

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM

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

C.M.A. No.2709 of 2018
and
CMP No.20492 of 2018

M/s.United India Insurance Co. Ltd.
Branch Office - III,
19/1, Kalpana Complex,
Birds Road,
Cantonment,
Trichy - 620 001. Appellant/3rd Respondent

versus

1. R. Chitra
2. Minor Barathvel
3. Minor Gowtham ... Respondents/Petitioners
(Minors rep. By their mother and
next friend R. Chitra)
4. C. Christina
5. Charles Respondents/Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 28.02.2018 made in M.C.O.P. No.3987 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Chennai.

For Appellant : Mr.S. Arun Kumar

For Respondents : Mr.K. Thilageswaran
for RR1 to 3
RR4 & 5 - served
- No appearance

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 28.02.2018 passed by the

Motor Accidents Claims Tribunal (Special Sub Court No.1, Chennai), in M.C.O.P. No.3987 of 2015.

Brief facts leading to the filing of the instant appeal :

2. A person by name R. Ramakrishnan died on 06.12.2014 as a result of an accident caused by a Two Wheeler Scooty Pep bearing Registration No.TN-05-AU-1156, owned by the 6th respondent and insured with the Appellant / Insurance Company. The accident happened when the deceased during his morning walk in I.C.F., Constable Road, near Chargent Road Junction, a Two Wheeler Scooty Pep bearing Registration TN-05-AU-1156 dashed against the deceased as a result of the same, the deceased sustained fatal head injuries and died on the same day.

3. The dependants of the deceased are his wife and two minor children. They preferred a claim before the Motor Accidents Claims Tribunal (Special Sub Court No.1, Chennai), in M.C.O.P. No.3987 of 2015, seeking a compensation of Rs.2,20,52,000/-, which was restricted to Rs.2,00,00,000/- against the 5th respondent as well as the Appellant / Insurance Company for the death of the deceased R.Ramakrishnan.

4. By an award dated 28.02.2018 passed by the Motor Accidents Claims Tribunal (Special Sub Court No.1, Chennai) in M.C.O.P. No.3987 of 2015, the Appellant / Insurance Company was directed to pay the claimants, a sum of Rs.1,14,28,100/- together with interest at 7.5% per annum from the date of claim petition i.e., 29.04.2015 till the date of realization. Out of the total compensation, the Tribunal determined that the first claimant being the Wife of the deceased is entitled to Rs.54,28,100 and the second and third claimants being the Minor Sons of the deceased are entitled to get Rs.30,00,000/- each.

5. Aggrieved by the award dated 28.02.2018 passed by the Motor Accidents Claims Tribunal (Special Sub Court No.1, Chennai) in M.C.O.P. No.3987 of 2015, the instant appeal has been filed by the Insurance Company.

6. Heard Mr.S. Arun Kumar, learned counsel for the Appellant and Mr.K.Thilageswaran, learned counsel for the Respondents 1 to 3. Despite service of notice on the 4th and 5th respondents and their names having been printed in the cause list today, there is no appearance on their side.

7. The Appellant / Insurance Company has challenged the award on the ground that the Tribunal has erroneously awarded a sum of Rs.1,12,53,088/- towards Loss of dependency without taking into consideration that the source of income still

continues in the hands of the respondents 1 to 3 herein. According to them, PW1 has categorically admitted in her oral evidence, that the business is carried on by her even after the death of her husband and therefore the question of loss does not arise. It is also their case that the Tribunal has erred in not taking average income shown in the three years Income Tax Returns and also failed to deduct the income - tax payable before ascertaining the income of the deceased through business. It is also the case of the Appellant / Insurance Company that the Tribunal failed to take note of the fact that the respondents 1 to 3 having succeeded to the said business and its capital ought not to have been construed as the entire business income or loss and if at all, the Tribunal ought to have fixed a reasonable sum as loss due to the managerial skill of the deceased. It is further submitted that the Tribunal failed to take note of the fact that business income is speculative in nature and hence erred in making 25% addition towards future prospects. According to the Appellant / Insurance Company, the compensation towards loss of future prospects is payable only to the salaried person's death, as there is every possibility to define the definite income and prospects that can be achieved on time basis. It is also their case that the Tribunal has erroneously awarded a sum of Rs.1,00,000/- towards loss of love and affection, which is contrary to 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.

8. We have perused and examined the impugned award as well as the evidence and materials available on record. On the side of the claimants, 17 documents were filed before the Tribunal, which were marked as Exs.A1 to A17 and they have examined one witness, viz., the wife of the deceased (PW1). On the side of the Appellant / Insurance Company three documents were filed, which were marked as Ex.R1 to Ex.R3 and one witness P. Murugesan, their official has been examined as RW1.

9. The Appellant / Insurance Company has not challenged the adverse finding of negligence on the part of the insured vehicle. Hence the said finding has attained finality.

10. We are now concerned only with the quantum of compensation awarded by the Tribunal as the Appellant / Insurance Company has challenged the impugned award only on the ground that the quantum of compensation awarded to the claimants is excessive.

