

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM

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

C.M.A.No.1888 of 2013
and M.P.No.1 of 2013

The New India Assurance Co. Ltd.,
City Divisional Office II,
863, Big Bazaar St.,
Coimbatore-1.

... Appellant/2nd respondent

vs.

1.Ezhilarasi ... 1st Respondent/1st Petitioner

2.Minor.Sivaraman

3.Minor.Monisha

4.Karuppusami

(Respondents 2 and 3 are minors
were represented as natural
guardian by their mother
Ezhilarasi the 1st
respondent herein)

... Respondent 2 to 4 /Petitioner 2 to 4

5.M/s.Bannariamman Spinning Mills Ltd.,
No.252, Mettupalayam Road,
Coimbatore.

...5th Respondent/1st respondent

(5th respondent herein (owner of the vehicle) was
set exparte by the Court below hence notice
against them in this appeal may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the Judgment and decree
dated 29th day of November, 2012 made in MCOP.No.367 of 2011 on
the file of the Motor Accidents Claims Tribunal, (Sub-Judge)
Sathyamangalam.

For Appellant

: Mr.A.Salomi

For Respondents 1 to 4

: Mr.V.P.Karthikeyan for R1 to R4
R5 - Ex parte

JUDGMENT

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

This appeal has been filed by the Insurance Company challenging the Award dated 29.11.2012 passed by the Motor Accident Claims Tribunal, (Sub-Judge) Sathyamangalam in M.C.O.P.No.367 of 2011

Brief facts leading to the filing of this appeal:

2.A person by name Palanisamy died on 10.07.2011 as a result of an accident caused by a chevrolet beat car LS LMV bearing Registration No.TN-38-BA-4583 owned by the fifth respondent and insured with the Appellant. The accident happened when the deceased was riding a Hero Honda Shine bearing Registration No.TN-66-TR-0348 in Pudupalayam to A.Nagore Road when the insured car coming from the opposite direction, dashed against the two wheeler which was driven by the deceased and as a result of the same, he sustained head injuries which resulted in his death.

3.The dependants of the deceased are his wife, two daughters and his father. They preferred a claim before the Motor Accidents Claims Tribunal, (Sub-Judge) Sathyamangalam, against the fifth respondent as well as the Appellant Insurance Company, seeking a compensation of Rs.30,00,000/- for the death of Palanisamy.

4.The Motor Accident Claims Tribunal, by its Award dated 29.11.2012, passed in M.C.O.P.No.367 of 2011, directed the Appellant Insurance Company to pay the claimants a sum of Rs.26,37,100/- together with interest at the rate of 7.5 % per annum from the date of the claim petition till the date of realization and also awarded costs.

5.Aggrieved by the Award dated 29.11.2012, passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.367 of 2011, this appeal has been filed by the Appellant Insurance Company.

6.Heard Mr.A.Salomi, learned counsel appearing for the Appellant and Mr.V.P.Karthikeyan, learned counsel appearing for the respondent Nos.1 to 4.

7.The Appellant Insurance Company has questioned only the assessment of compensation by the Tribunal under the impugned Award and they have not challenged the adverse finding of negligence on the part of the driver of the insured vehicle. Hence, the said adverse finding has now attained finality.

8.According to the Appellant, the compensation awarded by the Tribunal is excessive. It is their case that the fourth

claimant, who is the father of the deceased is not a dependant and hence the Tribunal has erroneously deducted 1/4th towards the personal expenses of the deceased instead of 1/3rd as per the settled principles of law. It is also the case of the Appellant that the Tribunal has committed a mistake by deducting a sum of Rs.1,84,275/- being the 1/4th deduction towards personal expenses of the deceased but at the same time has also awarded the same sum as compensation to the claimants under item No.6 to the claimants.

9.It is also case of the Appellant that the Tribunal failed to take note of fact that the deceased was an employee of Syndicate Bank and was promoted to the clerical cadre only on 01.07.2010 (the date of the accident was on 10.07.2011). According to the Appellant Insurance Company, the question of adding 30% towards future prospects will not arise unless there is proper proof of educational qualification and promotional aspects produced by way of documentary evidence through the employer of the deceased. According to the Appellant, since no proof was produced by the claimants, the Tribunal ought not to have added 30% towards loss of future prospects to the claimants. According to them, the income of the deceased assessed by the Appellant at Rs.20,475/- is also unjustifiable.

