IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM

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

C.M.A. No 2134 of 2019
and
CMP No.8625 of 2019

The Oriental Insurance Co. Ltd.,
Regional Office,
New No.116, Prakasam Salai,
Broadway,
Chennai - 600 108. ...2nd Respondent/Appellant

versus

1. Sunitha
2. N. Vedavyas (Minor) ..Petitioner
   Rep. by Mother and Natural Guardian Sunitha)
3. D. Latha
4. N. Dhamodaran
5. V. Marimuthu ....1st Respondent/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.11.2018 made in M.C.O.P. No.7191 of 2014 on the file of the Motor Accidents Claims Tribunal (In the III Court of Small Causes), Chennai.

For Appellant	:	Mr. D. Bhaskaran
For Respondents	:	Mr. V. Bhiman for M/s. Sampath Kumar Associates for RR1 to 4 R5 - Not ready in notice

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JUDGMENT

(Judgment delivered by Abdul Quddhose, J.)

This appeal has been filed by the Appellant / Insurance Company challenging the award dated 13.11.2018 passed by the Motor Accidents Claim Tribunal, Chennai (In the III Court of Small Causes, Chennai) in M.C.O.P. No.7191 of 2014.

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Brief facts leading to the filing of these appeals :

2. A person by name D. Narayanan, aged 33 years died on 18.07.2014, as a result of an accident caused by a Tempo Traveller bearing Registration No.TN 21 AY 5883 owned by the 5th respondent and insured with the Appellant. The accident happened when the victim was riding his Two wheeler bearing Registration No.TN 22 AP 6050 in Velacherry Main Road and turning towards Chitlapakkam Main Road near Mahalakshmi Nagar Junction, when the Tempo Traveller dashed against the Two Wheeler and the victim was thrown out of the motor cycle and he sustained fatal injuries and died on the way to the hospital. The dependants of the deceased, who are his wife, son and parents preferred a claim before the Motor Accidents Claims Tribunal in M.C.O.P. No.7191 of 2014, seeking a compensation of Rs.1,10,00,000/- from the 5th respondent as well as the Appellant / Insurance Company.

3. By an award dated 13.11.2018 passed by the Motor Accidents Claims Tribunal, Chennai (In the III Court of Small Causes, Chennai) in MCOP No.7191 of 2014, the Appellant was directed to pay the claimants, a sum of Rs.99,02,000/- together with interest at 7.5% p.a. from the date of numbering of the claim petition i.e. 16.12.2014, till the date of the realization together with costs. Out of the total compensation amount of Rs.99,02,000/-, the Tribunal determined that the first claimant being the Wife of the deceased is entitled to Rs.30,02,000/-; the second claimant being the minor Son of the deceased is entitled to Rs.60,00,000/- and the 3rd and 4th claimants being the mother and the father of the deceased are each entitled to get Rs.4,50,000/- each.

4. Aggrieved by the award dated 13.11.2018 passed by the Motor Accidents Claims Tribunal, Chennai (In the III Court of Small Causes, Chennai) in M.C.O.P. No.7191 of 2014, the instant appeal has been filed by the Insurance Company.

5. Heard Mr.D. Bhaskaran, learned counsel for the Appellant and Mr.V. Bhiman, learned counsel for the Respondents 1 to 4 and the 5th respondent remained ex-parte both before the Tribunal as well as this Court.

6. The Appellant / Insurance Company has challenged the adverse finding of negligence on the part of the Driver of the insured vehicle as well as the quantum of compensation assessed by the Tribunal.

7. We have perused and examined the impugned award as well as the evidence and materials available on record. On the side of the claimants, 26 documents were filed before the Tribunal, which were marked as Ex.P1 to Ex.P26 and they have examined one witness, viz., Sunitha, the mother of the deceased (PW1). On the side of the Appellant / Insurance

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Company, one witness S. Babu, their official has been examined as RW1 and his authorisation letter was marked as Ex.R1.

8. FIR (Ex.P2) was registered only against the Driver of the Tempo Traveller(Insured vehicle). The evidence of PW1, the wife of the deceased corroborates the contents of the FIR. No contra evidence has been produced by the Appellant / Insurance Company to disprove the contention of the claimants that only due to the rash and negligent driving by the Driver of the Tempo Traveller, the accident happened, which resulted in the death of Narayanan.

9. The negligence in a Motor Accident claim is determined on the basis of preponderance of probability. This being the case, the Tribunal has rightly determined that only due to the rash and negligent driving by the Driver of the Tempo Traveller (Insured vehicle), the said accident occurred as there was no contra evidence produced by the Appellant / Insurance Company.

