

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.09.2019
CORAM
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.3159 of 2019

M/s.Royal Sundaram General Insurance Company Limited,
Peelamedu, Coimbatore ... Appellant/2nd Respondent

vs.

1.V.Soundararajan
2.Harivignesh (Minor)
3.Nisanth (Minor)
(Respondents 2 & 3 Minors
represented by father & NF
1st respondent)
4.Lakshmi
5.V.Jayaraman
6.Dr.C.Nagarathinam ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.64 of 2016 dated 29.06.2018 on the file of the Motor Accident Claims Tribunal, IV Additional District & Sessions Court, Coimbatore.

For Appellant : Mr.Mohan Babu
for M/s.M.B.Gopalan Associates
for Respondent(1to5):M/s.C.Veeraraghavan for Caveator
for R1 to R5

JUDGMENT

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

The instant appeal has been filed by the Insurance Company challenging the Judgment and decree dated 29.06.2018 passed by the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Coimbatore in MCOP.No.64 of 2016.

Brief facts leading to the filing of the instant appeal:

2. A person named Usha died on 18.10.2015 as a result of an accident caused by a Ford Fiesta Car bearing registration No.TN72-AB-3141 owned by the sixth respondent and insured with the Appellant. She was a pillion rider in the XL Super Heavy Duty Vehicle bearing registration No.TN38 CB 0348 driven by one

Devaraj @ Devendran. The two wheeler was proceeding from Kovai-Mettupalayam road, near Lalitha Hotel, Cheran Nagar, Coimbatore when the accident happened which resulted in the death of Usha.

3. The respondents 1 to 5 who are the dependents of the deceased preferred a claim before the Motor Accident Claims Tribunal against the appellant and the sixth respondent seeking a compensation of Rs.25,36,000/- which was restricted to Rs.25,00,000/-.

4. By an award dated 29.06.2018, the Motor Accident Claims Tribunal, IVth Additional District and Sessions Court, Coimbatore partly allowed the claim petition and directed the Appellant to pay a sum of Rs.24,90,000/- together with interest at the rate of 7.5 % per annum from the date of claim till the date of realisation.

5. Aggrieved by the quantum of compensation awarded by the Tribunal in MCOP.No.64 of 2016, the instant appeal has been filed by the Appellant-Insurance Company. Insofar as the finding given by the Tribunal that the accident had happened only due to the rash and negligent driving by the driver of the insured car, the insurance company has not challenged the same in this appeal and hence, the said finding has now attained finality.

6. Heard Mr.R.Mohan Babu, learned counsel appearing for the Appellant and Mr.Veeraraghavan, learned counsel appearing for the caveator.

7. The impugned award is challenged by the Appellant on the ground that the Tribunal has erred in awarding excessive compensation which is not in consonance with the facts and circumstances of the case. According to the Appellant, the Tribunal has erred in fixing notional income of the deceased at Rs.12,000/- without any documentary evidence. According to the Appellant, the Tribunal has further erred in adding future prospects when the assessment of the monthly income itself is without basis.

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

9. Before the Tribunal, 19 documents were filed on the side of the respondents 1 to 5 which were marked as Ex.P1 to Ex.P19 and three witnesses were examined viz., PW1-Soundararajan, the husband of the deceased, PW2- Durai, an eye-witness and PW3-Sambooranam, an employer. Six documents were also marked through PW3 representing the employer of the deceased and the said documents were marked as Ex.X1 to Ex.X6.

On the side of the Appellant, the owner cum driver of the insured vehicle was examined as RW1.

10. As seen from the materials available on record, the Tribunal has rightly observed that the accident happened only due to the rash and negligent driving by the driver of the car which is insured with the appellant.

11. The respondents 1 to 5 have claimed in the claim petition that the deceased was working in the packing section at Victory Vodafone Agency and also working in a flour mill on part time basis and earning a sum of Rs.16,000/- per month at the time of the accident. Though there is no documentary evidence to prove that the deceased was earning a sum of Rs.16,000/- per month, the Tribunal has fixed the notional monthly income of the deceased at Rs.12,000/- without any documentary evidence which in our considered view is on the higher side. Considering the year of the accident i.e., 2015 and considering the fact that no contra evidence has been produced by the appellant to disprove the avocation of the deceased at the time of the accident, we are of the considered view that the notional monthly income of the deceased has to be fixed at Rs.10,000/- instead of Rs.12,000/- fixed by the Tribunal.

12. It is seen from the materials available on record that the Tribunal has rightly awarded a sum of Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards Funeral Expenses as per the decision of 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.

13. The Tribunal has not awarded any amount towards loss of love and affection which the claimants are entitled to. We are of the considered view that a sum of Rs.40,000/- each to the respondents 2 to 5 who are the minor children and parents of the deceased has to be awarded as compensation to them towards loss of love and affection.

