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.1087 of 2017
and
C.M.P. No.5377 of 2017

United India Insurance Company Ltd.
Thalassery .... Appellant /2nd Respondent

versus

1. Nabeesa,
2. Sareena. V
3. Lukhuman Abdulla (Minor)
4. Fazila Fasilu (Minor)
5. Fasina Fasilu (Minor)
6. Ziya Fathima (Minor)
(Minor respondents No.3 to 6 are represented by their mother / next friend respondent No.2)
7. Muhammed Rayees. P. ... Respondents/Petitioners and 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 9.9.2015 made in M.A.C.T.O.P. No.22 of 2014 on the file of The Motor Accidents Claims Tribunal (Sub Judge), Mahe.

For Appellant : Mr.D. Bhaskaran

For Respondents : Mr.R. Krishna Prasad for M/s.Saravabhavman Associates

JUDGMENT

(The Judgment of the Court was delivered by Abdul Quddhose, J.)

This appeal has been filed by the Appellant / Insurance Company challenging the award dated 09.09.2015 passed by the Motor Accidents Claims Tribunal (Sub Court), Mahe in

M.A.C.T.O.P. No.22 of 2014.

Brief facts leading to the filing of the instant appeal :

2. A person by name Fasalu Rahman, aged 35 years died on 09.01.2014 as a result of an accident caused by a Motor Cycle bearing Registration No.KL-58-K-4534 owned by the 7th respondent and insured with the Appellant. The accident happened when the deceased was riding his Motor cycle bearing Registration No.KL-18-K-8058 and was proceeding to Mahe from Dharmadam near Koduvally Higher Secondary School at Thalassery, when the Motor Cycle bearing Registration No. No.KL-58-K-4534 dashed his Motor Cycle and as a result of the same, he sustained fatal injuries, which resulted in his death.

3. The dependants of the deceased are his mother, his wife and four children. They preferred a claim before the Motor Accidents Claims Tribunal, Mahe against the 7th respondent as well as the Appellant / Insurance Company seeking a compensation of Rs.1,00,00,000/- for the death of Fasalu Rahman.

4. The Motor Accidents Claims Tribunal by its award dated 09.09.2015 in M.A.C.T.O.P. No.22 of 2014, directed the Appellant / Insurance Company to pay the claimants a sum of Rs.52,19,960/- together with interest at 7.5% from the date of claim petition i.e. from 21.11.2014 till the date of deposit. Out of the total compensation amount of Rs.52,19,960/- payable by the Appellant, the Tribunal determined that a sum of Rs.2,19,960/- is payable to the first claimant and Rs.10,00,000/- each payable to the remaining claimants.

5. Aggrieved by the award dated 09.09.2015, passed in M.A.C.T.O.P. No.22 of 2014 by the Motor Accidents Claims Tribunal, Mahe, this appeal has been filed by the Insurance Company.

6. Heard Mr.D. Bhaskaran, learned counsel for the Appellant and Mr.R. Krishna Prasad, learned counsel for the respondents 1 to 6.

7. We have perused and examined the impugned award as well as the evidence and materials available on record. Before the Tribunal, on the side of the claimants, two witnesses were examined viz., PW1 and PW2 and 9 documents were marked as Exhibits, viz., Ex.P1 to P9. Mrs.Sareena, the wife of the deceased was examined as PW1 and the PW2 is the authorised representative of the prospective employer of the deceased, who offered him employment at Dubai in MBJ Properties, Dubai. On the side of the Appellant / Insurance Company, neither any witness was examined nor any document filed in support of their defence.

