not reflect the correct monthly salary paid to the deceased. The Tribunal has fixed monthly income of the deceased at Rs.30,902/- per month without any basis. Further grievances raised by the appellant is that the tribunal ought to have deducted 1/4th instead of 1/5th towards personal expenses as per the judgment reported in "2009 ACJ 1298". The Tribunal erred in adding 50% towards future prospects without allowing 1/4th deduction. The tribunal failed to appreciate the evidence. In total, the compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

5.Heard Mr.S.Arunkumar, learned counsel appearing for the appellant/Insurance Company and Mr.Yuaraj, learned counsel appearing for the respondents 1 to 5 and perused all the materials available on record.

6.From the materials available on record, it is seen that the deceased was working as a Central Reserve Police Force, Chattisgarh State and was earning a sum of Rs.27,000/- per month, as per Ex.P9/pay certificate, Ex.P11/pay slip were and Ex.P12/pay slip marked by the respondents 1 to 5. It is also admitted that the deceased was aged 35 years at the time of the accident. The age of retirement in Central Reserve Police Force is 58 years. The multiplier applicable for a person aged 35 years is '15'. Considering the fact that the deceased is having remaining service of more than 23 years and also may retire with higher monthly income of pay, and he may not get the same amount after his retirement, adding 50% in his monthly income towards future prospects would be proper. The deceased would have retired at the age of 58 years. He was a Central Reserve Police Force and he may not have same work after his retirement and may not get the same salary. The deceased was working as a Central Reserve Police Force, which is a permanent job. The respondents

1 to 5 are entitled to 50% enhancement towards future prospects. Further, considering the number of claimants, 5 in members 1/4th has to be deducted towards personal expenses of the deceased. Accordingly, the amount awarded by the Tribunal towards loss of dependency is excessive and the same is modified to Rs.42,51,924/- [(Rs.21,872 x 12 = Rs.2,62,464 – Rs.26,246/- = Rs.23,62,18/-)] [(Rs.2,36,218/- + Rs.1,18,109) (Rs.3,54,327/- of 50%) x 15 x 1/5 = Rs.42,51,924/-)]. The sum of Rs.3,00,000/- granted by the Tribunal towards loss of love & affection, is very excessive, hence the same reduced to Rs.50,000/-. Similarly, the amount granted by the Tribunal towards loss of consortium and funeral expenses, are also excessive and the same are reduced to Rs.40,000/- and Rs.15,000/- respectively under those heads. Since the Tribunal has not granted any amount towards loss of estate, a sum of Rs.15,000/- is granted towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of dependency	Rs.50,54,760/-	Rs.42,51,924/-
2.	Loss of consortium	Rs.1,00,000/-	Rs.40,000/-
3.	Loss of love and affection	Rs.3,00,000/-	Rs.50,000/-
4.	Funeral expenses	Rs.25,000/-	Rs.15,000/-
5.	Loss of estate	-	Rs.15,000/-
	Total	Rs.54,79,760/-	Rs.43,71,924/-

8.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.54,79,760/- is reduced to Rs.43,71,924/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous Petition is closed.

9.The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court, along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1, 4 & 5 are permitted to withdraw their respective share of the modified award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalised Bank till the minors attain majority. The 1st respondent being the mother of the respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.307 of 2012, if the entire award amount has already been deposited by them.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vsn
To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Mannargudi.

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

+1 CC to Mr.S.Arunkumar, Advocate sr 67261.
+1 CC to Mr.S.P.Yuvaraj, Advocate sr 67175.

CMA.No.2008 of 2015
and
M.P.No.1 of 2015

RSK(CO)
SP(06/01/2020)