IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.10.2019

CORAM

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

C.M.A.No.544 of 2018
and
C.M.P.No.4818 and 10895 of 2018

United India Insurance Co. Ltd.,
C.G.Complex, 3rd Floor,
Kumaran Salai,
Coimbatore-641 601. ... Appellant/3rd Respondent

vs.

1. Ravichandran
2. Selvarani
3. Mythili ..Respondents 1 to 3/Petitioners 1 to 3
4. R.Rajasekar
5. K.Sivaraj
6. Sivakumar ..Respondents 4 to 6/1,2 and 4th Respondent

7. The Reliance General Insurance Company Limited,
   3rd Floor, Sakthi Super Market Buildings,
   Perundurai Salai,
   Erode-638 011. ..7th Respondents/5th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 13.07.2017 made in MCOP. No.160 of 2014, on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr. S.Arunkumar

For Respondents : Mr.N.Manokaran - R1 to R3

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

The Insurance Company has filed this appeal challenging the award dated 13.07.2017 passed by the Motor Accident Claims Tribunal (Sub Court), Sankari in MCOP.No.160 of 2014.

Brief facts leading to file this instant appeal are as follows:

2. A person, by name, Karthi, died on 31.05.2014 as a result of an accident caused by an Ashok Leyland vehicle bearing registration No. TN 39 AY 8025, owned by the fifth respondent and insured with the appellant/Insurance Company. The accident happened when the deceased was travelling in a two-wheeler bearing registration No.TN52-C-5009 from Gobichettipalayam to Dharmapuri when the Ashok Leyland vehicle bearing registration No. TN 39 AY 8025 coming in the opposite direction dashed against the two wheeler resulting in the death of Karthi.

3. The dependents of the deceased Karthi, are his parents and an unmarried sister, the first, second and third respondents herein. They preferred a claim before the Motor Accident Claims Tribunal, Sub Court, Sankari in MCOP. No.160 of 2014, seeking compensation of Rs.32,00,000/- against the respondents 4 to 7 and the Appellant-Insurance company for the death of Karthi.

4. The Motor Accident Claims Tribunal by its award dated 13.07.2017, in MCOP.No.160 of 2014, directed the Appellant/Insurance Company to pay a compensation of Rs.49,51,000/- together with interest at the rate of 7.5% per annum from the date of claim petition, till the date of realization. Out of the compensation amount of Rs.49,51,000/-, the Tribunal determined the compensation payable to the second claimant at Rs.48,01,000/- and to the first and third claimants at Rs.75,000/- each.

5. Aggrieved by the award dated 13.07.2017 passed by the Motor Accident Claims Tribunal in MCOP.No.160 of 2014, the insurer of Ashok Leyland vehicle which dashed against the two wheeler in which the deceased was travelling has filed this appeal.

6. Heard Mr.S.Arunkumar, learned counsel for the Appellant and Mr.N.Manokaran, learned counsel for the respondents 1 to 3. Even though the owner, driver and the insurer of the two wheeler have been made as party respondents to this appeal, they are not necessary parties for the adjudication of this appeal, since the Appellant - Insurance company has challenged only the quantum of compensation awarded by the Tribunal and not the adverse finding of negligence.

Discussion:

7. The learned counsel for the Appellant submits that the Appellant Insurance company is aggrieved only by the quantum of compensation assessed by the Tribunal and not aggrieved by the adverse finding of negligence on the part of the driver of the

Ashok Leyland vehicle which is insured with the Appellant. According to him, the assessment of compensation by the Tribunal is excessive.

8. This Court has perused and examined the impugned award as well as the materials and evidence available on record.

9. Before the Tribunal, the claimants have filed 28 documents which were marked as Ex.A1 to Ex.A28 and they have also examined three witnesses on their side namely PW1-father of the deceased, PW2-Viswanathan, an eye-witness to the accident and PW3-Mr.Marimuthu, authorized representative of the employer of the deceased. On the side of the Appellant/Insurance Company, neither any witness was examined nor any document filed before the Tribunal.

10. Ex.P1 (F.I.R.) was registered only against the driver of the insured Ashok Leyland Vehicle bearing Registration No.TN 39 AY 8025 (insured vehicle). No contra evidence has been produced by the appellant/Insurance company to disprove the contents of the FIR and the claim of the claimants that the accident had happened only due to the rash and negligent driving by the driver of the insured vehicle.

11. The Tribunal, after considering the oral and documentary evidence available on record has come to the right conclusion that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened. We do not find any infirmity in the said finding.

12. We shall now analyze as to whether the quantum of compensation awarded by the Tribunal to the claimants is excessive or not.

