

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.09.2019
CORAM
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.3479 of 2019
&
C.M.P.No.20417 of 2019

United India Insurance Co. Ltd.,
134, Silingi Building,
Greens Road, Chennai - 600 006.

... Appellant

vs.

1.Bhuvana
2.A.Munusamy
3.Banumathy
4.J.Srija (Minor)
Rep by mother 1st respondent
5.ETA Star Ready Mix (P) Ltd.,
Crown Court, 2nd Floor,
Cathedral Road, Chennai.
6.National Insurance Co. Ltd.,
No.46, Moore Street, 3rd Floor,
Chennai - 600 001.
7.N.M.Vimal Kanth

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree of the Court of III SCC Chennai / II Judge [FAC] in MCOP.No.1335 of 2011 dated 07.03.2018.

For Appellant : Ms.R.Vijayakamala

For Respondents 1 & 4 : Mr.Amar D.Pandiya

JUDGMENT

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

This appeal has been filed by the Insurance company challenging the award dated 07.03.2018 passed by the Motor Accident Claims Tribunal, IIIrd Court of Small Causes, Chennai in MCOP.No.1335 of 2011.

Brief facts leading to the filing of the instant appeal:

2. A person by name Jeevarathinam died on 08.08.2010 as a result of an accident caused by a lorry bearing registration No.TN59-M-7419 owned by the seventh respondent and insured with the Appellant. The accident happened when the lorry bearing registration No.TN59-M-7419 which was running with a concrete

mixer machine, kept the concrete mixer unattended in the road without proper lighting when the two wheeler bearing registration No.TN22-AC-3576 which was driven by Jeevarathinam hit against the lorry with unattended concrete mixer machine, due to which the rider sustained fatal injuries and died in the hospital.

3. The dependents of the deceased are his wife, parents and his daughter and they preferred a claim before the Motor Accident Claims Tribunal (IIIrd Court of Small Causes), Chennai against the fifth, sixth and seventh respondents as well as the Appellant seeking a compensation of Rs.40,00,000/- for the death of Jeevarathinam. The fifth respondent is the owner of the concrete mixer and the sixth respondent is the insurer of the concrete mixer.

4. By an award dated 07.03.2018 passed by the Motor Accident Claims Tribunal in MCOP.No.1335 of 2011, the Appellant insurance company was directed to pay the claimants a sum of Rs.27,75,400/- together with interest at the rate of 7.5% per annum from the date of numbering of the claim petition i.e., from 12.04.2011 till the date of realisation and also awarded costs. Out of the compensation amount of Rs.27,75,400/-, the Tribunal has determined that the first claimant who is the wife of the deceased was entitled to a sum of Rs. 7,75,400/-, the fourth claimant who is the minor daughter was entitled to a sum of Rs.16,00,000/- and the second and third claimants being the father and mother of the deceased were each entitled to a sum of Rs.2,00,000/-.

5. Aggrieved by the award dated 07.03.2018 passed by the Motor Accident Claims Tribunal in MCOP.No.1335 of 2011, this Appeal has been filed by the insurer of the lorry.

6. Heard Ms.Vijaya Kamala, learned counsel appearing for the Appellant and Mr.Amar D.Pandiya, learned counsel appearing for the respondents 1 to 4.

Discussion:

7. The Appellant insurance company has challenged this appeal only questioning the quantum of compensation assessed by the Tribunal. According to them, in the absence of proof of permanent avocation as a Marble Layer, the Tribunal ought not to have fixed the notional monthly income of the deceased at Rs.12,000/-. It is also their case that the compensation awarded by the Tribunal at Rs.25,17,400/- 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 9 documents which were marked as Ex.P1 to Ex.P9 and two witnesses were examined on their side viz., PW1-the wife of the deceased and PW2-A.Palani, an eye-witness to the accident. On the side of the Appellant as well as the respondents 5 to 7, neither any document was marked nor any witness examined.

10. Before the Tribunal, a claim was made for a sum of Rs.40,00,000/- and it was pleaded that the deceased was earning a monthly income of Rs.20,000/- as a Marble Layer at the time of the accident. The oral evidence of PW1 is consistent with the pleadings as she has also deposed that the deceased was earning a monthly income of Rs.20,000/- as a Marble Layer at the time of the accident. No contra evidence has been produced by the Appellant insurance company to disprove the avocation as well as the monthly income of the deceased at the time of the accident. The accident happened in the year 2010. Even though, the claimants have pleaded that the deceased was earning a monthly income of Rs.20,000/- as a Marble Layer, the Tribunal has fixed the monthly income of the deceased only at Rs.12,000/-, considering the fact that no documentary evidence was produced by the claimants in support of their contention that the deceased was earning Rs.20,000/- per month. As a Marble Layer and a daily wage earner, the employer will generally not provide pay slips and therefore, no documentary evidence is possible to be given. Since the accident is of the year 2010 and the deceased being a Marble Layer, the assessment of monthly notional income of the deceased at Rs.12,000/- is a reasonable sum. Therefore, we do not find any infirmity in the assessment of the monthly notional income of the deceased by the Tribunal.

11. The deceased was aged 27 years at the time of the accident as evidenced from Ex.P7-Driving License of the deceased. The Tribunal following the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680 has fixed the loss of future prospects at 40%, considering the fact that the deceased who was aged 27 years at the time of the accident, was a self-employed (Marble Layer) person and was not having a permanent employment, at the time of the accident. We are of the considered view that the assessment of compensation towards loss of future prospects assessed by the Tribunal is a correct assessment.

12. The dependents of the deceased are four in number. The Tribunal has rightly deducted 1/4th towards his personal expenses from and out of the annual income of the deceased which is in accordance with the decision of the Hon'ble Supreme Court in the case of Sarla Verma & others vs. Delhi Transport Corporation & Another reported in 2009 (2) TNMAC 1 (SC). We do not find any infirmity in the same.

13. The Tribunal has rightly applied 17 multiplier following Sarla Verma Judgment which in our considered view is a correct assessment.

14. The Tribunal has assessed a sum of Rs.40,000/- towards loss of consortium and another sum of Rs.15,000/- towards funeral expenses which is in accordance with Pranay Sethi Judgment and we do not find any infirmity in the same.

15. The Tribunal has awarded a sum of Rs.1,50,000/- as compensation towards loss of love and affection which in our considered view is a just compensation and do not find any infirmity.

Conclusion:

16. For the foregoing reasons, the appeal is dismissed and the Appellant insurance Company is directed to deposit the entire award amount i.e, Rs.22,75,400/- along with interest at the rate of 7.5% per annum and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.1335 of 2011 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 respective share of the first, second and third respondents through RTGS within a period of four weeks thereafter. Since the fourth respondent is a minor, her 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. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

- 1.The Motor Accident Claims Tribunal,
Court of III SCC Chennai / II Judge [FAC], Chennai.
- 2.The Section Officer,
VR Section, High Court, Chennai.

+1cc to Mr.S.Ravi kumar , Advocate SR.No. 81333

+1cc to M/s.R.Vijaya kamala , Advocate SR.No. 81484

C.M.A.No.3479 of 2019

A.SK(27/02/2020)