

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM

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

C.M.A. No. 2573 of 2015

and

MP No.1 of 2015

The Branch Manager,
Oriental Insurance Co. Ltd.,
Branch Office,
23B, Ground Floor,
Arunagiri Complex,
Bye-Pass Road,
Hosur - 635 109.

..... Appellant /3rd Respondent

versus

1. Mathalaimuthu
 2. Motcha Ragini
 3. Stella Victoria Maharani
 4. Nirmala Sagaya Milles,
 5. Flora,
 6. Saint Jhoncy,
 7. Minor Jopin Pal Alastin, ...Respondents 1 to 7/Petitioners
(Minor represented by his next friend,
Father Mathalaimuthu)
 8. Domnic Joseph
 9. S. Purushothaman
- ... Respondents 8 & 9/Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No.412 of 2013, dated 27.02.2015 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant :Mr.S.Mohan Babu for M/s.M.B.Gopalan

For Respondents:M/s.Mukund R. Pandiyan for
RR1 to 7
RR8 and 9 - Not ready in notice.

JUDGMENT

(The Judgment of the Court was delivered by Abdul Quddhose, J.)

This appeal has been filed by the Appellant / Insurance Company challenging the award dated 27.02.2015 passed by the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri in M.C.O.P. No.412 of 2013.

2. On 26.02.2012, a person by name C.M.Arokiasamy was travelling in a Scorpio car bearing Registration No.KA 53 M 4797 along with others. One Y.Muniraju was driving the said car. When the said car was proceeding in Kanakapura Town, Kodihalli road, near Keneramma Temple within the jurisdiction of Kanakapura Police Station in Ramanagara District, the driver of the said car dashed against the road side stones. In the result, the car capsized upside down. Due to the impact, C.M.Arokiasamy sustained fatal injuries and he died on the same day of the accident. The scorpio bearing Registration No.KA 53 M 4797 in which the deceased was travelling is owned by 8th respondent and insured with the appellant.

3. The dependants of the deceased C.M.Arokiasamy preferred a claim before the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri in M.C.O.P. No.412 of 2013 against the 8th respondent and the Appellant / Insurance Company seeking a compensation of Rs.60,00,000/- for the death of C.M.Arokiasamy.

4. By an award dated 27.12.2015, passed in M.C.O.P. No.412 of 2013, the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri, partly allowed the claim petition by directing the Appellant / Insurance Company to pay the claimants a sum of Rs.50,80,000/- together with interest at 7.5% p.a., from the date of claim petition till the date of deposit and also awarded costs.

5. Out of the total award amount of Rs.50,80,000/-, the Tribunal determined the amount payable to the first respondent as Rs.20,00,000/-; second respondent as Rs.20,80,000/- and 3rd to 7th respondents were each entitled to Rs.2,00,000/-.

6. Aggrieved by the award dated 27.02.2015 passed in M.C.O.P. No.412 of 2013, this appeal has been filed by the Insurance Company.

7. Heard Mr.Mohan Babu, learned counsel for the Appellant / Insurance Company and Mr.Mukund R. Pandiyan, learned counsel for the respondents 1 to 7.

8. The Appellant / Insurance Company has challenged only the quantum of compensation awarded by the Tribunal. Insofar as the adverse findings of negligence as against the driver of the Insured vehicle is concerned, the appellant has not challenged the same and therefore, the said finding of the Tribunal has attained finality.

9. The Appellant / Insurance Company has filed this appeal on the ground that a) the Tribunal has erroneously fixed the monthly income of the deceased at Rs.25,000/- which according to them is on the higher side. b) The pecuniary loss assessed by the Tribunal at Rs.48,00,000/- is unwarranted and unjustified. c) The award passed by the Tribunal is excessive and not in accordance with settled principles of law.

10. Further, it is their case that the Tribunal instead of deducting 50% towards personal expenses of the deceased from and out of the total income, which includes loss of future prospects, the Tribunal has erroneously deducted 50% towards personal expenses of the deceased from the income of the deceased.

11. This Court has perused and examined the impugned award. Before the Tribunal, on the side of the claimants, three witnesses were examined as PW1, PW2 and PW3 and 11 documents, were marked as Exhibits, viz., Ex.P1 to P11. PW1 is the father of the deceased and PW2 is an eye witness to the accident. PW3, is a Teacher at John Britto Higher Secondary School, where the deceased was working at the time of the accident. On the side of the Appellant / Insurance Company, one document was filed, which is the salary certificate (Ex. R1) of the deceased Arockiasamy.

12. The deceased Arockiasamy was working as B.T. Assistant in John Britto Higher Secondary School, Denkanikottai. John Britto Higher Secondary School is a Government aided school. His salary is paid by the Government. His service Register was marked as Ex.P8, last pay certificate issued by the Head Master was marked as Ex.P9. As per Ex.P9, the last drawn salary of the deceased was Basic Pay at Rs.9,720/-, G.P. Rs.4600, D.A.(65%) Rs.9308, H.R.A. Rs.260/- M.A. Rs.100/-, O.A. Rs.900/- W.A. Rs.250/-, Gross Total Rs.25,138/-. The salary certificate duly attested by the Correspondent of John Britto Higher Secondary school was also marked as Ex.P10. As per the Tamil Nadu Government school regulations and service conditions, the retirement of a Teacher in a Government School is 58 years. As per his Service Register, the date of retirement is 31.05.2035. Had he not died and continued in service, his total pay on the date of retirement will be Rs.1,29,06,652/-. The certificate to that effect was marked as Ex.P11. The oral testimony of PW-1

and PW-3 before the Tribunal also reveal that the deceased, if he was alive may have got promotion as a Head Master.