11. The deceased was a Proprietor in (Tantools and Guages Design & Manufacture of Hydraulic, Pneumatic Fixtures) and was having his own business. PW1, his wife has also deposed that the business was exclusively managed by her husband. The deceased has also left behind two Minor children and therefore, it is impossible for them to look after the business of their father. The deceased died at the age of 45 years leaving behind his wife and two minor children. It is the case of the claimants that the deceased was earning Rs.94,000/- p.m., out of his business as a Proprietor of Tantools and Guages, which deals with the Design & Manufacture of Hydraulic, Pneumatic Fixtures. As seen from the nature of the business, it is a specialised business, and unless and until a person has knowledge and experience in the said business, he may not be able to run a profitable business. The claimants have also filed Income Tax Returns of the deceased from the Assessment years 2010-2011 to 2014-2015, which were marked as Ex.P14 to Ex.P17. The last Income Tax Returns filed by the claimants was for the Assessment year 2014-15, which was marked as Ex.P14, discloses that the deceased was earning an Annual Income of Rs.9,64,550/- after deductions under Chapter VI-A of the Income Tax Act. The accident was on 6.12.2014. After considering the Income Tax Returns, the Tribunal fixed the monthly income of the deceased at the time of the accident as Rs.80,379/-. As seen from the Income Tax Returns of the deceased between the Assessment years 2010-2011 to 2014-2015, his business income has been fluctuating and only in the last Assessment year viz., 2014-2015, he was earning annual income of Rs.9,64,550/- after deductions, which is the highest annual income of the deceased out of the Income Tax Returns filed by the claimants before the Tribunal. This being the case, the Tribunal ought not to have fixed the monthly income of the deceased at the time of the accident as Rs.80,379/-, which is based upon the last Income Tax Return viz., Assessment year 2014-2015 (Ex.P14) filed by the claimants before the Tribunal, instead the Tribunal has ought to have taken the average of all the Income Tax Returns for fixation of the monthly income of the deceased at the time of the accident.

12. We are of the considered view that a sum of Rs.70,000/- will be a just assessment of the monthly income of the deceased at the time of the accident and not Rs.80,379/- fixed by the Tribunal, which is excessive.

13. Considering the age of the deceased which was 45 years at the time of the accident, the Tribunal has rightly added 25% towards loss of future prospects in accordance with the principles laid down by the Hon'ble Supreme Court in the Pranay Sethi case (cited supra). The Tribunal has rightly deducted 1/3rd towards the personal expenses of the deceased, if he was

alive, following the decision reported in (2009) (2) TN MAC page No.1 (Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr. case). The Tribunal has also rightly applied 14 multiplier, while assessing the loss of dependency.

14. The Tribunal has awarded a sum of Rs.40,000/- towards loss of Consortium; Rs.1,00,000/- towards loss of love and affection; Rs.15,000/- towards loss of Estate; Rs.5,000/- towards Transport charges and Rs.15,000/- towards Funeral expenses, which in our considered view is a just compensation and the same are in accordance with the settled principles of law. Excepting for reducing the monthly income of the deceased from Rs.80,379/- to Rs.70,000/- in all other aspects, the award of the Tribunal do not suffer from any infirmity.

15. For the foregoing reasons, the award passed by the Tribunal is modified from Rs.1,14,28,088/- to Rs.99,75,112/- and the same is detailed hereunder :-

Heads	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.
Total Loss of dependency *Rs.80,379/- x 25% - (1/3) x 14 = *Rs.70,000/- x 25% - (1/3) x 14 =	1,12,53,088/- *	98,00,112/- #
Loss of Consortium	40,000/-	40,000/-
Loss of love and affection	1,00,000/-	1,00,000/-
Loss of Estate	15,000/-	15,000/-
Transport charges	5,000/-	5,000/-
Funeral expenses	15,000/-	15,000/-
Total	1,14,28,088/-	99,75,112/-
Rounded to	1,14,28,100/-	99,75,112/-

16. In the result, the Civil Miscellaneous Appeal is partly allowed as indicated in the above manner. No costs. Consequently, connected miscellaneous petition is closed.

17. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by this Court together with interest at 7.5% p.a. from the date of claim petition, i.e.

29.04.2015 till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.3987 of 2015, on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1, Chennai), 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 1st respondent / major claimant, 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 respondent / minor claimant concerned, the same shall be deposited in Fixed deposit in any one of the Nationalized Banks, till he attains majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank.

18. Insofar as the share of the 2nd respondent is concerned, it is represented that he has now attained majority. Hence, on filing of an appropriate application by the 1st respondent before the Tribunal and on declaration of the 2nd respondent as major, he would be entitled to his share of compensation. The Tribunal is directed to transfer the share of the 2nd respondent to his bank account through RTGS, within a period of two weeks from the date of declaration of his majority.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vsi2

To :

1) The Sub Judge,
(Motor Accidents Claims Tribunal),
Special Sub Court No.1, Chennai.

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

+1cc to Mr.K. Thilageswaran, Advocate SR.No.84163

+1cc to Mr.S. Arun Kumar, Advocate SR.No.83707

C.M.A. No.2709 of 2018

RSV(CO)
GMY(31/10/2019)