BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD)Nos.579 of 2018 and 93 of 2019
and
CMP(MD)Nos.6686 and 11232 of 2018

CMA(MD)No.579 of 2018

The Oriental Insurance Co. Ltd.,
Through its Divisional Manager,
Office at 24-E, 12A, Sivasakthi
Shopping Complex,
S.N.High Road,
Tirunelveli. … Appellant

versus

1. Sugumari
2. Sankaranarayanan
3. Shankaran … Respondents

(3rd respondent remained
ex parte before the Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.02.2018 made in M.C.O.P.No.749 of 2017 on the file of the Motor Accident Claims Tribunal cum I Additional District and Sessions Judge, Tirunelveli.

For Appellant : Mr.K.Baskaran

For R1 and R2 : Mr.T.Selvakumaran

CMA(MD)No.93 of 2019

1. Sugumari
2. Sankaranarayanan ... Appellants

versus

1. Shankaran

2. The Oriental Insurance Co. Ltd.,

Through its Divisional Manager,
Office at 24-E, 12A, Sivasakthi
Shopping Complex,
S.N.High Road,
Tirunelveli. .... Respondents
(1st respondent remained
ex parte before the Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.02.2018 made in M.C.O.P.No.749 of 2017 on the file of the Motor Accident Claims Tribunal cum I Additional District and Sessions Judge, Tirunelveli.

For Appellants: Mr.T.Selvakumaran

For R2 : Mr.K.Baskaran

COMMON JUDGMENT

C.M.A.(MD)No.579 of 2018 has been filed by the Insurance Company challenging the liability as well as the quantum of compensation awarded by the Tribunal in M.C.O.P.No.749 of 2017.

2. C.M.A.(MD)No.93 of 2019 has been filed by the claimants, challenging the quantum of compensation awarded by the Tribunal.

3. Brief facts:

On 15.03.2017 at about 10.30 p.m, one Arumugam (the deceased) was riding a motorcycle bearing Registration No.TN72 AK 3557 from Suthamalli to Mukkudal from east to west and when the motorcycle was reaching near Thiruvalluvar Nagar at Suthamalli, at that time another motorcycle bearing Registration No.TN09AJ 5765 belonging to the 1st respondent insured with the 2nd respondent was going ahead of the motorcycle of the deceased and the motorcyclist who was riding ahead without showing signal or switch on the indicator lamp suddenly slow down his motorcycle and turned towards right side. Even though the deceased kept reasonable distance unable to stop his vehicle as the vehicle going ahead completely suddenly crossed the road, as a result of which, the deceased motorcylce hit against the 1st respondent motorcycle and the deceased was thrown out of the motorcycle and sustained serious head injuries and immediately the deceased was taken to TVMC Hospital at Palayamcottah. But, he died in the hospital on 16.03.2017. Hence, the parents of the deceased filed a petition in M.C.O.P.No.749 of 2007 before the Tribunal claiming compensation of Rs.25,00,000/-. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.16,77,657/-, which is payable by the 2nd respondent Insurance Company along with interest at the rate of 6.75% p.a. from the date of petition till the date of realization.

4. The learned counsel appearing for the appellant Insurance Company contended that it is claimed by the claimants that at the time of accident, the deceased was working as Supervisor in Pothys Store at Nagercoil and was getting a net salary of Rs.9554/- (gross salary of Rs.10,769/-). On the side of the claimants, one Administrative Officer of the Pothys Store was examined as P.W.3, wherein, he deposed that amount has been paid under ESI Act. By referring the said deposition, the learned counsel submitted that the claimants have received compensation under ESI Act and therefore, the compensation received under ESI Act should be deducted from the amount awarded to the claimants.

5. However, the learned counsel appearing for the claimants contended that the claimants have not received any compensation under ESI Act. P.W.3 is the person, who is working at Pothys Store, where the deceased was working and he is not an officer from ESI Corporation to depose about the full particulars of disbursement of compensation under ESI Act. Furthermore, no one was examined from ESI Croporation in order to substantiate the statement made by the appellant herein. Moreover, on 22.11.2019, the claimants have also filed an affidavit stating that they have not received any amount under ESI Act.

6.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents/claimants.

7. On perusal of records, it appears that P.W.3 deposed at the time of cross examination that the compensation under ESI Act has been paid to the claimants' family. Further, he stated that a sum of Rs.189/- has been deducted towards ESI contribution. However, nothing has been deposed by P.W.3 about the total amount of compensation paid to the claimants' family. In the absence of proof with regard to the same, the Court cannot come to the conclusion that compensation under ESI Act can be deducted from the award amount, based on the deposition of P.W.3. Further, in the present case, no one was examined from ESI Corporation to substantiate the statement of the appellant as well as the statement of P.W.3. Though P.W.3 deposed before the Tribunal with regard to the disbursement of compensation under ESI Act, it is only a mere statement without producing any particulars of records. Further, the claimants have also filed an affidavit stating that they have not received any compensation amount from ESI Corporation, since the deceased joined the Pothys store just six months before the accident. In these circumstance, this Court is of the view that based on the deposition of P.W.3, this Court cannot come to the conclusion that compensation under ESI Act was disbursed to the claimants and the statement of P.W.3 is not substantiated by way of examining any persons from ESI Corporation to depose about the disbursement of compensation under ESI Act. Therefore, this Court

is not in a position to accept the contention of the appellant and does not find any infirmity in the order passed by the Tribunal.

