IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.291 of 2013
and
M.P.No.1 of 2013

The New India Assurance Co.Ltd.,
DO at Near ARRS Multiplex,
3 Roads, Salem. ..Appellant / 2nd Respondent

Vs

1. P.Shanthi
2. T.Rajasekaran
3. T.S.Manjula ..Respondents 1 to 3/ Claimants

4. Ravichandran ..4th Respondent/ 1st Respondent
(R4 remained exparte and
notice dispensed with for him)

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 31.07.2012 made in MCOP.No.898 of 2010 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Salem.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mr.R.Nalliyappan for R1 to R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order dated 31.07.2012 made in MCOP.No.898 of 2010 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Salem.

2. The appellants are the claimants in M.C.O.P.No.898 of 2010, on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Salem. They filed the said claim petition, claiming a sum of Rs.22,50,000/- as compensation for the death of one Thangaraju. The first appellant is the wife of the deceased, second appellant is the son and third appellant is the daughter of the deceased. The accident took place on 15.12.2009.

3. Brief facts of the case:-

On 15.12.2009, when the deceased was travelling in a SETC bus bearing Reg.No.TN-01-N-6511 towards Karur to Dindukal road, nearby Vanjaman Kidalur Arch, the bus front right side tyre had got punctured. Due to that the bus was parked on the left side of the road by its driver. The deceased and all other passengers were standing on the left side of the bus at that time at about 24:00 hours a tipper lorry bearing Reg.No.TN-38-AU-0589 driven by its driver with great speed came in a rash and negligent manner and hit on the back side of the bus and the deceased sustained grievous and heavy multiple injuries all over the body.

4. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Tipper lorry bearing Reg.No.TN-38-AU-0589. The Tribunal awarded a sum of Rs.8,41,998/- as compensation to the claimants and directed the respondents 1 & 2 are liable to pay the same jointly or severally.

5. Before the Tribunal, the wife of the deceased was examined as P.W.1. One Saravanan, was examined as P.W.2. In support of the claim petition Exs.P1 to P17 were marked of which Ex.P1 - FIR original copy, Ex.P2 – Post mortem report, Ex.P3 – Death Certificate, Ex.P4 – Legal heir certificate, Ex.P.5 – Medical Bills, Ex.P6 – 2009 – 2010 pension details of the deceased, Ex.P7 – Salary slip, Ex.P8 – Income tax details, Ex.P9 - Karvy Stock Broking Limited Shares transaction documents, Ex.P10 - Karvy Stock Broking Limited Shares transaction documents, Ex.P11 - Karvy Stock Broking Limited Shares transaction documents, Ex.P12 - Stock Holding Corporation of India Ltd., shares transaction documents. Ex.P.13 - Conduct Certificate during service, Ex.P14 - Pass Book of the deceased, Ex.P15 - R.C. Book of Vehicle TN 38 U 0589, Ex.P16 - Family Card xerox and Ex.P.17 - Wound certificate of Saravanan. On the side of the respondents R.W.1 - Xerox copy of Insurance policy and R.W.1 Xerox copy of Charge sheet were marked.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has come out with the present appeal seeking reduction.

7. The learned counsel for the appellant/Insurance Company submitted that the Tribunal erred in fixing the loss of income of the deceased at Rs.7,98,672/-. The deceased was 62 years old at the time of accident and was drawing pension of Rs.12,262/- after retirement from service as Assessment Officer in TNEB. The Tribunal had fixed Rs.12,262/- as pension and Rs.2,000/- as income from Stock Trading business. Thus, the

Tribunal had fixed Rs.14,262/- as monthly income of the deceased, and by deducting one third, i.e., Rs.4,754/- towards personal expenses of the deceased, the Tribunal fixed a sum of Rs.9,508/- as monthly loss of dependency and by applying the multiplier "7", determined the loss of income at Rs.7,98,672/- (9,508 x 12 x 7 = Rs.7,98,672/-). The only contention raised by the learned counsel for the appellant/Insurance Company is that the Tribunal should not have fixed the monthly income of the deceased at Rs.14,262/- as loss of income to the family, since wife of the deceased will get 50% as family pension i.e., Rs.6131/-. Therefore, the Tribunal should have deducted 50% income towards family pension and the balance amount of 50% from Rs.6131 should be taken as Loss of income to the family. Further, the learned counsel submitted that the compensation awarded by the Tribunal on the other heads are also excessive and exorbitant and thus, prayed for appropriate reduction.