Discussion :

8. According to the Appellant / Insurance Company, the Tribunal ought to have apportioned the liability equally between the motor cycle which was driven by the deceased and the motor cycle bearing No.KL-58-K-4534 insured with the Appellant. It is also their case that the compensation awarded by the Tribunal is excessive. According to them, the deceased was unemployed when the accident happened and hence, the Tribunal ought not to have fixed the monthly income of the deceased at Rs.60,000/- for 5 years. It is also their case, the Tribunal has erroneously fixed the monthly income of the deceased at Rs.18,000/-p.m., towards notional wages for future loss. They have also challenged the award on the ground that a sum of Rs.17,82,000/- fixed by the Tribunal towards loss of pecuniary benefits is baseless.

9. FIR (Ex.P1) has been registered only against the Driver of the Two wheeler bearing Registration No.KL-58-K-4534 insured with the Appellant. The oral evidence of PW1 corroborates the contents of the FIR. No contra evidence has been produced by the Appellant / Insurance Company to disprove the contention of the claimants that only due to the rash and negligent driving by the Driver of the Two wheeler bearing Registration No.KL-18-K-8058, the accident had happened. The Driver of the insured vehicle was also not examined as a witness. After considering all these factors, the Tribunal has rightly come to the conclusion that only due to the rash and negligent driving by the rider of the Two Wheeler bearing Registration No.KL-58-K-4534, the accident had happened.

10. The deceased was aged 35 years at the time of the accident. His age is proved through his passport (Ex.P3). The deceased was an Electrician previously employed at Dubai, earning a monthly income of Rs.50,000/- between 2008-2012. The Service Certificate issued by his previous employer at Dubai is marked as Ex.P4, previous employment contract and cancellation document is marked as Ex.P5. The employment contract and cancellation document (Ex.P5) establishes that the deceased was working in Dubai between 2008-2012. Ex.P9 is the offer letter from MBH Properties in Dubai offering employment to the deceased as an Electrician on a monthly salary equivalent to Rs.67,750/-. As per the offer letter (Ex.P9), the deceased was about to join a new Company in January 2014. The accident happened on 09.01.2014, just before he was supposed to have joined his new Company at Dubai.

11. It is the case of the Appellant / Insurance Company that the deceased was unemployed at the time of the accident and hence, they are not liable to pay the salary which he is likely

to get, if he was working in Dubai. It is also their case that the previous employment of the deceased at Dubai between 2008-2012 was a contractual employment and not a permanent employment. The avocation of the deceased has not been disputed by the Appellant / Insurance Company and they have also not disputed the previous employment of the deceased at Dubai as an Electrician between 2008-2012. The claimants have proved through Exs.P4, P5 and P9 that the deceased was earning a sum of Rs.50,000/-p.m., during his previous employment at Dubai between 2008-12 and the deceased has got an offer letter to join MBH Properties as an Electrician at Dubai in January 2014. The authorised representative of MBH properties (PW2) has also deposed that the deceased was offered employment at Dubai on a monthly salary of Rs.67,750/-

12. The learned counsel for the Appellant / Insurance Company contended that since the deceased was not holding a work Visa for his new employment, the Tribunal ought not to have considered the monthly pay fixed under the offer letter from MBH properties at Dubai (Ex.P9) while assessing the monthly income of the deceased. Ex.P9 is dated 15.12.2013. The accident happened on 09.01.2014. Without the Offer letter(Ex.P9), the deceased could not have applied for the Visa for his employment at Dubai. Since the gap between the date of the Offer letter (Ex.P9) with the new employer and the date of accident is only 25 days, it cannot be held that the deceased could not have got a Visa. It can be presumed that the deceased may have made arrangements to apply for the Visa any time during the month of January 2014 to enable him to proceed to Dubai for joining his new employment. Therefore the contention of the Appellant / Insurance Company that the deceased did not hold a Visa cannot be accepted.

13. The Tribunal has assessed the monthly notional income of the deceased at Rs.60,000/- for a period of five years based on Ex.P4, Ex.P5 and Ex.P9. Since, the contract of the employment would have expired after five years, the Tribunal assessed the monthly income of the deceased at Rs.18,000/-p.m., based on a daily wage of Rs.600/-, which he may have got, after he returned to India. Therefore, the Tribunal has given a finding that the multiplier has to be split up into 5 x 11, so as to assess the loss of dependency for the period, when the deceased would be employed in Dubai and for the period after his return to India.

