

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

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

C.M.A.No.2872 of 2019
and C.M.P.No.15144 of 2019

M/s.National Insurance Company Limited
No.7, Raja Street, P.B.No.19,
Gobichettipalayam, Erode District. ... Appellant/4th Respondent

vs.

1.Rajeshwari

2.Priya (Minor)

(Minor Represented by mother
and NF 1st respondent)

...1st & 2nd Respondents/Petitioners

3.Mr.Vijayakumar

4.C.Suresh Kumar

5.G.Pothiraj

...3 to 5 Respondents/1 to 3 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.07.2018 passed in M.C.O.P.No.58 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore.

For Appellant

: Mr.Mohan Babu for
Mr.N.Vijayaraghavan

For Respondents

: Ms.R.Reena for R1 & R2

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the Insurance Company challenging the award dated 19.07.2018, passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore in M.C.O.P.No.58 of 2015.

Brief facts leading to the filing of the instant appeal:

2. A person by name Jaganathan died on 24.07.2014 as a result of an accident caused by a Lorry bearing Registration No.TN-34-A-0779 owned by respondent Nos.4 and 5 and insured with the appellant. The accident happened when the deceased was riding his Motorcycle bearing Registration No.TN-37-BZ-6224 on the left side of Kattampatty to Veerapandi Main Road, near Kalyanasundaram Nagar when the insured Lorry coming in the opposite direction dashed against the two wheeler resulting in the death of Jaganathan.

3. The dependants of the deceased, who are his wife and daughter preferred a claim against the respondents 4 and 5 as well as the appellant Insurance Company before the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore in M.C.O.P.No.58 of 2015, seeking a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only)

4. The Motor Accidents Claims Tribunal by its award dated 19.07.2018 in M.C.O.P.No.58 of 2015 directed the appellant Insurance Company to pay the claimants a sum of Rs.78,82,000/- (Rupees Seventy Eight Lakhs Eighty Two Thousand only) as compensation together with interest at the rate of 7.5% per annum from the date of claim till the date of realization along with proportionate costs. Out of the total compensation amount of Rs.78,82,000/- (Rupees Seventy Eight Lakhs Eighty Two Thousand only), the Tribunal determined the amount payable to the first claimant (wife) as Rs.38,82,000/- (Rupees Thirty Eight Lakhs Eighty Two Thousand only) and the second claimant (daughter) as Rs.40,00,000/- (Rupees Forty Thousand only).

5. Aggrieved by the award dated 19.07.2018 passed in M.C.O.P.No.58 of 2015, the instant appeal has been filed by the Insurance Company.

6. Heard Mr.Mohan Babu, learned counsel for the Appellant and Ms.R.Reena, learned counsel for respondent Nos.1 and 2. Respondents 3 to 5 have remained ex-parte both before the Tribunal as well as this Court.

Discussion:

7. The appellant Insurance Company has challenged the impugned award questioning the quantum of compensation awarded by the Tribunal to the claimants. According to them, the Tribunal has erred in fixing huge income without credible proof of filing Income returns or assessment to Income Tax. It is also their case that the compensation awarded by the Tribunal towards pecuniary loss and other/conventional heads are far in excess of what may be justified in the circumstances of the case.

8. The appellant Insurance Company has not challenged the adverse finding of negligence on the part of the driver of the insured vehicle and hence the said finding has attained finality.

9. Before the Tribunal, the claimants have filed 13 documents which was marked as Exs.P1 to Ex.P13 and two witnesses were examined viz., the wife of the deceased S.Rajeswari as P.W.1 and one Kailashnathan, an eyewitness to the accident as P.W.2. On the side of the appellant Insurance Company, neither any witness was examined nor any document filed before the Tribunal. According to the claimants, the deceased was doing Real Estate Business, having a Bakery and was also running a tourist cab and earning monthly income of Rs.70,000/- at the time of the accident. The claimants in order to prove the income of the deceased have produced his income tax returns for the Assessment Year 2013-14, which was marked as Ex.P11. In order to prove that the deceased was also running a tourist cab, the registration certificate of the tourist car standing in the name of the deceased was marked as Ex.P12. As far as the Bakery business claimed to have been done by the deceased is concerned, the claimants have filed an agreement between the deceased Jeganathan and one Abdul Salam for payment of Rs.1,000/- to Jeganathan in respect of running Karuna Backery, which was marked as Ex.P13. The Tribunal after considering the Income Tax Return for the Assessment Year 2013-14, marked as Ex.P11, has come to the conclusion that the deceased was earning Rs.32,000/- from Real Estate Business and would be earning not less than Rs.20,000/- by operating the tourist cab and would be earning Rs.10,000/- from the Bakery business and in all put together, he would be earning a total income of Rs.62,000/- per month. This Court has perused and examined the Income Tax return for the Assessment Year 2013-14 marked as Ex.P11, which would reveal that the deceased was earning only Rs.32,000/- per month. But as regards the income of Rs.20,000/- from the operation of tourist cab and Rs.10,000/- from Bakery business assessed by the Tribunal, there is no documentary evidence produced by the claimants before the Tribunal. Without any documentary evidence, the Tribunal has assessed the monthly income of the deceased at the time of the accident as Rs.62,000/-, which is an erroneous assessment.

