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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3262 of 2017
and
C.M.P.No.20346 of 2017

United India Insurance Co. Ltd.,
6/659, Trichy Road,
Ramanathapuram,
Coimbatore

...Appellant/3rd Respondent

..Vs..

1.Balasubramaniam (died)
2.S.Madhankumar
3.P.Sivakumar
4.B.Archana
5.Minor B.A.Akhilesh
represented by mother/guardian/Archana
6.Palanathal

..2 &3 Respondent/1 & 2 Respondent

..4 to 6 Respondents/
/LRs of Deceased/Claimant

(Respondents 4 to 6 brought on record
as LRS of the deceased 1st respondent
viz., A.Balasubramaniam vide Court
order dated 11.09.2018 made in
CMP.Nos.15597 and 15598 of 2018)

Prayer: Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act, 1988, against the award and decree
dated 04.10.2016 made in MCOP. No.815 of 2014 on the file of the
Motor Accident Claims Tribunal, Chief Judicial Magistrate Court,
Tiruppur.

For Appellant : Mr.S.Arun Kumar

For Respondents
4 to 6 : Mr.T.Murugamanickam,
Senior Counsel
for Mr.T.L.Thirumalasamy



For Respondents

2 & 3

: Mr.A.Ponnuvelan

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J U D G M E N T

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

The instant appeal has been filed by the Insurance Company challenging the Award dated 04.10.2016 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur in M.C.O.P No.815 of 2014. In the instant appeal, the Appellant Insurance Company has challenged the findings on negligence and also the quantum of compensation awarded to the first respondent by the Tribunal.

2.Brief facts leading to the filing of the instant appeal are as follows:

2.1. One Balasubramaniam, sustained injuries as a result of an accident that took place on 12.01.2014 caused by a motor cycle bearing registration No.TN-43-A-3073 owned by the third respondent and insured with the Appellant Insurance Company. It is the case of the claimant that only due to the rash and negligent driving by the second respondent who was the rider of the vehicle, the accident had happened which resulted in Balasubramaniam sustaining injuries. Mr.Balasubramaniam preferred a compensation claim before the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur in M.C.O.P No.815 of 2014 against the Appellant as well as the second and third respondents. The Motor Accident Claims Tribunal by its Award dated 04.10.2016 in MCOP.No.815 of 2014 directed the Appellant to pay Balasubramaniam a sum of Rs.2,75,80,000/- together with interest at the rate of 7.5 % per annum from the date of claim till the date of realisation.

2.2. Aggrieved by the Award dated 04.10.2016 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur in M.C.O.P No.815 of 2014, the instant appeal has been preferred by the Insurance Company.

3. Heard Mr.S.Arun Kumar, learned counsel for the Appellant, Mr.A.Ponnuvelan, learned counsel for the second and third respondents and Mr.T.Murugamanickam, learned Senior Counsel for respondents 4 to 6. During pendency of the appeal, Balasubramaniam, the claimant died and the respondents 4 to 6 were brought on record as his legal representatives vide order of this Court dated 11.09.2018 made in CMP.Nos.15597 & 15598 of 2018.



Submissions of the learned Counsels:

4. Learned counsel for the Appellant contended that the Tribunal failed to note that the profit from the business from 31.03.2007 to 31.03.2012 declared to the Income Tax by the injured / claimant is not sizable. According to him, the major portion of the gross income constitutes salary paid to the injured in the Partnership business and interest received from investment. He also contended that the fourth respondent/wife of the injured who was examined as PW1 has accepted that the business is still continuing, but has not produced any records pertaining to loss or closure. According to the learned counsel for the Appellant, the Tribunal erred in granting 50% towards loss of future prospects. By relying upon the Division Bench judgment of this Court rendered in CMA.No.807 of 2014 in the case of OIC v. Victoria Shobana and others on 12.09.2018, the learned counsel for the Appellant submitted that the interest received on deposits is not part of the business income.

5. Per contra learned Senior Counsel for the respondents 4 to 6 contended that the first respondent/injured has sustained 100% disability as a result of the accident and he subsequently died, during the pendency of the Appeal. According to the learned Senior Counsel for the respondents 4 to 6, the compensation awarded by the Tribunal is a just compensation. Further he would contend that only due to the rash and negligent driving of the motorcycle by the second respondent, the accident had happened. He drew the attention of this Court to the findings of the Tribunal, wherein, according to him, the Tribunal after considering the FIR, Charge sheet, motor vehicle's investigation report and the place and time of accident, has given a categorical finding that only due to the rash and negligent driving by the second respondent, the accident had happened, which resulted in injuries sustained by Balasubramaniam.

Discussion:

6. This Court, after having considered the materials available on record and after examining the impugned Award and after hearing the rival submissions of the respective counsels, observes the following:

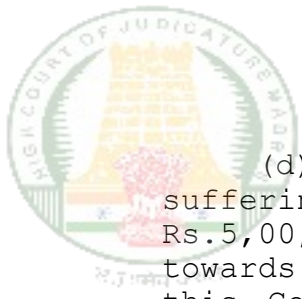
(a) The Tribunal, under the impugned award has considered the FIR, Charge Sheet, MVI report, the place and time of accident and only thereafter has come to the categorical conclusion that only due to the rash and negligent driving of the motorcycle by the second respondent, the accident had happened, which resulted in injuries sustained by Balasubramaniam, the claimant. The Tribunal has observed that the accident having happened during broad day-light, near Fun



City Mall, in Coimbatore, would not have happened if not for the rash and negligent driving by the second respondent. No contra evidence has been produced by the appellant to disprove the contents of the FIR and the Charge Sheet as well as the place and time of the accident. Therefore, this Court does not find any infirmity in the findings of the Tribunal that only due to the rash and negligent driving by the second respondent, the accident had happened.