14. It is an admitted fact that from 2012 to the date of accident i.e. on 09.01.2014, the deceased was unemployed. However, as seen from Ex.P4 and P5, the deceased was earning a monthly income of Rs.50,000/- at Dubai upto the year 2012. No contra evidence was also been produced by the Appellant / Insurance Company to disprove the monthly income of the deceased

that he was earning between 2008-2012. It is also an admitted fact that between the year 2012 and the date of accident, the deceased was unemployed. Therefore, the salary that the deceased was earning upto 2012 cannot be taken as the notional monthly income of the deceased.

15. The Tribunal has also assessed the monthly income of the deceased for the first five years at Rs.60,000/- based on his earlier salary, but since the accident happened in January 2014 and he was last employed in Dubai only in 2012, the Tribunal ought not to have fixed Rs.60,000/- as the monthly salary of the deceased. The educational qualification of the deceased is only 9th standard. This being the case, fixing of the notional monthly income of the deceased at Rs.60,000/- is excessive. After considering the fact that he was unemployed on the date of the accident and he was supposed to join the duty at Dubai in his new employment only in January 2014 and he having not obtained a Work Visa for his new employment, the Tribunal has split up the notional monthly income of the deceased and assessed the same for the first five years at Rs.60,000/- and thereafter at Rs.18,000/- calculated at the rate of Rs.600/- per day.

16. Since the deceased has left six dependants, the Tribunal has deducted 1/4th income towards his personal and living expenses and the Tribunal therefore, assessed the monthly contribution by the deceased to his family during his employment at Dubai at Rs.60,000-15,000 (1/4) = Rs.45,000/-. Accordingly, the Tribunal assessed the loss of dependency to the claimants for the first five years between 2008 and 2012 at Rs.27,00,000/- (Rs.45,000 x 12 x 5) and for the period thereafter, when the deceased would have returned to India, the loss of dependency was assessed at Rs.17,82,000/- (Rs.18,000 - 4,500 = Rs.13,500/- x 12 x 11 = Rs.17,82,000/-).

17. Admittedly, the deceased was unemployed at the time of the accident, which happened on 09.01.2014. His last employment was in Dubai, where he was working between the years 2008-2012. While he was working there, the deceased was earning a monthly income of Rs.50000/- but the Tribunal has taken into consideration, the offer letter issued by the MBH Propertes, Dubai, which was marked as Ex.P9 and has assessed the monthly income of the deceased on notional basis at Rs.60,000/-. As the deceased was unemployed for more than a yea, the Tribunal ought not to have fixed the monthly income of the deceased at Rs.60,000/-, which is higher to the monthly income of the deceased last earned in the year 2012.

18. We are of the considered view that the assessment of the monthly notional income of the deceased at Rs.60,000/- is

excessive as it is not based on any documentary evidence. The deceased was only an Electrician and after considering his past employment in Dubai and after considering the fact that an Electrician in India normally would get between Rs.15,000/- and Rs.25,000/- p.m. in the year 2014 when the accident happened. The deceased was 35 years at the time of the accident and considering his years of experience as an Electrician, we are of the considered view that the notional monthly income of the deceased has to be fixed at Rs.20,000/- instead of Rs.60,000/- fixed by the Tribunal.

19. The Tribunal has applied split multiplier i.e. applied 5 multiplier for one period and 11 multiplier for another period, which in our considered view is not correct considering the facts and circumstances of the instant case. We therefore apply the standard multiplier of 16, as per the decision reported in (2009) (2) TN MAC Page No.1 (Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr. case), as the deceased was 35 years at the time of the accident.