10. The learned counsel for respondent Nos.1 and 2 has produced before this Court the Income Tax return for the Assessment Year 2014-15 of the deceased, which discloses that the gross total income of the deceased for the Assessment Year 2014-15 was Rs.4,96,540/-. The accident happened on 24.07.2014, when Jeganathan died and therefore, the income disclosed in the Income Tax return for the Assessment Year 2014-15 is the income of the deceased. In order to award just compensation to the

claimants for the death of Jeganathan, we have also considered the Income Tax return of the deceased for the Assessment Year 2014-15. As a businessman, the income of the deceased will be a fluctuating one. This being the case, the correct way to assess the monthly income of the deceased at the time of the accident will be to take the average of income disclosed in the Income Tax returns filed during the respective Assessment Years. The Tribunal in the impugned award has taken note of the fact that for the Assessment Year 2013-14, the Income Tax return discloses that the monthly income of the deceased was Rs.32,000/-. In so far as, the Assessment Year 2014-15 is concerned, the Income Tax return which was brought to the notice of this Court by the learned counsel for the respondents reveals that the annual gross total income of the deceased was Rs.4,96,540/- and if monthly income is calculated based on the gross total income, it will be approximately Rs.42,000/-. However, it has been claimed in the claim petition that the deceased was not alone doing Real Estate Business, but was also having a bakery as well as doing the business of a tourist cab. The Income Tax return do not disclose the nature of business the deceased was doing. Certainly, the deceased would have earned income from Real Estate, Bakery and as a operator of tourist cab. No contra evidence has been produced by the appellant Insurance Company before the Tribunal to disprove the contention of the claimants that the deceased was doing Real Estate Business, having a bakery and was a tourist cab operator. As observed earlier, the assessment of the monthly income of the deceased by the Tribunal at Rs.77,500/- is on the higher side and has not been based upon any documentary evidence. This being the case and after considering the annual Income Tax return of the deceased for the Assessment Years 2013-14 and 2014-15, we assess the monthly income of the deceased at the time of the accident as Rs.37,500/- instead of Rs.77,500/-. The age of the deceased was 44 years at the time of the accident, which is also proved as observed by the Tribunal through the postmortem certificate-Ex.P2. The Tribunal has rightly deducted 1/3rd towards the personal expenses of the deceased and has also rightly applied the 14 multiplier, considering the fact that the deceased was 44 years at the time of the accident. The Tribunal has also rightly awarded a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, but, failed to award a sum of Rs.40,000/- towards loss of love and affection. Accordingly, we award a sum of Rs.40,000/- as compensation towards loss of love and affection to the second claimant, who is the daughter of the deceased. The Tribunal has also rightly added 25% towards loss of future prospects to the claimant, which is in accordance with the Constitution Bench judgment of the Hon'ble Supreme Court in the case of Sarala Verma & Ors Vs. Delhi Transport Corporation & Anr reported in 2009 (2) TN MAC page No.1. The Tribunal has

rightly deducted 10% towards Income Tax from the total annual income of the deceased. Excepting for the revised assessment of monthly income of the deceased by this Court from Rs.77,500/- to Rs.37,500/-, the impugned award in respect of the heads loss of consortium, funeral expenses and loss of estate are not disturbed. In view of the reduction of the monthly income of the deceased, the loss of dependency is reduced from Rs.6,20,000/- to Rs.3,00,000/- p.a. and the pecuniary loss is reduced from Rs.78,12,000/- to Rs.52,50,000/-.

11. For the forgoing reasons, the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal	Amount modified by this Court
Loss of dependency	Rs.78,12,000/- (Rs.62,000 +25% = 77,5000 x 12-1/3= 6,20,000 x 90% x 14 = 78,12,000)	Rs.52,50,000/- (Rs.37,500 x 12 = 4,50,000 - 1/3 = 3,00,000 + 25% = 3,75,000 X 14)
Loss of Consortium	Rs.40,000/-	Rs.40,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Loss of Estate	Rs.15,000/-	Rs.15,000/-
Loss of Love and Affection	-	Rs.40,000/-
Total	Rs.78,82,000/-	Rs.53,60,000/-

12. In view of our finding, the amount awarded by the tribunal is reduced from Rs.78,82,000/- (Rupees Seventy Eight Lakhs Eighty Two Thousand only) to Rs.53,60,000/- (Rupees Fifty Three Lakhs and Sixty Thousand only). Out of the said amount, the first claimant is entitled to Rs.23,60,000/- (Rupees Twenty Three Lakhs and Sixty Thousand only), the second claimant is entitled to Rs.30,00,000/- (Rupees Thirty Lakhs only).

Conclusion:

13. In the result, the appeal is partly allowed by modifying the award passed in MCOP.No.58 of 2015 passed by the Motor Accidents Claims Tribunal Special Subordinate Judge, Coimbatore by reducing the compensation amount from Rs.78,82,000/- (Rupees Seventy Eight Lakhs Eighty Two Thousand only) to Rs.53,60,000/- (Rupees Fifty Three Lakhs and Sixty Thousand only). However, the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

14. The Appellant Insurance Company is directed to deposit the entire award amount as per the order of this Court before the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.58 of 2015 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 share of the award to the first respondent as per the order of this Court through RTGS within a period of four weeks thereafter. Since the second respondent is minor, her respective share of award amount shall be deposited in an interest bearing fixed deposit in any Nationalized bank till she attains majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

vsm

To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Coimbatore.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.84663

+1cc to Ms.R.Reena, Advocate SR.No.83712

C.M.A.No.2872 of 2019
and C.M.P.No.15144 of 2019

CP (CO)
GMY (29/11/2019)

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