10. The Tribunal has awarded a sum of Rs.99,02,000/- to the claimants in the following manner :-

Heads	Award amount Rs.
Loss of Dependency	96,96,960/-
Loss of Consortium	40,000/-
Loss of love and affection	1,50,000/-
Funeral Expenses	15,000/-
Total	99,01,960/-

Rounded off Rs.99,02,000/-

11. The claimants are the Wife, minor Son and Parents of the deceased. It is settled law that Father is not the dependant of his son unless and until the claimant establishes through oral and documentary evidence that he is a dependant of his son.

12. In the case on hand, the claimants have not established before the Tribunal by letting in oral and documentary evidence that the 4^{th} claimant viz., 4^{th} Respondent herein, who was the father of the deceased is a dependant of the deceased. However, the Tribunal has erroneously treated the father of the deceased as a dependant and erroneously deducted $1/4^{th}$ towards personal expenses of the deceased instead of $1/3^{rd}$ in accordance with the decision reported in (2009) (2) TN MAC Page No.1 (Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr. case). As per the settled principles of law, the Tribunal has erroneously deducted 1/4th towards personal and living expenses instead of 1/3rd amount. Accordingly, the amount awarded under the head

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loss of dependency has to be re-assessed. Further, the Tribunal has also not deducted any amount towards Income Tax from the annual income of the deceased, which is to be deducted as per the settled principles of law. Considering the year of the accident, in accordance with the prevailing Income Tax deduction applicable for that year, an amount of Rs.86,616/- (10% on Rs.2,50,000/- and 20% on Rs.3,08,080/-) has to be deducted towards Income Tax. Accordingly, the amount under the head of Loss of Dependency is reassessed and modified amount is detailed hereunder :-

Monthly income determined by the Tribunal	:	Rs.48,100/-
Multiplier adopted by the Tribunal by considering the age of the deceased as 33 years	:	16
Annual income (Rs.48,100 x 12)	:	Rs.5,77,200/-
Add Future prospects @ 40%	:	Rs.2,30,880/-
		Rs.8,08,080/-
Less Income Tax (10% on Rs.2,50,000 + 20% on Rs.3,08,080/-)	:	Rs.86,616/-
		Rs.7,21,464/-
Less : 1/3rd deductions towards personal and living expenses	:	2,40,488/-
		Rs.4,80,976/-
Rs.4,80,976 x 16(multiplier)	:	
Amount to be awarded under the head Loss of dependency	:	Rs.76,95,616/-

13. Insofar as the compensation awarded by the Tribunal under various other heads are concerned, the same are quite reasonable and in accordance with 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. Excepting for the erroneous deduction of 1/4th instead of 1/3rd towards personal and living expenses of the deceased and the non deduction of income tax, the other determinations made by the Tribunal does not suffer from any infirmity.

14. For the foregoing reasons, the impugned award of the Tribunal is modified in the following manner :

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Heads	Amount awarded by the Tribunal Rs.	Amount awarded by this Court
Loss of Dependency *(Rs.48,100 + 40% x 12 - 1/4 x 16 =Rs.96,96,960/- # (Rs.48,100 + 40% - Rs.86,616(Income tax) - 1/3 x 16 = Rs.76,95,616/-	96,96,960/- *	Rs.76,95,616/- #
Loss of Consortium	40,000/-	40,000/-
Loss of love and affection	1,50,000/-	1,50,000/-
Funeral Expenses	15,000/-	15,000/-
Total	99,01,960/-	79,00,616/-
Rounded off	99,02,000/-	79,00,616/-

15. In the result, the award passed by the Tribunal is modified from Rs.99,02,000/- to Rs.79,00,616/-.

16. Accordingly, the Appellant / Insurance Company is directed to deposit the entire award amount along with accrued interests and costs as ordered by this Court, less the amount, if any, already deposited to the credit of M.C.O.P. No.7191 of 2014 on the file of the Motor Accidents Claim Tribunal, Chennai (In the III Court of Small Causes, Chennai), 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 claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter.

17. In the result, the Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

vsi2

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To :

1. The III Judge,
   Court of Small Causes,
   Chennai.

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

+1cc to Mr.D. Bhaskaran, Advocate SR.No.80520 (23/01/2020)

+2cc to M/s. Sampath Kumar Associates, Advocate SR.No.80063 (23/01/2020)

C.M.A. No 2134 of 2019

AD(CO)
GMY(09/01/2020)

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