IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2019

CORAM

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

C.M.A. Nos.2309 and 3164 of 2019
and
CMP No.10306 of 2019

CMA No.2309 of 2019
M/s.Iffco-Tokio General Insurance Co. Ltd.
No.28, North Usman Road,
T.Nagar,
Chennai - 17. ... Appellant/2nd respondent

versus

1. R. Madurai ..1st respondent/ Petitioner
2. N. Sivakanthan ... Respondents/1st Respondent

CMA No.3164 of 2019
R. Madurai ... Appellant/ Petitioner

versus

1. N.Sivakanthan
2. Iffco-Tokio General Insurance Co. Ltd.
No.28, North Usman Road,
T.Nagar,
Chennai - 17. ... Respondents/ Respondents

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order and decree dated 03.09.2018 made in M.C.O.P. No.791 of 2016 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Poonamallee.

C.M.A. No.2309 of 2019
For Appellant : Mr. S.Arunkumar
For Respondents : Ms. A. Subadra for
M/s. M. Malar for R1
R2 Not ready in Notice

C.M.A No.3164 of 2019

For Appellant : Ms.A. Subadra for M/s. M. Malar

For Respondents : Mr. S.Arunkumar for R2

COMMON JUDGMENT

(Judgment delivered by Abdul Quddhose, J.)

CMA No.3164 of 2019 has been filed by the claimant seeking enhancement of compensation under the impugned award dated 03.09.2018 passed by the Motor Accident Claims Tribunal, Poonamallee (III Additional District Court, Tiruvallur at Poonamalle) in M.C.O.P. No.791 of 2016. CMA No.2309 of 2019 has been filed by M/s.Iffco Tokio General Insurance Company Limited, challenging the same award questioning the quantum of compensation awarded by the Tribunal.

Brief facts leading to the filing of the instant appeals.

2. A person by name N.Janardhanam, died on 8.11.2016, as a result of the accident caused by the driver of the lorry bearing Registration No.TN 02 A 2727 owned by the first respondent in C.M.A. No.3164 of 2019 and insured with the appellant in C.M.A. No.2309 of 2019.

3. On 8.11.2016, Janardhanam was riding a motor cycle bearing TN 20 BL 9078 with his mother as the pillion rider on C.T.H. Road, Thiruninravur Bazaar, in front of Muthu Medicals, at that time, the lorry of the first respondent in C.M.A. No.3164 of 2019, bearing Registration No. TN 02 A 2727 came in the same direction hit against the motor cycle, due to the rash and negligent driving by its driver. Due to the said accident, M.Janaradhanam and his mother fell down on the road and the back wheel of the lorry run over them and they died on the spot.

4. As a result of the said accident, the father of the deceased M.Janaradhanam preferred a claim before the Motor Accident Claims Tribunal, Poonamallee in M.C.O.P. No.791 of 2016 against the respondents in C.M.A. No.3164 of 2019 seeking a compensation of Rs.1,56,00,000/-, which was restricted to Rs.1,20,00,000/-.

5. The Motor Accidents Claims Tribunal, Poonamalle by its award dated 03.09.2018, partly allowed the claim by directing the second respondent /Insurance Company in CMA No.3164 of 2019 to pay a sum of Rs.57,11,704/- together with interest at 7.5% from the date of petition viz., 22.12.2016 till the date of payment in favour of the appellant in C.M.A. No.3164 of 2019.

6. Unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, the appellant in C.M.A. No.3164 of 2019 has preferred the said appeal seeking for enhancement of compensation. The Insurance Company viz. M/s.Iffco Tokio General Insurance Company also aggrieved by the same award has preferred another appeal C.M.A. No.2309 of 2019 on the ground that the quantum of compensation awarded by the Tribunal under the impugned award is excessive.

7. Heard Mr.S. Arun Kumar, learned counsel for the appellant / Insurance Company in C.M.A. No.2309 of 2019, who also represents the second respondent in C.M.A. No.3164 of 2019 and Ms.A.Subadra, learned counsel for the appellant in C.M.A. No.3164 of 2019, who also represents for the first respondent in C.M.A. No.2309 of 2019.