13. The Tribunal considered Ex.P8 to Ex.P11 and found that the evidence of PW-3 is acceptable. The Tribunal has also considered the rules and regulations applicable to the Government aided private school. Based on the oral and documentary evidence available on record, the Tribunal has fixed the monthly income of the deceased as Rs.25,138/- and rounded off the same to Rs.25,000/-. The Tribunal has also compared Ex.P9, Last Pay Certificate with Ex.R1, Salary Certificate. Ex.P9 was issued by the Correspondent of the school and Ex.R1 was issued by the Head Master of the school. All entries in Ex.R1 is same as found in Ex.P9. The D.A. in Ex.R1 is found to be Rs.8306/-, whereas the D.A. in Ex.P-9 is shown as per Rs.9308/- which is 65% of Rs.9720/-. The Tribunal has observed that as on the date of the award, the D.A. is 107%, which will be Rs.15,322/-. The D.A. as prevalent as on 20.2.2012 has been calculated by the Correspondent of the School at 65%. The Tribunal has observed that as on March 2014, the D.A. had been increased by 100% by the Government of Tamil Nadu. The Tribunal has rightly rejected the contention of the Appellant / Insurance Company that Ex.P9 was issued only to favour the family of the claimant.

14. The Tribunal has rightly followed the decision the Hon'ble Supreme Court in the case of Sarala Verma & Others and Delhi Transport Corporation & Another reported in 2009 (2) TN MAC 1 (SC) as well as Reshma Kumari & others versus Madan Mohan and another reported in (2009) INSC 1274 held that if the deceased was in employment in Government service on the day of the accident, half of the salary is to be included towards future prospects, if the age of the deceased was less than 40 years on the date of death.

15. In the case on hand the deceased Arockiasamy was born in the year 1977, as per his Service Register marked as Ex.P8 and entered into service in 2010, i.e., at the age of 33 years. He died on 26.02.2012, as a result of the accident and therefore, his age on the date of the accident is 34 years, 9 months and 16 days. Therefore, towards future prospects, the Tribunal has rightly added 50% to the monthly income

16. The deceased being a Bachelor, the Tribunal ought to have deducted 50% towards his living and personal expenses. As per the decision of the Hon'ble Supreme Court in the case of Sarala Verma & Others and Delhi Transport Corporation & Another reported in 2009 (2) TN MAC 1 (SC), it has been held that 50% will have to be deducted from the total monthly income, if the deceased was a Bachelor. Therefore, the assessment of future

loss of income by the Tribunal at Rs.48,00,000/- is incorrect and not in accordance with the judgment referred to supra. If 50% of the total monthly income is deducted towards the personal and living expenses of the deceased, the future loss of income will be only Rs.36,00,000/- and not Rs.48,00,000/-, as assessed by the Tribunal.

17. The Tribunal has also awarded a sum of Rs.2,00,000/- towards loss of love and affection to the first and second claimants and each of them were entitled for a sum of Rs.1,00,000/-, but, as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680, the first and second claimants being the parents of the deceased are each entitled only to Rs.40,000/- and therefore, the total compensation payable to them towards loss of love and affection is only Rs.80,000/- and not Rs.2,00,000/- as assessed by the Tribunal. Being unmarried Brothers and Sisters of the deceased, respondents 3 to 7 are each entitled to Rs.10,000/- totally amounting to Rs.50,000/- towards loss of love and affection. There is no infirmity on the assessment of the Tribunal under the said head.

18. The Tribunal has failed to award any compensation towards loss of estate which the claimants are entitled to as per the settled principles of law. Accordingly, a sum of Rs.15,000/- is awarded to the claimants towards loss of estate.

19. The Tribunal has rightly awarded a sum of Rs.10,000/- towards Transport to hospital and Rs.20,000/- towards funeral expenses and the same is confirmed.

20. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Future Loss of income *Rs.25,000/- + 50% (future prospects) - Rs.12,500/- (50% towards bachelor) = Rs.25,000/- x 12 x 16 = Rs.48,00,000/- #Rs.25,000/ + 12,500 (future prospects) = Rs.37500 - 18750 (50% towards bachelor) = Rs.18,750/- x 12 x 16 = Rs.36,00,000/-	48,00,000/- *	36,00,000/- #
Loss of Love and affection to 1st and 2nd respondents !! (each Rs.1,00,000) @ (each Rs.40,000/-)	2,00,000/- !!	80,000/- @
Loss of love and affection to 3rd to 7th respondents (each Rs.10,000/-)	50,000/-	50,000/-
Loss of Estate	-	15,000/-
Transport to Hospital	10,000/-	10,000/-
Funeral Expenses	20,000/-	20,000/-
Total	50,80,000/-	37,75,000/-

21. In the result, this appeal stands partly allowed by modifying the amount from Rs.50,80,000/- to Rs.37,75,000/-. No costs.

22. The Appellant / Insurance Company is directed to deposit the entire award amount i.e. Rs.37,75,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation together with costs, less the amount, if any, already deposited to the credit of MCOP

No.412 of 2013, on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri, 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 award amount directly to the bank account of the 1st to 6th respondents, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. Insofar as the share of the minor claimant / 7th respondent is concerned, the same shall be deposited in fixed deposit in any one of the Nationalized Banks, till he attains majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

To :

- 1) The Special Sub Judge,
(Motor Accidents Claims Tribunal),
Krishnagiri.
- 2) The Section Officer,
V.R. section,
High Court, Madras - 104.

+1cc to M/s.M.B.Gopalan, Advocate Sr.80825
+1cc to Mr.Mukund R.Pandiyan, Advocate Sr.80508

C.M.A. No. 2573 of 2015

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srg 29/07/2020

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