8. Per contra, the learned counsel appearing for the respondents 1 to 3, the Tribunal on proper evaluation of both oral and documentary evidence passed the award and no interference of this Court is warranted. So far as the contention putforth by the learned counsel for the appellant that the Tribunal failed to make any deduction towards the family pension received by the first claimant, the learned counsel for the claimants submitted that family pension paid to the family cannot be deducted while calculating the compensation awarded to the claimants, and in support of his contention, placed reliance on the following decisions:-

i) Sebastiani Lakra Vs. National Insurance Company Limited, reported in 2018 SCC Online 1924:-

ii) Lal Dei and others Vs. Himachal Road Transport reported in (2007) 8 SCC 31 ;

iii) Vimal Kanwar and others Vs. Kishore Dan and others reported in 2013 (1) TNMAC 641 (SC) :-

9. The contention of the learned counsel for the appellant/Insurance Company that the Tribunal while determining compensation towards Loss of Income, failed to make any deductions towards the family pension received by the first claimant/wife, cannot be accepted, because, the Hon'ble Supreme Court in the following cases, relied upon by the learned counsel for the claimants i) Sebastiani Lakra Vs. National Insurance Company Limited, reported in 2018 SCC Online 1924 ii) Lal Dei and others Vs. Himachal Road Transport, reported in (2007) 8 SCC 31 and iii) Vimal Kanwar and others Vs. Kishore Dan and others reported in 2013 (1) TNMAC 641 (SC) held that the family pension cannot be deducted while determining the compensation

under the Motor Vehicles Act. The family pension is nothing but the savings earned by the deceased during the course of employment, which will be available in the form of family pension to his family, after his demise and hence, no deduction can be made from the compensation awarded to the claimants while calculating the compensation under loss of dependency. Hence, the contention of the learned counsel for the appellants is held to be unsustainable and the award passed by the Tribunal on the head of Loss of Dependency at Rs.7,98,672/- is confirmed.

10. Insofar as the compensation awarded by the Tribunal under other heads are concerned, the same are determined in the following manner:-

i) Love and Affection:-

The Tribunal has awarded Rs.10,000/- towards love and affection and the same is confirmed.

ii) Funeral Expenses:-

The Tribunal has awarded a sum of Rs.5,000/- under the head funeral expenses. As held by the Hon'ble Apex Court in the judgment reported in 2017(2)TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi and others], the compensation towards funeral expenses is enhanced to Rs.15,000/-.

iii) Loss of Estate and Consortium:-

No amount has been awarded by the Tribunal under the heads of Loss of Estate and Consortium, and by following the ratio laid down by the Hon'ble Apex Court, in Pranay Sethi's case (cited supra), the 1st claimant is entitled to Rs.40,000/- towards loss of consortium and the claimants are entitled to a sum of Rs.15,000/- towards loss of estate.

iv). Medical expenses:-

The Tribunal awarded a sum of Rs.22,326/- towards medical expenses and the same is confirmed.

v) Damages to cloth & articles:-

The Tribunal has awarded a sum of Rs.1,000/- towards damages to cloth and articles and the same is confirmed.

vi) Transport Charges:-

The Tribunal has awarded a sum of Rs.5,000/- towards transport charges and the same is confirmed.

11. Hence, the total compensation payable to the claimants are as hereunder

S.No	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court
1	Loss of income	Rs.7,98,672/-	Rs.7,98,672/-
2	Funeral expenses	Rs.5,000/-	Rs.15,000/-
3	Loss of love and affection to the claimants 2 and 3	Rs.10,000/-	Rs.10,000/-
4	Transportation	Rs.5,000/-	Rs.5,000/-
5	Loss of estate	-	Rs.15,000/-
7	Loss of consortium	-	Rs.40,000/-
8	Damages to cloth & articles	Rs.1,000/-	Rs.1000/-
9	Medical bills	Rs.22,326/-	22,326/-
	Total	Rs.8,41,998/-	Rs.9,06,998/-

12. Thus, the claimants are entitled to a sum of Rs.9,06,998/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

13. The New India Assurance Co.Ltd. is directed to deposit the entire amount awarded by this Court with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum from the date of petition is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of two weeks thereon.

14. On such deposit being made by the Tribunal, the claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

i) First claimant, wife of the deceased shall receive a sum of Rs.5,06,998/-;

ii) Second claimant, son of the deceased shall receive a sum of Rs.2,00,000/-

and

iii) Daughter of the deceased, third claimant shall receive a sum of Rs.2,00,000/-.

15. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal to the tune of Rs.8,41,998/- is increased to Rs.9,06,998/-. No costs. Consequently, connected miscellaneous petition is also closed, if any.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Motor Accidents Claims Tribunal,
   II Additional District Court, Salem.

+1 cc to M/s.M.Krishnamoorthy, Advocate, S.R.No.24303

+1 cc to M/s.R.Nalliyappan, Advocate, S.R.No.24284

C.M.A.No.291 of 2013

PPA(CO)
SSM(20/09/2019)