8. According to the claimant, who is the appellant in C.M.A. No.3164 of 2019, the Tribunal failed to consider the age of the deceased at the time of the accident. According to the claimant, the deceased was aged about 31 years old and was working as a Manager in ESSAR Projects India Limited, Cochin and was earning Rs.80,000/- p.m. at the time of the accident.

9. It is also the case of the appellant in C.M.A. No.3164 of 2019 that the Tribunal ought not to have deducted the tax out of the monthly salary payable to the deceased, while assessing the monthly income of the deceased for the payment of the compensation. Further, the Tribunal ought to have awarded more compensation under the heads of loss of dependency, love and affection, loss of estate, transport expenses and funeral expenses. It is also his case that the Tribunal ought to have awarded compensation under the heads of mental agony, pain and sufferings, damages, consortium, loss of expectation of life.

10. The Insurance Company M/s. Iffco Tokio General Insurance Company, the appellant in C.M.A. No.2309 of 2019 has challenged the impugned award on the ground that the compensation awarded to the claimant is excessive. Despite producing the salary statement copy of the deceased (Ex.P.24) for the months of March to June 2016, the Tribunal has erroneously fixed the salary of the deceased at the time of the accident at Rs.65,973/-.p.m.

11. Further, it is their case, that the deceased was unemployed at the time of the accident and hence, the Tribunal ought not to have fixed the monthly income of the deceased at Rs.65,973/-, which was his monthly income four months prior to the accident, when he was working with M/s.ESSAR Projects India Limited, Cochin. It is also their case that the claimant even though being the father of the deceased is not a dependant of the deceased and hence, he is not entitled to file a claim for compensation.

12. According to the Insurance Company, the Tribunal failed to note that the deceased had he been alive would have got married and not contributed 50% of income to his father. Hence, according to them, the compensation assessed at Rs.56,46,704/- on account of loss of dependency is unsustainable.

13. This Court has perused and examined the impugned award. Before the Tribunal on the side of the claimant (Madurai), three witnesses were examined as PW1, PW2 and PW3 and 29 documents were marked as Exhibits, viz., Ex.P1 to P29. PW2 was the eye witness.

14. Since, the Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the insured lorry, the accident had happened, which resulted in the death of Janaradhanam and further, the Insurance Company having not challenged the said finding in their appeal, the said finding has now attained finality.

15. The point for consideration in these appeals is whether the quantum of compensation awarded by the Tribunal is a just compensation or not?

16. The deceased Janaradhanam was working as Deputy Manager in ESSAR Projects India Limited, Cochin and he resigned from the said job on 02.06.2016. His last drawn salary at ESSAR Projects India Limited was Rs.77,331/-, as

per Ex.P24. The accident happened on 08.11.2016 i.e. 5 months after he resigned from his job with ESSAR Projects India Limited, Cochin. To hold the post of Deputy Manager in ESSAR Projects India Limited, Cochin, the deceased must be a well qualified person. Further, the deceased was aged only 32 years at the time of the accident and therefore, his job prospects is brighter. Under these circumstances, there would have been no difficulty for the deceased to get a new job, even better than the earlier one in view of his past work experience. The details of salary payment made to the deceased, prior to his resignation by his employer ESSAR Projects India Limited, Cochin, reveals his monthly income as Rs.77,331/- (gross) and after deductions, he received the net salary of Rs.65,973/-. PW3, S. Guru Rajan was the HR Manager of ESSAR Projects India Limited, has also deposed that the deceased Janaradhanam was working as Deputy Manager in ESSAR Projects India Limited, and only through him, the appointment letter (Ex.P22) issued to the deceased from their company was marked. The attendance register has been marked as Ex. P23.

