IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1039 of 2015
M.P.No.1 of 2015

National Insurance Company Limited,
having its branch office at
Salem.

...Appellant/2nd Respondent

Vs.

1.Periapillai
2.Maadhu
3.Maheswari
4.Malathi
5.Ramayee
6.Murugan
7.Nallathambi
8.P.Veerappan ...Respondents/Petitioners/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 29.04.2014 made in M.C.O.P.No.33 of 2009 on the file of the Motor Accident Claims Tribunal(Sub Court, Mettur).

For Petitioner : Mr.K.Padmanabhan

For Respondents : Mr.C.Kulanthaivel for RR1 to R7
Mr.M.Hariharan for R8

J U D G M E N T

The appeal suit is preferred against the judgment and decree dated 29.04.2014 made in M.C.O.P.No.33 of 2009 on the file of the Motor Accident Claims Tribunal(Sub Court, Mettur).

2. The appellant is the National Insurance Company Limited filed this appeal challenging the quantum of compensation awarded by the Tribunal. The accident took place on 15.12.2008 at about 10.00 a.m. in Nangavalli to Tharamangalam Road near Pipur Bus stop. The respondents/claimants are the legal heirs of

the deceased, who died in the accident, while proceeding towards the hospital. The post mortem was done at G.M.K.M.C. Hospital, Salem and accordingly, the case was registered and subsequently, the claim petition was filed by the daughters and grand children of the deceased and the Tribunal adjudicated the issues and granted compensation of Rs.4,30,000/-.

3. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the award of compensation is improper on the ground that the loss of income as well as the loss of dependency granted separately is excessive. This apart, there is no possibility of shock and mental agony as the victim died instantly while proceeding towards the hospital and therefore, the compensation granted under the head of shock and mental agony is improper. This apart, the Tribunal granted a sum of Rs.1,00,000/- towards loss of happenings and pain and suffering and the same would not arise, in view of sudden death of the deceased. The learned counsel appearing on behalf of the appellant challenged the award in respect of three heads. Firstly, loss of income and compensation for shock and mental agony as well as for loss of happenings and pain and suffering and there is no serious objection with reference to other heads granted. The learned counsel appearing on behalf of the appellant is of the opinion that the deceased was aged about 70 years, at the time of accident and therefore, there is no possibility of any further compensation. Therefore, the Tribunal has committed an error in granting the compensation under various heads.

4. The learned counsel appearing on behalf of the respondents/claimants opposed the contention by stating that though the deceased was aged about 70 years, her family was living together and grand-children were also dependents of the deceased as she was contributing for the welfare of the grand-children. This apart, the deceased was doing the job of selling betel leaf and was earning and contributing to the family. This being the factum, there is no error in respect of grant of compensation by the Tribunal and accordingly, no interference is required.

5. This Court is of the considered opinion that the Tribunal adjudicated the facts as well as the circumstances. It is not disputed between the parties that the accident occurred and the deceased died instantly and at the time of accident, she was aged about 70 years. The fact regarding the job of the deceased vendor is also not disputed by the Insurance Company. Therefore, the Tribunal fixed a sum of Rs.3,000/- towards

monthly income and accordingly, applied multiplier "5". Taking note of the fact that the deceased was aged about 70 years, there is no error in respect of application of multiplier as well as adoption of multiplier "5" under Second Schedule of the Motor Vehicles Act. However, once the loss of dependency granted to the family of the deceased, the compensation awarded under the head of loss of income is unnecessary. However, the fact regarding the job of the deceased was not taken into consideration and in fact, a betel leaf vendor may earn more than Rs.3,000/- per month. At the age of 70, it is possible to carry on such business. Under these circumstances, the Tribunal should have fixed income as Rs.4,500/- per month, considering the fact that the deceased was looking after the grand-children also. However, further award of loss of income cannot be accepted. So also, the award of compensation under the head of shock and mental agony is also improper and loss of happening and pain and suffering would not arise at all. Thus, the compensation of Rs.1,60,000/- fixed in this regard is also excessive and not in consonance with the principles settled. However, this Court is inclined to enhance the compensation towards loss of dependency from Rs.3,000/- to Rs.4,500/- and accordingly, 1/3 is to be deducted towards personal expenses and a sum of Rs.1,80,000/- (Rs.3,000X12X5) is awarded. Accordingly, loss of dependency is enhanced from 1,20,000/- to Rs.1,80,000/- and loss of income of Rs.2,00,000/- is to be set aside. So also, the compensation awarded under the head of shock and mental agony of Rs.60,000/- as well as the loss of happenings and pain and suffering of Rs.1,00,000/- are also to be set aside. Thus, the order of the Tribunal is modified as under:

(i) Loss of dependency	:	Rs.1,80,000/-
(ii) Transport	:	Rs. 6,000/-
(iii) Funeral expenses	:	Rs. 14,000/-
(iv) Love and affection	:	Rs. 50,000/-
Total	:	Rs. 2,50,000/-

6. The appellant/Insurance Company is directed to deposit the modified amount of Rs.2,50,000/-, if not already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants are permitted to withdraw the modified compensation amount awarded in this appeal with accrued interest by filing an appropriate application and the balance, if any to be paid to the appellant/Insurance Company, then the appellant is also permitted to submit appropriate application for withdrawal of the said amount. All the payments are to be made through RTGS.

7. Accordingly, the civil miscellaneous appeal stands allowed in part. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssb
To

The Motor Accident Claims Tribunal,
Sub Court, Mettur.

Copy to

The Section Officer,
VR Section, High Court,
Chennai-104.

+1cc to Mr.M.Hariharan, Advocate Sr.18687
+1cc to Mr.K.Padmanabhan, Advocate Sr.18985
+1cc to Mr.C.Kulanthaivel, Advocate Sr.18532

C.M.A.No.1039 of 2015

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