20. The Tribunal has not added 40% to the monthly income of the deceased towards loss of future prospects, in accordance with the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680, which is an erroneous one. Since, the future prospective increase in come has not been added, we are adding 40% to the notional monthly of the deceased, while re-assessing the loss of dependency to the claimants. The Tribunal has rightly deducted 1/4th towards the personal expenses of the deceased, if he was alive. Since the deceased was aged 35 years at the time of the accident, the multiplier applicable is 16. Hence, we are re-assessing the loss of dependency of the claimants in the following manner :

Rs.20,000/- + Rs.8,000(40%) - Rs.7,000 (1/4)
= 21,000 x 12 x 16 = Rs.40,32,000/-

21. The Tribunal has erroneously awarded a sum of Rs.50,000/- towards loss of estate to the claimants, which is on the higher side, as per the settled principles of law and accordingly, we reduce the same to Rs.15,000/-.

22. The Tribunal has awarded Rs.1,00,000/- towards loss of consortium, which 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 Shethi and Others reported in 2017 (16) SCC 680. As per the said judgment, the 2nd claimant / wife of the deceased is entitled to only Rs.40,000/-

23. The 1st and 3rd to 6th claimants are each entitled to only a sum of Rs.40,000/- towards loss of love and affection, whereas, the Tribunal has erroneously awarded Rs.1,00,000/- each, including the 1st claimant / mother of the deceased, which is excessive. Hence, the amount awarded under the head loss of love and affection is reduced from Rs.5,00,000/- to Rs.2,00,000/- (Rs.40,000/- each). The compensation of Rs.25,000/- awarded by the Tribunal under the head funeral expenses is also excessive is not as per the settled principles of law. Accordingly, the same is reduced to Rs.15,000/-. The amount awarded under other heads viz., Medical expenses and Transport Charges remain unaltered as they are correctly assessed.

24. For the foregoing reasons, the award passed by the Tribunal is reduced to Rs.43,64,960/- from Rs.52,19,960/- and the same is detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of dependency * [Rs.60,000/- Less 15000 (1/4) = 45000 x 12 x 5 = Rs.27,00,000/- ..... (a) Rs.18,000/- Less 4500(1/4) = 13500 x 12 x 11 = Rs.17,82,000/- ... (b) (a + b) = Rs.44,82,000/-] # [20,000 Add 8,000 (40%) Less 7,000 (1/4) = 21,000 x 12 x 16 = Rs.40,32,000/-]	44,82,000 *	40,32,000 #
Loss of estate	50,000	15,000
Loss of consortium	1,00,000	40,000

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of love and affection @ Rs.1,00,000/- to P1,p3 to 6 & Rs.40,000/- to p1, p3 to 6	5,00,000 @	2,00,000 &
Medical Expenses	41,360	41,360
Transportation charges	21,600	21,600
Funeral expenses	25,000	15,000
Total	52,19,960/-	Rs.43,64,960/-

25. In the result, the Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

26. Accordingly, the Appellant / Insurance Company is directed to deposit the entire award amount along with accrued interest and costs as ordered by this Court, less the amount, if any, already deposited, to the credit of M.A.C.T.O.P. No.22 of 2014 on the file of the Motor Accidents Claim Tribunal (Sub Judge, Mahe), 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 award amount, directly to the bank account of the major claimants / 1st and 2nd respondents, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks, thereafter. Insofar as the share of the 3rd to 6th respondents / minor claimants are concerned, the same shall be deposited in fixed deposit in any one of the Nationalised Banks, till they attain majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants, once in three moths, directly from the Bank.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To :

1) The Subordinate Judge,
(Motor Accidents Claims Tribunal),
Mahe.

2) The Section Officer,
V.R. section,
High Court, Madras - 104.

+1cc to Mr.D.Bhaskaran, Advocate Sr.81407
+1cc to M/s.Sarvabhauman Associates Sr.82160

C.M.A. No. 1087 of 2017

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