8. The learned counsel appearing for the appellants submitted that in case, if the appellant Insurance Company comes to know about the disbursement of compensation under ESI Act in future, the same may be permitted to be recovered from the claimants after payment of award amount, for which, the learned counsel appearing for the claimants has no objection.

9. In view of the above, in case, if the Insurance Company comes to know about the receipt of the compensation by the claimants under ESI, the appellant Insurance Company is at liberty to recover the said amount from the claimants.

10. As far as the quantum of compensation is concerned, it is claimed that the deceased was working as Supervisor at Pothys Store and was drawing the salary of Rs.13,000/-. However, on the side of the appellant, they have produced pay slips of the deceased, which shows that the deceased had drawn a gross salary of Rs.10769/- in the month of January 2017 and Rs.8154/- in the month of Feb 2017. Further, in the month of Jan'2017, the deceased was received leave salary of Rs.2,769/-, whereas, in the moth of Feb 2017, the leave salary is at Rs.154/-. Therefore, there is a variation in the gross salary of the deceased. Hence, this Court is inclined to take average salary by adding the salary of two months and accordingly, the salary of the deceased would be fixed at Rs.9,461/- and calculated the Loss of Income as follows (Rs.10769/- + 8154/- = 18923/2 = 9461/-). Though the average salary comes around Rs.9461/-, but, in the present case, leave salary and overtime salary varies from months to months. Further, in the month of January, there are festivals and hence, there is a chance for taking leave by many of the employees probably and therefore, there is a reason that the deceased was working for overtime and received leave salary for a sum of Rs.2,769/-. However, the leave salary in the month of February has substantiately been reduced to an extent of Rs.154/-. Taking note of all these aspects, though this Court initially takes the average salary, which comes around Rs.9,461/-, this Court is inclined to fix the monthly income of the deceased at Rs.9,000/-.

11. In the present case, the deceased was aged about 27 years at the time of accident. Therefore, the multiplier to be adopted is '17' and the same has been correctly applied by the Tribunal. Sofaras the future prospects is concerned, the Tribunal has wrongly added 50% towards future prospects. As held by the Hon'ble Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***AIR 2017 SC 5157***, for the age group below 40 years, it is just and necessary to add 40% towards future prospects. Since the deceased was a bachelor, personal expenses of the deceased should be deducted at 50%, which was correctly adopted by the Tribunal at the time of determining the compensation. By applying

the same, the loss of dependency comes to Rs.12,85,200/- (Rs.9,000 x 12 + 40% - 50% x 17).

12. The Tribunal has awarded a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, which are just and proper, therefore, there is no need for any interference. However, the Tribunal has not awarded any amount towards transport expenses and loss of love affection. Considering the facts and circumstances of the case, this Court is inclined to award a sum of Rs.20,000/- towards transport expenses and Rs.45,000/- each to the claimants, who are the parents of the deceased, towards loss of love and affection. Therefore, the compensation awarded by the Tribunal stands revised in the manner stated below:

Loss of dependency	-	Rs.12,85,200/-
Loss of love and affection	-	Rs. 90,000/-
Funeral expenses	-	Rs. 15,000/-
Loss of estate	-	Rs. 15,000/-
Transport Expenses	-	Rs. 20,000/-
Total	-	Rs.14,25,200/-

13. In the result, C.M.A.(MD)No.579 of 2018 is partly allowed, by modifying the compensation from Rs.16,77,657/- to Rs.14,25,200/-, which is payable by the appellant Insurance Company along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization. C.M.A.(MD)No.93 of 2019 is dismissed. The claimants are entitled to the compensation of Rs.14,25,200/- in equal share.

14. The appellant/Insurance Company is directed to deposit the compensation of Rs.14,25,200/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the respective shares of the claimants directly to their Bank Account through RTGS within a period of three weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

To

The Motor Accident Claims Tribunal - cum -
Ist Additional District and Sessions Judge,
Tirunelveli.

Copy to:

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

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-100864[F] dated 25/11/2019)

+1 CC to M/s.K. BHASKARAN, Advocate (SR-101248[F] dated 26/11/2019)

CMA(MD)Nos.579 of 2018 and 93 of 2019
22.11.2019

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