

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM

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

C.M.A. No. 1493 of 2018
and
CMP Nos.11832 and 11833 of 2018

Shriram General Insurance Co. Ltd.
Rep by its Authorised Signatories,
100 Feet Road,
Near Indira Gandhi Square,
Pondicherry. Appellant/2nd Respondent

versus

- 1.Hasan Banu
2. Minor Abura
3. Minor Sara Begum
4. Jaibunnisa ...Respondents 1 to 4/Petitioners No.1-4
(2nd and 3rd respondents are minors
and represented by their next
friend / mother, the 1st respondent)
5. S.Gnanaguru ...5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 15.11.2017 made in M.C.O.P. No.105 of 2016, on the file of Motor Accident Claims Tribunal (II Additional District Court), Puducherry.

For Appellant : Mr.S.Dhakshinamoorthy

For Respondents : Mr.R. Mugundhan for RR1 to 4
R5 - 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 15.11.2017 passed by the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry in M.C.O.P. No.105 of 2016.

Brief facts leading to the filing of the instant appeal

2. A person by name Faizal Mohamed, aged 39 years died on 01.07.2015, as a result of an accident caused by a Mini lorry, Swaraj Mazda bearing Registration No.TN-20-BU2080 owned by the 5th respondent and insured with the Appellant. The accident happened when the deceased was proceeding in his TVS Victor bearing Registration No.PY-01-AA5564, when the Swaraj Mazda Mini Lorry bearing Registration No.TN 20 BU 2080 coming from the opposite direction dashed against the Two Wheeler and as a result of the same, the deceased sustained head injuries and died in the hospital.

3. The dependants of the deceased, who are his wife, his two minor children and his mother. They preferred a claim before the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry in M.C.O.P. No.105 of 2016 against the 5th respondent as well as the Appellant / Insurance Company seeking a compensation of Rs.75,00,000/- for the death of the Faizal Mohamed.

4. By an award dated 15.11.2017 passed by the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry in M.C.O.P. No.105 of 2016, the Appellant / Insurance Company was directed to pay the claimants, a sum of Rs.46,35,712/- together with interest at 7.5% p.a. from the date of claim petition, i.e. on 12.01.2016 till the date of payment. Out of the total compensation, the Tribunal determined that the first respondent being the Wife of the deceased is entitled to Rs.22,35,712/-; the second and third respondents being the minor Daughters of the deceased are each entitled to Rs.10,00,000/- and the fourth respondent being the mother of the deceased is entitled to Rs.4,00,000/-.

5. Aggrieved by the award dated 15.11.2017 passed by the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry in M.C.O.P. No.105 of 2016, the instant appeal has been filed by the Insurance Company.

6. Heard Mr.S.Dhakshinamoorthy, learned counsel for the Appellant and Mr.R. Mugundhan, learned counsel for the respondents 1 to 4.

7. The Appellant / Insurance Company in this appeal has challenged only the quantum of assessment of compensation awarded by the Tribunal. It is their case that the compensation awarded by the Tribunal is excessive. According to them, the monthly income of the deceased assessed by the Tribunal at Rs.31,892/- is solely based on Ex.P19, salary certificate from an individual person without examining him is incorrect. It is also their case that compensation awarded by the Tribunal under the conventional heads are not in accordance with the Constitution Bench of Hon'ble Supreme Court in the case of National Insurance Company Ltd. versus

Pranay Sethi and Others.

8. We have perused and examined the impugned award as well as the evidence and materials available on record. On the side of the claimants, 21 documents were filed before the Tribunal, which were marked as Ex.P1 to Ex.P21 and they have examined two witnesses viz., First respondent / wife of the deceased as PW1 and PW2 is an eye witness. But on the side of the Appellant / Insurance Company neither any witness was examined nor any document filed to disprove the contention of the claimants.

Discussion :

9. The deceased Faizal Mohamed was working as a Driver at Kuwait, a Foreign Country and was earning equivalent of Rs.35,000/- per month in the Indian Currency. The claimants have produced i) copy of the Driving Licence (Ex.P12) of the deceased issued by Kuwait Government, ii) copy of passport (Ex.P17) of the deceased, iii) copy of the Residency permit (Ex.P18) of the deceased issued by the Government of Kuwait and iv) the salary certificate (Ex.P19) issued by one Dr.Abdulmuhsen Almulla, the employer of the deceased at Kuwait.

10. On perusal of Ex.P19, Salary certificate of the deceased, it is revealed that the deceased was working as a Driver at Kuwait and his Residency permit was extended for another period of four years and the deceased had come to India on vacation, when the accident happened resulting in his death. At the time of renewal of the Permit, the salary of the deceased, as per Ex.P19 was increased to 170 Kuwait Dinars per month with additional support of any required extra expenses. Ex.P19 is dated 24.07.2015. The accident took place on 01.07.2015.

11. The Tribunal has considered Ex.P12, Ex.P17, Ex.P18 and Ex.P19 and has fixed the notional monthly income of the deceased at 150 Dinars, even though as per Ex.P19, he would have earned 170 Kuwait Dinars, if he had re-joined the employment at Kuwait, after his vacation in India. The Tribunal has rightly calculated the exchange rate and has fixed the monthly income of the deceased at Rs.31,891.50 (150 Dinars x 212.61).

12. The age of the deceased was 43 years at the time of the accident. Since, the age was only 43 years, there is a possibility that the deceased would have earned more income in the future. Considering the same, the Tribunal after following the Constitution Bench Judgment 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 added 25% towards loss of future prospects and hence, the monthly income of the deceased was assessed at Rs.39,864.30, rounded to Rs.39,864/-, after adding Rs.7,972.80 as loss of

future prospects calculated at the rate of 25% of the monthly salary assessed by the Tribunal.

