BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **31.07.2019**

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.M.A(MD)No.563 of 2019
and
C.M.P(MD)No.6822 of 2019

Branch Manager,
Sri Ram General Insurance Company Ltd.,
No.30, HAK Road,
Near ICICI Bank,
Chinnachokkikulam,
Madurai - 625 002. .. Appellant/ 2nd Respondent

Vs.

1.Bawani

2.Govindan

3.Sathya .. Respondents 1 to 3 / Claimants

4.Saraswathi .. 4th Respondent / 1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 16.03.2017, passed in M.C.O.P.No.613 of 2014 by the Motor Accident Claims Tribunal / Principal District Court, Pudukkottai.

For Appellant : Mr.D.Sivaraman

JUDGMENT

It is a case of fatal. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.14,04,000/- towards loss of dependency, Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses, totally Rs.15,29,000/- as compensation. The Tribunal has observed that the deceased Prakash @ Rengaraj has also contributed for the accident and hence, the respondents 1 to 3 / claimants shall bear 20% of the award amount, ie., Rs.3,05,800/- and the remaining 80% of the award, i.e., Rs.12,23,200/- shall be payable by the appellant / Transport Corporation with 7.5% interest per annum from the date of petition till the date of realization and also directed the appellant / Transport Corporation to deposit the same. The appellant / Transport Corporation has filed this appeal challenging the liability as well as quantum of compensation.

2.The learned counsel appearing for the appellant / Insurance

Company would submit that the accident was not happened due to the rash and negligent driving of the driver of the 4th respondent. In Ex.P.1, FIR, it has been stated that the deceased dashed against the parked lorry at the time of accident. Further, since the deceased is a bachelor at the time of accident, age of the parents ought to have been taken into consideration for fixing multiplier. But, the Tribunal has adopted the multiplier considering the age of the deceased. The compensation awarded by the Tribunal towards other heads, is also excessive. Thus, he prayed to allow the appeal.

3.Heard the learned counsel appearing for the appellant / Insurance Company and also perused the records carefully.

4.The date of accident is on 17.03.2011. P.W.2 would state that on the date of occurrence, he followed the two wheeler driven by the deceased and the accident was happened only due to the negligent act of the driver of the lorry belonging to the 4th respondent. In Ex.P.1, FIR, it has been stated that the deceased hit the lorry standing on the road side and therefore, the accident was happened. But, there is no proof that the lorry was stopped at the extreme left side of the road at the time of accident. Therefore, considering the above facts and circumstances and also considering the manner of accident, the Tribunal has rightly fixed 20% : 80% liability on the deceased as well as the driver of the 4th respondent respectively and accordingly, directed the respondents 1 to 3 / claimants shall bear 20% of the award amount and also directed the appellant / Insurance Company to pay the remaining 75% of the award amount to the claimants, which requires no interference from this Court.

5.As far as the quantum is concerned, the accident is of the year 2011. It is not in dispute that the deceased was aged about 22 years at the time of accident and he died leaving behind his father, mother and brother. It has been stated on the side of the claimants that the deceased was a milk vendor at the time of accident and earning a sum of Rs.20,000/- as monthly income. But, no proof has been filed to substantiate the same. In the decision of **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited**, reported in **2014 ACJ 627**, the Hon'ble Supreme Court, keeping in mind the escalation of prices, has fixed a sum of Rs.6,500/- as notional monthly income of a vegetable vendor, even in the absence of documentary evidence to prove the income. In view of the above and also considering the age of the deceased, the Tribunal has rightly fixed the monthly income of the deceased as Rs.6,500/- and taken multiplier 18 and deducted 1/3 towards personal expenses and accordingly awarded a sum of Rs.14,04,000/- towards life dependency of the family. It is seen that the Tribunal has added 50% towards future prospects. But, the Tribunal has not awarded any amount towards loss of estate. The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection. The loss which had occurred to the claimants can never be compensated with money and hence, the award passed towards loss of love and affection, cannot be considered as excessive. The award passed towards funeral expenses is also not on the higher side. Therefore, this Court is not inclined to interfere with the award passed by the Tribunal.

6.In view of the above, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. The appellant / Insurance Company is directed to deposit 80% of the award amount, i.e., Rs.12,23,200/-, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw their respective shares with accrued interest and costs, as apportioned by the Tribunal, less the amount already withdrawn, by filing an application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Motor Accident Claims Tribunal /
Principal District Court, Pudukkottai.

Copy to:
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-79134[F] dated 01/08/2019)

C.M.A(MD)No.563 of 2019
31.07.2019

KK/SAR/22.08.2019/3P-5C/