

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.09.2018

Delivered on : 12.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.331 of 2018
and
CMP.Nos.3322 and 13310 of 2018

The Oriental Insurance Company Ltd.,
T.P.Cell, No.115, Broadway High Road,
Broadway, Chennai - 600 108.

... Appellant/2nd Respondent

Vs

1.Valliammal

2.K.Murugan

3.K.Shanthi

4.D.Natarajan

... Respondents 1 to 3/Petitioners

... 4th Respondent/Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of M.V. Act, 1988, against the award and decree dated 11.10.2017 made in M.C.O.P.No.5542 of 2012 on the file of the Motor Accidents Claims Tribunal (In the II Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.Varadha Kamaraj

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 11.10.2017 made in M.A.C.T.O.P.NO.5542 of 2012 on the file of Motor Accident Claims Tribunal, in the Court of Small Causes, Chennai.

2.The Appellant -Insurance Company is the second Respondent, Respondents 1 to 3 are Claimants and 4th Respondent is the 1st Respondent in M.A.C.T.O.P.NO.5542 of 2012 on the file of Motor Accident Claims Tribunal, in the Court of Small Causes, Chennai. According to the Respondents 1 to 5, the husband of the first

respondent and father of Respondents 2 and 3 was riding a Bicycle on 25.4.2010 at about 08.00. P.M near SRB tools Signal at Rajiv Gandhi Salai, while so the 1st Respondent Private Bus bearing Registration No.TN-73 - 7508 driven by its driver rash and negligent manner hit the deceased from behind,due to which he suffered multiplies injuries died on spot. The deceased was 60 years at the time of death and working Kovil Poosari at Poondy Amman koil and almin product at Anna Salai,Chennai and earning Rs.15,000/- per month.The Respondents 1 to 3 are dependents of the deceased. They claim a sum of Rs.11,00,000/- as compensation .The 4th Respondent is owner of the vehicle remained exparte.

3.The Appellant filed counter statement and denied various allegations made by the Respondents 1 to 3 and pleaded the accident not happened due to rash and negligent driving of the 4th respondent driver and denied the age and income of the deceased.

4.Before the Tribunal,the second respondent examined as PW1 and one Udaya kumar ,Eyewitness as examined as PW2 and marked 11 Documents as E.P1 to P11. On behalf of Respondents nobody examined and no documents marked.

5.The Tribunal considering the pleadings ,oral and documentary evidence and accepting the evidence of PW2,Eyewitness ,came to the conclusion that the accident occurred only due to rash and negligent driving of the Driver of the 4th Respondent and Vehicle was insured with the appellant and hence the appellant and 4th Respondent are liable to pay Compensation. The tribunal fixed the age of the deceased as 60 years based on Post Mortem Certificate and Death Report. The tribunal fixed the income of the deceased as Rs.6000/- per month since the respondents /claimants 1 to 3 not filed any Account pay register and Bank statement though they filed salary statement Ex.P11 and applied the multiplier of 9 and after deducting 30% income for personal expenses of the deceased fixed pecuniary loss Rs.4,53,600/- and award Rs.1,00,000/- for love and affection of Respondents 2 and 3 and award Rs.1,00,000/- for loss of consortium of 1st Respondent and award Rs.25,000/- for funeral expenses of the deceased and awarded total compensation of Rs.6,79,000/- with 9% interest.

6.Against the said award dated 11.10.2017 made in M.A.C.T.O.P.No.5542 of 2012, the present Civil Miscellaneous Appeal prepared by the appellant.

7.The learned counsel for the appellant contended that the tribunal erred in fixing the age of the deceased at 60 years, contended that age of the deceased more than 70 years as Ex.P.10 legal heir certificate and multiplier to be fixed 5 as per Ex.P.10 and further contended the learned tribunal went wrong in deduct 30% income for personal expenses of the deceased and ought to have deduct 1/3rd income for personal expenses of the deceased and further submitted that the award of Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses is very high and Rs.1,00,000/- towards loss of love and affection is unsustainable as per National insurance company ltd Vs Pranay Sethi and others and 9% interest is also not sustainable as per our court rulings and apex court rulings.