13. The Tribunal has also rightly deducted 10% towards Income Tax from out of the total income of Rs.39,864/- and after the said deduction, the monthly income of the deceased was assessed by the Tribunal at Rs.35,878/-.

14. The claimants are four in number and therefore, the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased, if he was alive. The first claimant, who is the wife of the deceased is aged about 35 years and she lost her husband at her young age. Considering the same, the Tribunal has rightly awarded Rs.40,000/- towards loss of Consortium, as per the Constitution Bench Judgment 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 second and third claimants, who are the minor daughters of the deceased aged about 12 and 8 years respectively, have lost their father at a very young age and hence they are entitled to compensation under the head "loss of love and affection" the 4th claimant, who is the mother of the deceased has lost her son and she is also entitled under the head "loss of love and affection". Accordingly, the amount awarded under the head "loss of love and affection" by the Tribunal is correct assessment.

15. The Tribunal has rightly followed the Constitution Bench Judgment of the Hon'ble Supreme Court, referred to supra and has awarded Rs.15,000/- towards funeral expenses and another sum of Rs.15,000/- towards loss to estate to the claimants. The details of the award passed by the Tribunal are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income (Rs.31,691.50 + 7,972.80 (25% future prospects) = Rs.39,864.30 P. rounded to Rs.39,864/- Deduct 10% Income Tax (Rs.39,864/- - Rs.3,986/- = Rs.35,878) Less 1/4th deduction (Rs.35,878 - 8969.50 = Rs.26,908.50 p. rounded to Rs.26,909/- Rs.26,909 x 12 x 14 =Rs.45,20,712/-	45,20,712/-
Loss of consortium	40,000/-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of love and affection (petitioners 2 to 4 / respondents 2 to 4 at Rs.15,000/- x 3 = Rs.45,000/-	45,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Total	46,35,712/-

16. The Tribunal has considered the oral and documentary evidence available on record and only thereafter passed the impugned award.

Conclusion :

17. We do not find any infirmity in the order in M.C.O.P. No.105 of 2016 passed by the the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry and the same is hereby confirmed. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

18. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition, i.e. on 12.01.2016 till the date of payment with costs, less the amount, if any, already deposited to the credit of MCOP No.105 of 2016, on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry, 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 major claimants/1st and 4th 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 claimants / 2nd and 3rd respondents are concerned, the same shall be deposited in fixed deposit in any one of the Nationalized Banks, till they attain majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants once in three months, directly from the Bank.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

To :

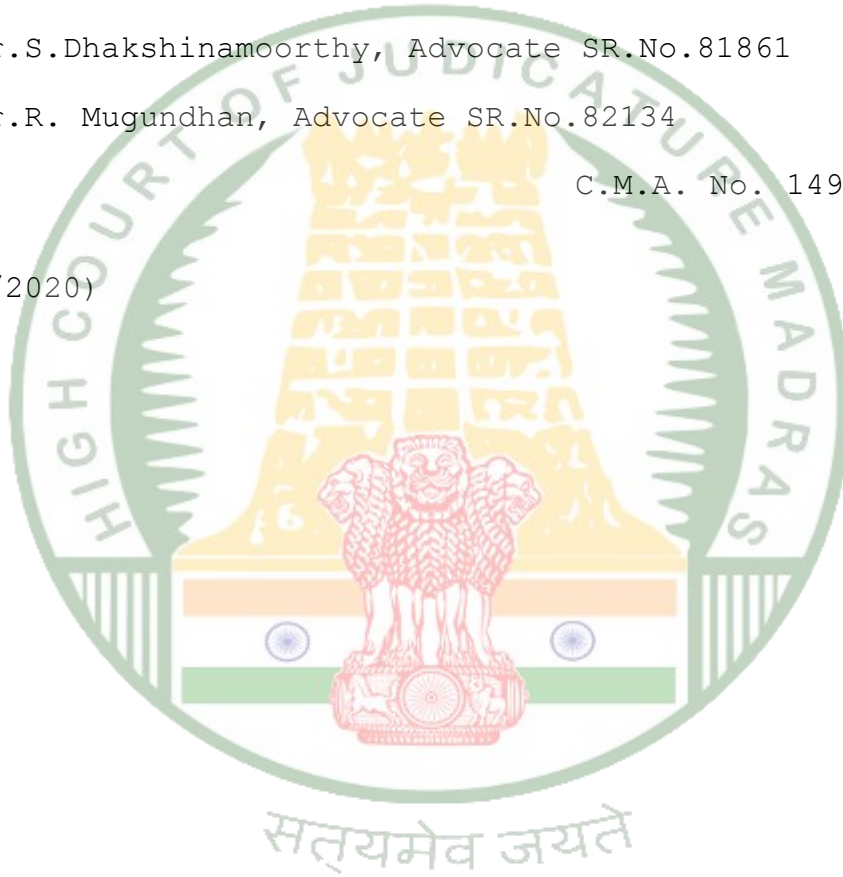
- 1) The II Additional District, Judge,
(Motor Accident Claims Tribunal)
II Additional District Court,
Puducherry.
- 2) The Section Officer,
V.R. section,
High Court, Madras - 104.

+1cc to Mr.S.Dhakshinamoorthy, Advocate SR.No.81861

+1cc to Mr.R. Mugundhan, Advocate SR.No.82134

C.M.A. No. 1493 of 2018

RSV(CO)
GMY(15/06/2020)



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