IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1786 of 2011
and
M.P.No.1 of 2011

(Through Video Conferencing)

M/s.National Insurance Company Limited,
2nd Floor, 81-D, Chetty Street,
Opposite Bus Stand,
Thiruchengodu Taluk,
Namakkal District. ... Appellant/2nd Respondent

Vs.

1. Sampooranam (deceased)
2. M.Lokeshkumar
3. Minor M.Poojasri
4. Nallammal
5. R.Selvaraj

(R2 declared as major & R1 discharged from her guardianship vide order of Court dated 16.06.2012 made in M.P.No.1 of 2012 in CMA.No.1786 of 2011) ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and Decree in M.C.O.P.No.315 of 2006, dated 12.03.2010, on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr.S.Arunkumar

For Respondents :
For R1 : Died

For R2 & R4 : No appearance

For R5 : Ms.Mahalakshmi for Ms.R.Gowri

JUDGMENT

Though learned counsel for the 5th respondent/owner of the insured vehicle is present, there is no representation on behalf of the 1st to 4th respondents/1st to 4th claimants. However, this case is taken up for final hearing as no adverse orders are proposed to be passed against the contesting 1st to 4th respondents. (The 1st respondent has since deceased).

2. The appellant Insurance Company is the appellant in this appeal. The appellant is aggrieved by the impugned Judgment and Decree dated 12.03.2010 passed by the Motor Accidents Claims Tribunal (Sub Court, Sankari) in M.C.O.P.No.315 of 2006.

3. The case of the appellant in this appeal is that, the Tribunal has erred in awarding a sum of Rs.14,09,000/- as compensation to the 1st to 4th respondents/1st to 4th claimants by considering the income of the deceased as Rs.12,000/- per month.

4. Before the Tribunal, the 1st to 4th respondents/1st to 4th claimants had stated that the deceased P.S.Murugesan, husband of the 1st respondent and the father of the 2nd and 3rd respondents and son of the 4th respondent, was earning a sum of Rs.25,000/- per month. There is no dispute regarding the accident and the death.

5. The only dispute in the present appeal is on account of adoption of a monthly income of Rs.12,000/- per month by the Tribunal to compute the compensation. It was the case of the claimants that the deceased P.S.Murugesan was not only engaged in drilling business in a partnership concerned but also was earning money through his agricultural land owned by the deceased.

6. The Tribunal has considered the evidences on record and has come to a conclusion that the income of the deceased can be fixed at 12,000/- per month ie., Rs.8,000/- per month from the partnership business of the drilling wells and Rs.4,000/- per month from agricultural income.

7. It is the contention of the appellant that the evidences of P.W.1 and P.W.3 itself has concedes the case of the Appellant Insurance Company that there is no loss on account of the death of the deceased from the agricultural income and therefore the Tribunal ought not to have arrived at notional income of Rs.4,000/- per month from agriculture.

8. In any event, it is submitted that the respondents/claimants have also not produced any evidences to substantiate the income of Rs.25,000/- as was claimed in the claim petition or the income of Rs.12,000/- has arrived by the Tribunal.

9. The learned counsel for the appellant drew my attention to the decision of the Hon'ble Supreme Court in the case of State of Haryana and others Vs Jaspir Kaur and others, 2003 ACJ 1800, wherein, the Hon'ble Supreme court had given indication as to how the income of the deceased has to be arrived in case of agricultural income.

10. The learned counsel for the appellant also relies on the decision of the Hon'ble Supreme Court in the following two cases:-

(i) Syed Vasheer Ahamed Vs Mohd. Jameel and others, 2009 2 SCC 225.

(ii) New India Assurance Company Limited Vs Yogesh Devi and others, 2012 ACJ 702.

11. The learned counsel for the appellant submits that, there has to be proper evidences of income from business and income from agriculture and appropriate deductions have to be made before arriving at the notional income of the deceased. He therefore submits that, the compensation awarded by the Tribunal is liable to be reduced by fixing the income of the deceased as Rs.8,000/- per month.

12. I have considered the arguments advanced by the learned counsel for the appellant. I have also considered the claim petition, evidences on record and the impugned Judgment and Decree.

13. In my view, the Tribunal has applied its mind and has come to a fair conclusion as to the income of the deceased as Rs.12,000/- by taking Rs.8,000/- as income from the drilling business from the partnership concerned and a sum of Rs.4,000/- from agriculture.

14. In my view, the notional income that has been arrived by the Tribunal is not exorbitant. Considering the fact that the accident took place in the year 2006 and also considering that the Tribunal has not awarded amount/compensation under other heads as per the decisions of the Hon'ble Supreme Court in the case of :-

(i) National Insurance Co. Ltd. Vs. Pranay Sethi and

Others, (2017) 16 SCC 680.

(ii) Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130.

These cases have applied to the facts of the case. However, there is prayer for enhancement of compensation payable to the respondents. Therefore, I am of the view that, the award passed by the Tribunal requires no interference, even if the income of the deceased was reduced as was suggested by the learned counsel for the appellant.

15. In view of the same, I confirm the award passed by the Tribunal. At the time of admission, the appellant Insurance Company was directed to deposit Rs.12,00,000/- together with interest within a period of six weeks from the date of the order ie., 27.06.2011.

16. The appellant Insurance Company is therefore directed to deposit the balance amount of compensation together with interest thereon within a period of six weeks from the date of this order. In case, the amount directed to be deposited has not been deposited by the appellant Insurance Company, it is directed to deposit the entire amount together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit, less the amount already deposited if any, within the aforesaid period of six weeks from the date of receipt of the copy of this Judgement.

17. On such deposit, the 2nd to 4th respondents/2nd to 4th claimants are entitled to withdraw the same together with interest as directed by the Tribunal, less if any amount already withdrawn by filing suitable application before Tribunal.

18. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arb

To:

The Sub Judge,
The Motor Accidents Claims Tribunal,
Sub Court, Sankari.

Copy To

The Section Officer,
VR Section, High Court,
Madras 104.

+1cc to Mr.S.Arunkumar, Advocate SR.No.26931

C.M.A.No.1786 of 2011
and
M.P.No.1 of 2011

VG II(CO)
GN(10/06/2022)