8.The learned counsel for the respondents 1 to 3 submitted that the respondents 1 to 3 proved the age of the deceased by producing postmortem certificate Ex.P3 and death report Ex.P4 and further submit that monthly income Rs.6000/- fixed by the tribunal is very low considering the present economic conditions and further contended that in Syed Sadiq case, the Hon'ble Apex Court in the year 2008 fixed Rs.6500/- as notional income and in the claimant's case have proved the income by marking salary certificate Ex.P11, hence income to be fixed Rs.9000/- as just one since accident in the year 2010 .The tribunal rightly fixed awards towards loss of consortium , love and affection and funeral expenses. The tribunal considered all the materials is proper perspective and awarded proper compensation and prayed for dismissal of the above Civil Miscellaneous Appeal.

9.I heard Mr.D.Bhaskaran, learned counsel for the appellant and Mr.Varadha Kamaraj, learned counsel for the Respondents 1 to 3 and perused the materials available on record.

10.As far as deceased age concern, the age of the deceased 60 years fixed by the tribunal I find is correct, since the respondents 1 to 3 proved the age of the deceased by producing postmortem certificate Ex.P3 and death report Ex.P4 because the same disproved by appellant by adducting any contra evidence and when the above plea regarding age of the deceased not stoutly denied by the appellant in his counter statement. Hence, I find the multiplier 9 made by tribunal is correct on the basis of deceased age 60 years. As far as income concern I find that the income Rs.6000/- P. M fixed by the tribunal is very low and since accident in the year 2010, I fixed the income at Rs.7500/- per month. As far as 30% income deduction made for personal expenses of the deceased concern order by tribunal is incorrect, I find 1/3rd income should be deducted for personal expenses of the deceased. The tribunal calculated the loss of dependency at Rs.4,53,600/- as under:

"6000 x12x9x30/100 +=Rs.4,53,600/-

As above findings the above said calculation appears to be incorrect and if we calculate $7500 \times 12 \times 9 \times 1/3$ and after deduction would come to Rs.5,40,000/-.

11.The tribunal awarded Rs.1,00,000/- towards loss of consortium of 1st Respondent the same reduced to Rs.40,000/- as per the Hon'ble Apex Court verdict in National Insurance Company Ltd Vs. Pranay Sethi.

12.The tribunal awarded Rs.1,00,000/- towards love and affection of Respondents 2 and 3, in the present case the same reduced to Rs.50,000/- awarding Rs.25,000/- each since they lost their affectionate father.

13.The tribunal awarded Rs.25,000/- towards funeral expenses the same reduced to Rs.15,000/- as per the Hon'ble Apex Court verdict in National Insurance Company Ltd. Vs. Pranay Sethi.

14. The tribunal not awarded any amount towards loss of estate for the same awarded to Rs.15,000/- as per the Hon'ble Apex Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi.

15.The tribunal granted 9% interest for the award amount, in the present case, the same reduced to 7.5% interest as per the Hon'ble Apex Court Judgment rendered in National Insurance Company Ltd. Vs. Pranay Sethi.

16.In view of above discussion, the compensation of Rs.6,79,000/- awarded by the tribunal is reduced to Rs.6,60,000/- as under:

Loss of dependency	= Rs.5,40,000/-
Loss of consortium	
to the 1 st Respondent	= Rs. 40,000/-
Love and affection	
to the Respondents 2 & 3	= Rs. 50,000/-
Loss of Estate	= Rs. 15,000/-
Funeral Expenses	= Rs. 15,000/-

Total	= Rs.6,60,000/-

17.The total compensation of Rs.6,60,000/- is apportioned to the Respondents 1 to 3/Claimants as under:

1st Respondent/Claimant = Rs.4,00,000/-
2nd Respondent/Claimant = Rs.1,30,000/-
3rd Respondent/Claimant = Rs.1,30,000/-

18. With the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed. The learned counsel for the appellant is directed to deposit the modified award amount along with interest, if not already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Respondents 1 to 3 are permitted to withdraw their above said share along with interest, after adjusting the amount already withdrawn if any.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Motor Accidents Claims Tribunal
(In the II Court of Small Causes),
Chennai.
2. The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.Varadha Kamaraj, Advocate, S.R.No.23102

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.23035

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and
CMP.Nos.3322 and 13310 of 2018

CNR(CO)
CS/07/06/2019