(b) Due to the injuries sustained by him as a result of the accident caused by the vehicle insured with the appellant, the claimant suffered 100% disability as on the date of filing of the claim petition before the Tribunal. The injured Balasubramaniam, was taken to the hospital on 30 occasions. He was under Coma, for a long time. From the evidence available on record, it is clear that the injured Balasubramaniam, always needed attendants to take care of his basic needs. Balasubramaniam sustained grievous injuries with fracture on his head, left clavicle, left radius proximal 1/3, multiple left side rib fracture, pelvic fracture, left acetabulum fracture, left inferior pubic rami fracture and left knee fracture. Before the Tribunal, wound certificate (Ex.P.7), treatment register (Ex.P.8), discharge summary (Ex.P.9, Ex.P.10 and Ex.P.11), X-Ray report (Ex.P.14) and disability certificate (Ex.P.21), were produced to prove the injuries sustained by Balasubramaniam.

(c) Eventhough the claimant has sustained grievous injuries resulting in 100% disability, this Court is of the considered view that the Tribunal has without basis fixed the monthly income of the injured at Rs.60,000/- based on Ex.P.27 series and oral testimony of PW-4 and added 50% towards loss of future prospects and applied 16 multiplier to award an excessive sum of Rs.1,72,80,000/- as loss of income due to permanent disability. Considering the fact that the gross income revealed under Ex.P.27 & Ex.P.38 has receipt components of salary, interest received, sporadic profit from the business income, this Court is of the considered view that a sum of Rs.40,000/- is reasonable instead of Rs.60,000/- assessed by the Tribunal as the monthly income. This Court is of the considered view that as per the judgment of 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, future prospects will have to be fixed only at 40%, since the injured was self-employed and aged below 40 years at the time of accident. The Tribunal has rightly applied the 16 multiplier following the judgment of the Hon'ble Supreme Court in the case of Sarala Verma and others Vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121.



(d) The Tribunal has awarded Rs.20,00,000/- towards pain and suffering, Rs.10,00,000/- towards Future medical expenses, Rs.5,00,000/- towards attender charges and Rs.10,00,000/- towards Mental agony & consortium. But in the considered view of this Court, the sums awarded by the Tribunal under the above mentioned heads of compensation is excessive and will have to be reduced for the purpose of arriving at a just compensation.

(e) The Tribunal has awarded a sum of Rs.56,00,000/- towards medical expenses, Rs.1,00,000/- towards loss of amenities and Rs.1,00,000/- towards transportation, which in the considered view of this Court is a just compensation and there is no necessity for this Court to interfere.

7. In the light of the above observations, the amount awarded by the Tribunal under the impugned Award dated 04.10.2016 has to be modified in the following manner:

Heads	Amount awarded by the Tribunal	Modified Award Amount
Loss of Income	Rs.1,72,80,000/- (60000x12x16+50%)	Rs.1,07,52,000/- (40000x12x16x+40%)
Medical Expenses	Rs.56,00,000/-	Rs.56,00,000/-
Pain and suffering	Rs.20,00,000/-	Rs.6,00,000/-
Loss of Amenities	Rs.1,00,000/-	Rs.1,00,000/-
Transportation	Rs.1,00,000/-	Rs.1,00,000/-
Future medical expenses	Rs.10,00,000/-	Rs.3,00,000/-
Attender Charges	Rs.5,00,000/-	Rs.1,00,000/-
Mental Agony & Consortium	Rs.10,00,000/-	Rs.2,00,000/-
Total	Rs.2,75,80,000/-	Rs.1,77,52,000/-

Conclusion:

8. In the light of the above observations, the award dated 04.10.2016 passed in MCOP No.815 of 2014, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur is modified by reducing the compensation awarded by the Tribunal from Rs.2,75,80,000/- to Rs.1,77,52,000/-. Out of the modified award amount, the fourth respondent being the wife of the deceased is entitled for a sum of Rs.1,00,00,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, the fifth respondent being the son of the deceased is entitled for a sum of Rs.50,00,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and the sixth respondent



being the mother of the deceased is entitled to a sum of Rs.27,52,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

9. It is represented that the entire amount awarded by the Tribunal under the impugned award has already been deposited by the Appellant and a sum of Rs.75,00,000/- and Rs.25,00,000/- out of the deposited amount has already been transferred to the personal accounts of the fourth and sixth respondent respectively as per the order of this Court dated 28.11.2018.

10. Since a part of share of award amount of the fourth and sixth respondents has already been transferred to their personal accounts, the remaining part of their award amount together with accrued interest, shall be transferred to their personal accounts through RTGS within a period of two weeks from the date of receipt of a copy of this Order.

11. Since the fifth respondent is a minor, his share of award amount i.e., Rs.50,00,000/- shall be deposited in any one of the nationalised banks, till he attains majority and his guardian/mother/fourth respondent is permitted to withdraw the interest accrued once in six months.

12. Since the entire amount awarded by the Tribunal under the impugned award has already been deposited by the Appellant, after defraying the payments as directed by this judgment, the appellants are permitted to withdraw the excess amount available to the credit of MCOP.No.815 of 2014 by filing an appropriate application before the Tribunal.

13. In the result, the appeal is partly allowed and the connected miscellaneous petition is closed. However, there shall be no order as to costs.

nl/MR

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Tiruppur



+1cc to Mr.T.L.Thirumalaisamy, Advocate, SR.No.9826/19

+1cc to Mr.S.Arun Kumar, Advocate, SR.No.9396/19

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C.M.A.No.3262 of 2017

Kak (23/05/2019)