13. The deceased Karthi was an Assistant Professor in Electronics and Communication Department at Shri Venkateshwara Engineering College, earning a monthly income of Rs.21,600/- at the time of accident. His salary certificate for the months of June, July and November-2013 were marked as Exhibits C3, C4 and C5 respectively through Mr.Marimuthu, the authorized representative of Shri Venkateshwara Engineering College, who is the employer of the deceased. Exhibits C3, C4 and C5 proves that the deceased was earning a monthly income of Rs.21,600/- at the time of accident.

14. The Tribunal, after considering the oral and documentary evidence available on record, has rightly assessed the monthly income of the deceased at the time of accident at Rs.21,600/-. We do not find any infirmity in the said finding. The age of the deceased at the time of the accident was 24

years, which is proved through Ex.P2-Post morterm Certificate and Ex.P25-Transfer Certificate. The Tribunal has rightly applied the ''18'' multiplier, while assessing the loss of dependency by following the judgment of the Hon'ble Supreme Court reported in 2009 (2) TN MAC 1 (SC) [Sarla Verma & others vs. Delhi Transport Corporation & another].

15. The Tribunal has awarded a total compensation of Rs.49,51,000/- to the claimants in the following manner:

Sl. No.	Heads	Award amount Rs.
1	Loss of Income	46,66,000/-
2	Loss of love and affection	2,50,000/-
3	Transportation charges	10,000/-
4	Funeral expenses	25,000/-
	Total	49,51,000/-

16. The Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased. As per the judgment of 2009 (2) TN MAC 1 (SC) [Sarla Verma & others vs. Delhi Transport Corporation & another] referred to supra, the Tribunal ought to have deducted 50% towards personal expenses as the deceased was a bachelor. We, therefore, set aside the finding of the Tribunal deducting 1/3 towards personal expenses of the deceased instead of 50% which is the correct deduction to be applied. Accordingly, 50% is deducted towards personal expenses of the deceased from and out of his monthly income instead of 1/3rd deducted by the Tribunal which is not in accordance with Sarla Verma Judgment referred to supra.

17. The Tribunal has rightly added 50% towards loss of future prospects, since the deceased was aged about 24 years and holding permanent employment as an Assistant Professor at Shri Venkateshwara Engineering College. The compensation awarded by the Tribunal towards loss of love and affection at Rs.2,50,000/- is excessive and not in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC). We, therefore, re-assess the same at Rs.50,000/- instead of Rs.2,50,000/- awarded by the Tribunal.

18. The compensation awarded by the Tribunal towards transportation charges at Rs.10,000/- is also meager and is enhanced to Rs.15,000/- as per the Constitution Bench judgment of the Hon'ble Supreme Court in the case of National Insurance

Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC) referred to supra. However, the compensation awarded by the Tribunal towards funeral expenses at Rs.25,000/- is excessive and it has to be reduced to Rs.15,000/- as per the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC). Accordingly we reassess the compensation towards Transportation charges and funeral expenses at Rs.15,000/- each.

19. The Tribunal has not awarded compensation towards loss of estate which the claimants are entitled as per the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC). Accordingly, we award a sum of Rs.15,000/- as compensation to the claimants towards loss of estate. The Tribunal has not deducted Income Tax, while assessing the loss of income, which ought to have been deducted by the Tribunal as per the settled principles of law. We, accordingly, deduct Income Tax at the rate of 10% while assessing the loss of income payable to the claimants.

20. For the foregoing reasons, we modify the impugned award in the following manner:

Heads	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.
Loss of Income	46,66,000/-	Rs.33,29,280/-
Loss of love and affection	2,50,000/-	50,000/-
Loss of estate	-	15,000/-
Transportation charges	10,000/-	15,000/-
Funeral expenses	25,000/-	15,000/-
Total	49,51,000/-	34,24,280/-

21. In view of the modification of the impugned award, the first and third respondents being the father and unmarried sister of the deceased are each entitled to Rs.50,000/- and the second respondent being the mother of the deceased is entitled to Rs.33,24,280/-.

Conclusion:

22. In the result, the appeal is partly allowed and the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The Appellant 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, already deposited if any, to the credit of MCOP.No. 160 of 2014 within a period of four weeks from the date of receipt of a copy of this Judgment.

23. On such deposit being made, the Tribunal is directed to transfer the award amount to the first, second and third respondents/claimants as per the order of this Court through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Sub Court, Sankari.

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

C.M.A.No.544 of 2018
and
C.M.P.No.4818 and 10895
of 2018

RJI(CO)
GMY(18/08/2020)