14. The Tribunal has not awarded any amount towards loss of transportation which the claimants are entitled to as per the settled principles of law. We are of the considered view that a sum of Rs.5,000/- is a reasonable sum towards transportation charges.

15. For the foregoing reasons, the amount awarded by the Tribunal is modified in the following manner:

Heads	Amount awarded by the tribunal	Amount awarded by this Court
Pecuniary loss	Rs.24,19,200/- (12,000+4,800=16,800 x 12 x 16 x $\frac{1}{4}$)	Rs.20,16,000/- (10,000+4,000=14,000 x 12 x 16 x $\frac{1}{4}$)
Loss of love and affection	Nil	Rs.1,60,000/-
Loss of consortium	Rs.40,000/-	Rs.40,000/-
Loss of estate	Rs.15,000/-	Rs.15,000/-
Transportation Charges	Nil	Rs.5,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Total	Rs.24,89,000/-	Rs.22,51,000/-
Rounded Off	(+) 1,000/-	-
Total Award	Rs.24,90,000/-	Rs.22,51,000/-

Conclusion:

16. In the result, the appeal is partly allowed by modifying the award amount passed in MCOP.No.64 of 2016 by the Motor Accident Claims Tribunal, learned IV Additional District & Sessions Court, Coimbatore from Rs.24,90,000/- to Rs.22,51,000/-. Out of the award amount, the first respondent is entitled to Rs.2,50,000/-, the second and third respondents being the minors are entitled to Rs.9,00,000/- each and the fourth and fifth respondents, being the parents of the deceased are entitled to Rs.1,00,500/- each. However, the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The Appellant-Insurance Company 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, if any already deposited, to the credit of MCOP.No.64 of 2016 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, fourth and fifth respondents as per the order of this Court 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 the guardian of the minors/second and third respondent is permitted withdraw the interest accrued once in six months. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
IV Additional District & Sessions Court, Coimbatore

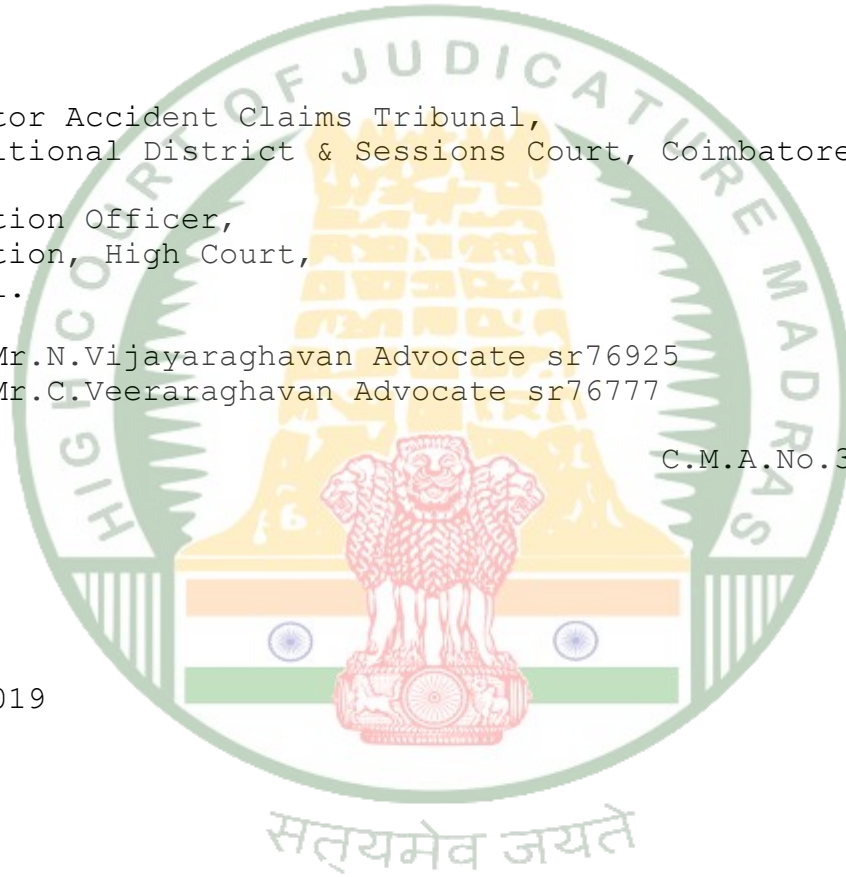
2.The Section Officer,
VR Section, High Court,
Chennai.

+1 cc to Mr.N.Vijayaraghavan Advocate sr76925

+1 cc to Mr.C.Veeraraghavan Advocate sr76777

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