IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2434 of 2009
and M.P.No.1 of 2009

(Through Video Conferencing)

M/s.The National Insurance Company
No.312, 31st Floor,
J.N.Road, Pondicherry. ... Appellant/2nd Respondent

Vs.

1.Valli ...Respondents/petitioners
2.M.Mani
3.M.Abdul Rahim
(3rd respondent was set exparte before
the Tribunal) ... Respondent/Ist respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.02.2005 made in M.C.O.P.No.167 of 2003 on the file of the Motor Accident Claims Tribunal (Sub Court) Madhuranthagam.

For Appellant : Mr.S.Arunkumar
For R1 & R2 : Mr.K.Govi Ganesan

J U D G M E N T

The insurance company is the appellant in this appeal. It is aggrieved by the impunged Judgment and Decree dated 08.02.2005 passed by the Motor Vehicles Accident Claims Tribunal (Sub Court) Madhuranthagam in M.C.O.P.No.167 of 2003.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.10,00,000/- together with interest at 9% per annum from the date of claim petition till the date of deposit, to the 1st and 2nd respondents/claimants. The deceased Jagadeesan is the son of 1st and 2nd respondents.

3. On the date of the accident, the deceased was aged about 24 years and is said to have died in an accident while riding a Hero Honda Splendor Motorcycle bearing Reg.No.TN.07.T.6228 when he was hit by the Ambassador car bearing registration number TN-31-1139, belonging to the 3th

respondent insured with the appellant herein, coming from the same direction, as a result of which, the deceased Jagadeesan sustained grievous injuries and later died in the hospital on 21.03.2003.

4. The appellant-Insurance Company has contested the award passed by the Tribunal primarily on the ground that the Tribunal erred in awarding compensation inasmuch as the FIR was lodged only on 11.08.2003 though the accident took place on 17.03.2003. It is submitted that the appellant Insurance Company has been wrongly fastened with libility. It is further submitted that the Tribunal erred in determining the compensation based on Ex.P13- letter of appointment to fix the income of the deceased Jagadeesan as Rs.7,500/- p.m even though in the claim petition the respondents 1 and 2 /claimants have stated that the deceased was earning only a sum of Rs.6,200/- .

5. The learned counsel for the 1st and 2nd respondents/claimants submits that the impugned order passed by the Tribunal is well reasoned and requires no interference. He further submits that as per the decision of the Hon'ble Supreme Court reported in National Insurance Co. Ltd. Vs. Pranay Sethi and Others, (2017) 16 SCC 680 and the decision in Magma General Insurance Company Ltd. vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 Online SC 1546, the parents of the deceased are not only entitled to further compensation towards future prospects but also towards loss of filial consortium. He therefore prays that this Civil Miscellaneous Appeal to be dismissed with cost.

6. I have considered the arguments advanced on behalf of the appellant and the 1st and 2nd respondents.

7. The Tribunal has wrongly determined the income of the deceased as Rs.7,500/- instead of R.6,200/-. Though there is a mistake on account of the same, nevertheless in view of the decision of the Hon'ble Supreme Court in Praney Sethi case, further 40% compensation would be added towards future income of the deceased. The Tribunal has also deducted the 1/3rd of the income towards the personal expenses of the deceased. It is noticed that the 1st respondent /1st claimant is the mother and the 2nd respondent/2nd claimant is the father of the deceased who was aged about 24 years at the time of accident. Therefore, the deduction towards the personal expenses of the deceased would have been 1/2nd of the income and not 1/3rd of the income as was adopted by the Tribunal contrary to the decision of the Hon’ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121,wherein, it was held as follows:-

> 31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses,because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, inwhich event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

8. I am of the view on consideration of over all facts and circumstances of the case, the Tribunal has awarded just compensation though there are some errors in calculation. The Tribunal has deducted 1/3rd towards personal expenses of the deceased, which is not correct. At the same time, 50% of the income should have been deducted towards personal expenses of the deceased as he was a bachelor. Therefore, after deducting 50% towards personal expenses of the deceased and after applying multiplier of '17', the compensation awarded by the Tribunal towards loss of dependency is re-quantified as Rs.8,85,360/- (Rs.6,200 + 40% x ½ x 12 x 17).

9. As far as the other conventional heads are concerned, the Tribunal has not awarded any compensation under the conventional heads (i.e., Loss of filial consortium, Transport and Funeral expenses). Therefore, a sum of Rs.80,000/- (40,000 x 2) is awarded to the 1st and 2nd respondents/claimants towards loss of filial consortium and further a sum of Rs.10,000/- towards Transport and a sum of Rs.10,000/- towards funeral expenses. Therefore, the total amount of compensation of Rs.9,85,360/- [8,85,360 + 80,000 + 10,000 + 10,000] is as follows:-

Loss of dependency	: Rs.8,85,360/-
Loss of filial consortium	: Rs. 80,000/-
Funeral Expenses	: Rs. 10,000/-
Transport	: Rs. 10,000/-
Total	: Rs.9,85,360/-

The amount of compensation of Rs.9,85,360 is rounded off to Rs.10,00,000/-.

10. Thus, the amount of compensation awarded by the Tribunal and the compensation arrived by this Court is same and therefore, there is no difference between them. Therefore, the compensation awarded by the Tribunal requires no interference. However, in view of the rate of interest fixed by the Tribunal at 9% appears to be excessive and is therefore reduced to 7.5% p.a.

11. Accordingly, this civil miscellaneous appeal is partly allowed. The appellant-Insurance Company is therefore directed to deposit the compensation of Rs.10,00,000/- awarded by the Tribunal together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. If the appellant-Insurance Company has deposited the entire amount of compensation together with interest at 9% as directed by the Tribunal, the appellant Insurance Company is permitted to withdraw the excess amount of interest, by filing suitable application before the Tribunal.

12. On such deposit, the respondent Nos.1 and 2 are permitted to withdraw equally along with interest and cost by filing suitable application before the Tribunal, less the amount already withdrawn if any. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

kkd/jen

To:The Motor Accident Claims Tribunal
(SubCourt),Madhuranthagam.

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The Section Officer
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High Court Madras

+1 cc to Mr.S.ARunkumar Advocate sr25694
+1 cc to Mr.K.Govi Ganesan Advocate sr25553

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