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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2019

Delivered on : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.823 of 2016

The Oriental Insurance Co Ltd.,
Siva complex, 2nd floor, No.22-C,
Sarada College Main Road,
Salem District. ... Appellant/2nd Respondent

-Vs-

1.Murugesan

2.Chinnammal

3.Natesan
(2nd and 3rd respondents are given up)
...Respondents 1 to 3/Petitioners

4.Selvan
(4th respondent remained exparte)

5.The Tahsildar,
Namakkal Taluk,
Namakkal District. ... 4th Respondent
(R5 Suo moto impleaded as respondent vide
Court order dated 05.09.2018 made in
CMA.No.823/16)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 04.11.2015 made in M.A.C.T.O.P. No. 1351 of 2013 on the file of MACT/Additional District Judge at Namakkal.



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For Appellant : Mr. M.Krishnamoorthy

For Respondents : Mr.Ma.Pa.Thanagavel (for R1 to R3)

Mr.Venkateshkumar (for R5)

Government Advocate

R4 - Exparte

JUDGMENT

Aggrieved by the decree and judgment dated 04.11.2015 made in M.C.O.P. No. 1351 of 2013 the insurer filed this appeal against award of tribunal.

2.For convenience, the parties are referred to as per their array in the claim petition.

3.It is the case of fatal accident, happened on 03.02.2013, while deceased working as Lady Tailor and aged 23 years and earned 15,000/- PM. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident happened due to rash and negligent driving of the Tipper Lorry driver of the first respondent owner of vehicle, since the first respondent vehicle was insured with the second respondent insurance company, the Tribunal held that the respondents 1 & 2 are jointly and severally liable to pay the compensation. Based on the pleadings and evidences the learned tribunal granted compensation under following heads:-

Sl.No.	Head	Amount awarded by the Tribunal
1.	Loss of Income (Rs. 6,000 x 12 X 18)	Rs. 12,96,000/-
2.	Love & Affection for Husband	Rs. 50,000/-
3.	Funeral Expenses	Rs. 25,000/-
Total		Rs. 13,71,000/-



4. Since negligence and liability are not disputed either of parties and only Quantum of compensation arrived by the tribunal is inadequate, hence this court not traversed with regard to negligence and Liability fixed by the tribunal are confirmed

5. Before the Tribunal, on the side of the appellants P.Ws.1 to 3 were examined and Exs.P-1 to P-8 were marked. On the side of the respondents, No oral and documentary adduced.

6. Challenging the compensation awarded by the Tribunal, the appellant vehemently argued that without any proof of income a sum of Rs.6,000/- fixed by tribunal is without any basis and added 50% towards future prospects and deducted 1/32 towards personal expenses against rulings of the apex court, hence he pray for reduce the award.

7. Per contra learned Counsel for Claimants submitted that the accident happen only on 03.02.2013 and deceased doing as Lady Tailoring and earned not less then Rs. 15,000/- per month and as per rulings this Hon'ble Division Bench if the earning women may not spend more then 1/3. moreover the deceased was pregnant at the time of accident and foetus in mother's womb, it could be treated as child, hence as per rulings this Court reported in 2013 (1) TNMAC 552 and another Judgment reported in 2017 SCC Online Delhi 10278 he pray for seeking compensation under head of loss of child, since foetus 4 months old, hence pray for Rs.2,50,000/- and seeking enhancement of the compensation in other conventional heads and further pointed out as per settled possession of law that this court can award more compensation in absence of any appeal or cross appeal, as just compensation. It is further argued that the tribunal not considers award in favour of the parents of the deceased. Hence he pray for award to the Claimants 2 and 3.

8. I have heard Mr.M.Krishnamoorthy learned counsel for the Appellant, Mr.Ma.Pa.Thangavel, learned counsel for the Respondents 1 to 3/Claimants and Mr.Venkateshkumar, learned Government Advocate for the 5th respondent and perused the entire materials available on record.

9. As far as quantum of compensation awarded by the Tribunal is concerned, according to the husband of the deceased, who examined as PW-1, categorically states that at the time of accident, the deceased was aged 23 years and was earning Rs.15,000/- p.m; by doing tailoring business, but no documentary



evidence were produced, absence of it the tribunal taken Rs.6,000/- p.m., as rightly pointed out by the learned counsel for respondents and even as per rulings of the Hon'ble Apex Court in Neeta case Reported in 2015 (1) TNMAC 161 (SC) for carpenter a notional income of Rs.12,000/- fixed by the Hon'ble Apex Court for the accident happened on the year of 2011. Here the accident happened on 03.02.2013, hence in the interest of justice it should be taken a sum of Rs.8,000/- p.m. as a notional income to be just and reasonable. By considering facts and circumstances of the case, the deceased survived with her husband and parents, moreover at the time of accident he was only 23 years, a energetic young person, she definitely put her hard work to the welfare of the entire family, and considering year of accident this Court deems to fix the monthly income of the deceased at Rs.8,000/- per month.

10.In so far as the age of the deceased concerned, as per Ex.P2, Post Mortem Certificate the age of the deceased at the time of accident is 2, and proper multiplier is 18 as per Sarala Varma case rightly apply by Tribunal. While awarding compensation, the Tribunal has wrongly taken into consideration the future prospects at 50%. Hence, it would be appropriate to give addition of 40% of the salary towards future prospects. If we add 40%, the monthly earning of the deceased would comes to Rs.11,600/- (Rs. 8,000 + 3,600).

11.In the present case, the number of dependent family members is 3. Therefore, 1/3 has to be deducted as personal and living expenses of the deceased and the loss of dependency would comes to {Rs. 11,600 x 12 x 18 x 1/3}= Rs.16,70,400/-.