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

11.Before the Tribunal, the claimants have filed 14 documents which were marked as Exs.A1 to A14 and three witnesses were examined on their side namely, PW1 - wife of the deceased, PW2 - an eye witness and PW3 (Periyasamy) - an authorized representative of the employer of the deceased.

12.It is not in dispute that the deceased was an employee of Syndicate Bank and he was earning a monthly income of Rs.15,246/- at the time of the accident rounded off to Rs.15,750/- by the Tribunal. The age of the deceased at the time of the accident is also proved through postmortem certificate (Ex.A5) and School leaving certificate (Ex.A10). After considering the age of the deceased as 45 years at the time of the accident, the Tribunal has rightly applied 13 multiplier for assessing pecuniary loss to the estate of the deceased. The father of the deceased is an aged person who has lost his wife and he is the dependant of the deceased. No contra evidence has been produced by the Appellant Insurance Company to disprove the contention of the claimants that the father of the deceased is also his dependant.

13.This being the case, the Tribunal has rightly accepted the pleadings and evidence of claimants that the fourth

Appellant is also the dependant of the deceased. Accordingly, the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased had he been alive, in accordance with the Hon'ble Supreme Court judgment in the case of Smt.Sarala Verma and Others vs. Delhi Transport Corporation and Another reported in 2009 (2) TN MAC 1 (SC).

14.The Tribunal has erroneously after deducting 1/4th amount from the annual income of the deceased amounting to Rs.1,84,275/- has awarded the same sum as compensation to the claimants under item No.6 which is an error on the face of record and the same will have to be deleted. However, the Tribunal has not awarded sufficient compensation 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, under the heads loss of consortium to the first claimant, love and affection and funeral expenses. Accordingly, we enhance the compensation under the heads, loss of consortium from Rs.10,000/- to Rs.40,000/-, love and affection from Rs.40,000/- to Rs.50,000/- and funeral expenses from Rs.5,000/- to Rs.15,000/-. The Tribunal has also not awarded any compensation towards loss of estate, which the claimants are entitled to as per Pranay Sethi's judgment referred to supra. Accordingly, a sum of Rs.15,000/- is awarded as compensation towards loss of estate.

15.For the foregoing reasons, the impugned Award of the Tribunal is modified in the following manner:

Heads	Amount awarded by the tribunal	Amount awarded by this Court
Pecuniary loss to the estate of the deceased	Rs.23,95,575/- (20475x12=245700- 1/4 th =1,84,275x13= 23,95,575)	Rs.23,95,575/- (20475x12=245700- 1/4 th =1,84,275x13= 23,95,575)
Loss of consortium to the 1 st petitioner	Rs.10,000/-	Rs.40,000/-
Love and affection	Rs.40,000/-	Rs.50,000/-
Transport	Rs.2,250/-	Rs.2,250/-
Funeral expenses	Rs.5,000/-	Rs.15,000/-
After deducting 1/4 th amount from the annual income	Rs.1,84,275/-	Rs.15,000/-
Total	Rs.26,37,100/-	Rs.25,17,825/-

Conclusion:

16. In the result, the appeal is partly allowed by reducing the total compensation from Rs.26,37,100/- to Rs.25,17,825/-. However, the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. It is brought to our notice that the Appellant has already deposited the entire Award amount as per the impugned Award. The apportionment among the claimants shall be as per the ratio of proportionment made by the Tribunal. The Tribunal is directed to pay the Award amount as per this judgment to the major claimants through RTGS within a period of four weeks and after the said payment refund the balance amount to the Appellant Insurance Company, within a period of one week thereafter. The second and third respondents being minors, their respective shares of compensation shall be deposited in an interest bearing fixed deposit in any Nationalized bank till the minors attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months till the minors attain majority. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(Sub-Judge) Sathyamangalam.

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

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No. 82380

RSV(CO)
GN(04/11/2019)

C.M.A.No.1888 of 2013

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