

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM

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

C.M.A.No.3138 of 2019

Bharti Axa General Insurance Company Ltd.,
No.162, Metro Plaza, 2nd Floor,
Opp to Spencer Plaza, Annasalai,
Mount Road, Chennai - 600002. Appellant/2nd Respondent

vs.

1.K.Rajeshwari

2.K.Porkodi (Minor)

3.K.Shankar (Minor)

(Minor respondents 2 & 3 are
represented by their mother &
NF Mrs.K.Rajeshwari)

V.Veera Raghavan (Since died)
(As per order in MP.No.2581/
16 dated 30.01.2017)

V.Meenakshi (Since died)
(As per order in MP.No.2581/
16 dated 30.01.2017)

4.Mohanraj

(4th respondent herein remained
exparte, hence notice may be
dispensed with)

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, to set aside the decree and judgment
dated 08.01.2019 made in MCOP.No.4728 of 2013 on the file of the
Motor Accident Claims Tribunal cum Special Sub Judge No.1 to
deal with MCOP Cases, Small Causes Court, Chennai.

For Appellant

: Ms.K.Poomalai

For Respondents 1 to 3

: Mr.JB.Solomon Peter Kamaldoss

JUDGMENT

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

This appeal has been filed by the Insurance Company challenging the award dated 08.01.2019 passed by the Motor Accident Claims Tribunal cum Special Sub Court No.1, Chennai in MCOP.No.4728 of 2013.

Brief facts leading to the filing of the instant appeal:

2. A person by name V.Karunakaran died on 26.07.2013 as a result of an accident caused by a lorry bearing registration No.TN28-C-4789 owned by the fourth respondent and insured with the Appellant. The accident happened while the deceased was standing near the lorry and was hit by the lorry which resulted in his death.

3. The dependents who are the wife and the minor children of the deceased along with the parents of the deceased preferred a claim before the Motor Accident Claims Tribunal cum Special Sub Court No.1, Chennai seeking a compensation of Rs.85,00,000/- against the fourth respondent as well as the Appellant for the death of V.Karunakaran. During the pendency of the motor accident claim in MCOP.No.4728 of 2013, the mother and father of the deceased viz., V.Veera Raghavan & V.Meenakshi died and the respondents 1 to 3 became the only dependents of the deceased V.Karunakaran.

4. By an award dated 08.01.2019 passed by the Motor Accident Claims Tribunal (Special Sub Court No.1) Small Causes Court, Chennai, the Tribunal directed the Appellant to pay a sum of Rs.26,95,000/- together with interest at the rate of 7.5% per annum from the date of claim i.e., on 27.08.2013 till the date of realisation. A further direction was also given by the Tribunal that out of the total compensation, assessed by the Tribunal, the first respondent, being the wife of the deceased was entitled to Rs.6,95,000/- and the second and third respondents, being the children of the deceased each were entitled to Rs.10,00,000/-.

5. Aggrieved by the Award dated 08.01.2019 passed by the Motor Accident Claims Tribunal in MCOP.No.4728 of 2013, the instant appeal has been filed by the Insurance Company.

6. Heard Ms. Poomalai, learned counsel for the Appellant and Mr.JB.Solomon Peter Kamaldoss learned counsel appearing for the respondents 1 to 3.

Discussion:

7. The insurance company has challenged the impugned award on the ground that without any basis, the Tribunal has assessed the monthly income of the deceased at Rs.15,000/-. They have also challenged the award on the ground that the Tribunal has awarded excessive compensation to the claimants under various heads of claim.

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

9. Before the Tribunal, the claimants have filed 15 documents which were marked as Ex.P1 to Ex.P15 and two witnesses were examined on their side viz., PW1-K.Rajeshwari, wife of the deceased and PW2-T.Manikandan, an eye-witness to the accident. However, on the side of the Appellant, neither any witness was examined nor any document filed.

10. The deceased was a transport operator and was carrying on the business in the name of M/s.Shankar Transports. In the claim petition, the claimants have claimed that the deceased was earning a sum of Rs.60,000/- per month at the time of the accident. The deceased was the owner of the lorries and as proof of the same, the claimants have filed the RC books of the lorries which were marked as Ex.P6. Photograph of one of the lorries owned by the deceased was also marked as Ex.P9 before the Tribunal. The bank passbook copy of the deceased was also marked as Ex.P10. The driving license of the deceased was also marked as Ex.P7. Handwritten notebook, visiting card and Chennai Port Trust entry permit maintained by the deceased were also marked as Ex.P8. All these documents will confirm that the deceased was a transport operator. Since Income Tax returns were not filed as documents, the Tribunal has assessed the monthly notional income of the deceased at the time of the accident as Rs.15,000/-, even though in the claim petition, the claimants have claimed that the deceased was earning Rs.60,000/- per month.

11. The accident happened on 26.07.2013 and considering the fact that the claimants have proved through documentary evidence before the Tribunal that the deceased was a transport operator, the assessment of notional monthly income of the deceased by the Tribunal at Rs.15,000/- is a correct one and does not call for any interference by this Court.

12. The age of the deceased at the time of the accident was 37 years which proved through the postmortem certificate of the deceased. Considering the age of the deceased, the Tribunal has rightly applied the multiplier of 15 for calculating the loss of dependency.

13. The claimants being three in number, the Tribunal has also rightly deducted 1/3rd towards the personal expenses of the deceased following the decision of the Hon'ble Supreme Court in the case of Sarla Verma vs. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 SC Supreme Court. Therefore, the total loss of dependency assessed by the Tribunal at Rs.25,20,000/- is a correct one.

14. The Tribunal has rightly awarded 40% towards loss of Future Prospects following the Constitution Bench Judgment of the Hon'ble supreme Court in the case of National Ins. Co. v. Pranay Sethi & Others reported in 2017 (2) TN MAC 609 (SC).

15. The compensation awarded by the Tribunal under the heads loss of consortium, loss of love and affection and loss of estate, transportation charges and funeral expenses have all been assessed by the Tribunal only in accordance with Pranay Sethi Judgment.

16. The Tribunal has awarded the following amounts as compensation to the claimants as detailed below:

Heads	Award amount (Rs.)
Total loss of dependency	25,20,000/-
Loss of consortium	40,000/-
Loss of love and affection	1,00,000/-
Loss of estate	15,000/-
Transport Charges	5,000/-
Funeral Expenses	15,000/-
Total	26,95,000/-

17. We do not find any infirmity in the award dated 08.01.2019 passed by the Motor Accident Claims Tribunal in MCOP.No.4728 of 2013.

Conclusion:

18. In the result, this appeal is dismissed. However, the rate of interest awarded by the Tribunal at the rate of 7.5% per annum and the ratio of apportionment made by the Tribunal is confirmed. The Appellant is directed to deposit the entire award amount together with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.4728 of 2013 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 first respondent through RTGS within a period of four weeks thereafter. Since the second and third respondents are minors, their share of award amount shall be deposited in any one of the Nationalised Banks, till they attain majority. The first respondent who is the guardian of the minors/second and third respondent is permitted withdraw the interest accrued once in six months. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
cum Special Sub Judge No.1, Chennai.
2. The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.K.Poomalai, Advocate sr.78837

+2cc to Mr.JB.Solomon Peter Kamaldoss, Advocate sr.78702

C.M.A.No.3138 of 2019

VGII (CO)
CS/10/01/2020

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