17. On the side of the Insurance Company RW1 viz. V.Srinivasan, who was the Inspector, Transport Investigation Branch, Poonamalle Branch, was examined. Excepting for filing the charge sheet copy (Ex.R1), no other document has been filed by the Insurance Company before the Tribunal.

18. The deceased is a B.E. Mechanical Engineering graduate with first class, as seen from Exs.P14 and P15 and was a bright student in his academic career. The Tribunal has accepted the salary statement copy Ex.P24, which has been supported by the evidence of PW3, HR Manager, ESSAR Projects India Limited and has fixed the monthly income of the deceased at the time of the accident as Rs.65,973/- after making deductions from his net salary. (Rs.77,331 - 11,358 = Rs.65,973/-). The deductions made by the Tribunal from and out of the gross monthly income including the tax component is as per the settled principles of law.

19. The contention of the learned counsel appearing for the insurance company is that since the deceased was unemployed on the date of the accident, the Tribunal ought not to have determined the monthly income based on the salary statement, which was issued by his employer ESSAR Projects India Limited, prior to his resignation. Being a qualified person, having sufficient work experience and being a young man, the job prospects of the deceased, if

he was alive is much brighter. He may even get a much higher salary, if he joins another company. Further, the deceased resigned from ESSAR Projects India Limited, Cochin on 02.06.2016 and the accident happened on 08.11.2016 i.e. within a short period of five months. Therefore, it cannot be said that the deceased will not be entitled to get a salary of Rs.65,973/- or more in future. Further, as seen from the evidence available on record, only after a rich work experience, the deceased has reached the position of Deputy Manager in ESSAR Projects India Limited, Cochin. All these factors were taken into consideration by the Tribunal and the Tribunal has rightly assessed the monthly income of the deceased at Rs.65,973/-. Therefore, the contention of the Insurance Company questioning the assessment of the monthly income of the deceased by the Tribunal cannot be accepted by this Court.

20. The claim petition has been filed by the father of the deceased and he has also let in oral evidence deposing that he is the dependant of the deceased. No contra evidence has been produced by the Insurance Company to disprove the claim of the claimant that he is the dependant on the deceased. A counter statement filed by the Insurance Company before the Tribunal has also not disputed the dependency of the claimant. Being a Bachelor at the time of accident, the Tribunal has rightly deducted 50% of the income of the deceased towards his personal living expenses, if he was alive.

21. We are of the considered view that the assessment towards loss of dependency of the claimant, who is the father of the deceased by the Tribunal is a correct one. The claimant has also proved that he is the father of the deceased through Ex. P7, viz.,Legal Heirship certificate issued by the Tahsildhar, Tiruvallur Taluk. The Tribunal has also applied the right multiplier as the deceased was 32 years at the time of the accident, in accordance with the decision reported in (2009) (2) TN MAC Page No.1 (Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr. case). The assessment of compensation by the Tribunal under the heads of funeral expenses, loss of love and affection, transport charges and loss of estate are also correct. Accordingly, the Tribunal has awarded the total compensation of Rs.57,11,704/- under the following heads :

Loss of dependency	:	Rs.56,46,704.00
Loss of love and affection	:	25,000.00
Loss of estate	:	15,000.00

Transport Charges	:	10,000.00
Funeral Expenses	:	15,000.00
Total	:	57,11,704.00

22. The assessment of compensation under various heads by the Tribunal is a just compensation and in accordance with the settled principles of law. Therefore, the enhancement sought for by the claimant cannot be entertained. In the result, both appeals shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23. The appellant in CMA No.2309 of 2019 /Insurance Company is directed to deposit the entire award amount along with accrued interest and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of MCOP No.791 of 2001 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Poonamallee, 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 claimant, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsi2
To :
The III Additional District Judge,
Motor Accidents Claims Tribunal,
Thiruvallur at Poonamallee.

2) The Section Officer,
V.R. section,
High Court, Madras - 104.

+1cc to M/s. M. Malar , Advocate SR.No. 76601
+1cc to Mr. S.Arunkumar, Advocate SR.No. 76581

kj A.SK(26/11/2019)