12.The Tribunal awarded Rs.15,000/- towards funeral expenses, which is hereby reduced from Rs.25,000/-; towards loss of estate nothing is awarded by tribunal, hence Rs.15,000/- is awarded and nothing has been towards loss of consortium, hence a sum of Rs.40,000/- awarded by this Court. The tribunal not awarded any amount toward transportation, hence a sum of Rs.10,000/- is awarded. In so far as filial consortium to parents of deceased a sum of Rs.40,000/- each has been awarded as per recent rulings of the Hon'ble Apex Court.

13.In so far as findings of the Tribunal with regard to award has been not granted any amount inter alia dismissing claim against the parents of the deceased women without assigning any valid and acceptable reasons, which is not correct, according to my opinion the motor accident case is benevolent legislation, it has to be consider for welfare of the



victims family rather any technicalities and here it has be consider that loss of dependency for death earning persons rather considering who are legal heirs of the deceased. Mere non-mention of the parents name in the Legl heirs certificate it would not be curtail tribunal to grant compensation to the parents. In view of the same this courts no hesitation to set aside the findings of the tribunal and awarded compensation to the parents also.

14.Next question would be wheather the claimants are entitle compensation under head of Loss Fetus. It is seen that if the deceased women was pregnant at the time of accident and foetus in mother's womb, it could be treated as child, as rightly pointed out that learned counsel for the Respondents that as per rulings this Court reported in 2013 (1) TNMAC 552 and another Judgment reported in 2017 SCC Online Delhi 10278, there is some force in their arguments of the respondents. Considering the Ex.P-2, post mortem report it is seen that the deceased was four month pregnant. Hence followings the above said rulings this court awards a sum of Rs.2,50,000/- under head of loss of child is just , fair and reasonable compensation.

15.The last contention of the learned counsel for the Insurance Company / second respondent is that the appellant has claimed only a sum of Rs.15,00,000/- and to seeking enhancement more then claim is not justified.

16.The claims Tribunal/Court are duty bound to award just compensation which is reasonable on the basis of evidence adduced. There is no ceiling limit for the Tribunal to award the compensation. The Claims Tribunal/Court is not bound by technical rules of evidence and when sections 168 and 169 of the Motor Vehicles Act, provide for summary procedure, it should be consistent with the Rules of Natural Justice. It is appropriate to point out the decision of the Hon'ble Supreme Court, reported in 2011 (10) SCC 683 (Govind Yadav vs. New India Insurance Company Ltd.), wherein, it has been pointed out due to sheer ignorance, poverty and other disabilities, such underestimated claims are made, therefore, the Tribunal should adopt a proactive approach and to award adequate compensation. The relevant observation reads as under:

"A very large number of people involved in motor accidents are pedestrians, children, women and illiterate persons. Majority of them cannot, due to sheer ignorance, poverty and other disabilities, engage competent lawyers for proving negligence of the wrongdoer in adequate measure. The insurance companies with whom the vehicles involved in the accident are



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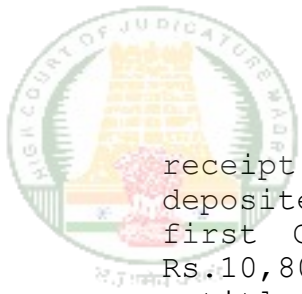
insured usually have battery of lawyers on their panel. They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liabilities minimized. This results in prolonging the proceedings before the Tribunal. Sometimes the delay and litigation expenses' make the award passed by the Tribunal and even by the High Court (in appeal) meaningless. It is, therefore, imperative that the officers, who preside over the Motor Accident Claims Tribunal adopt a proactive approach and ensure that the claims filed under Section 166 of the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure. The amount of compensation in such cases should invariably include pecuniary and non-pecuniary damages."

17. Therefore, even though the Tribunal has failed in the duty to award just compensation, this Court, as the Appellate Court, should correct the mistake and to award just compensation. Thus, award tribunal modified and enhanced as follows:-

18. In the light of the above mentioned discussion, the total sum of Rs.13,71,000/- awarded by the Tribunal is enhanced to Rs.20,80,400/- as under following heads:

Heads	Rs.
Loss of dependency	Rs. 16,70,400/-
Loss of Filial Consortium to parents	Rs. 80,000/-
Loss of Fetus	Rs. 2, 50,000/-
Loss of consortium to husband	Rs. 40,000/-
Funeral Expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Transportation	Rs. 10,000/-
Total	Rs. 20, 80,400/-

19. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The compensation of Rs.13,71,000/- awarded by the Tribunal in decree and judgment dated 04.11.2015 made in M.C.O.P.No.1351 of 2013 on the file of MACT/Additional District Court at Namakkal is enhanced to Rs.20,80,400/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 2nd respondent insurance company is directed to deposit the amount within six weeks from the date of



receipt of copy this order, deduct if any amount already deposited. Out of the total compensation of Rs.20,80,400/-, the first Claimant being the Husband is entitled for a sum of Rs.10,80,400/- and Claimants 2 and 3 being the parents are entitled for a sum of Rs.5,00,000/- each and this court grant permission to withdraw their respective entire shares with accrued interest and cost, in so far as of the enhance compensation in the absence of cross appeal, this Court directs the Respondents/Claimants to pay court fees within period of two weeks from the date of receipt of a copy of this order.

*Copy of the Memo for the Additional Court Fee filed by the Respondents/Claimants

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal,
Additional District Court, Namakkal.

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.24806

+1cc to Mr.Ma.Pa.Thanagavel, Advocate SR.No.24831

+1cc to Special Government Pleader SR.No.4442

C.M.A.No.823 of 2016

NRJK (CO)
GMY (10/09/2019)