IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.09.2020	Pronounced on: 22.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1588 of 2015

Muthammal, aged 46 years,
W/o. Late Gajendran,
residing at
Old No.4/147, New No.4/145,
Ponniammal Koil Street, Poonamallee,
Chennai - 600 056. ... Appellant/Petitioner

/versus/

1. T.Sornalatha,
W/o.Thirugnanam,
No.C, 14/5, New No.63/31, Housing Board,
Thuraimangalam Post, Perambalur & District.

2. The TATA AIG General Insurance Co. Ltd.,
No.1, Raheja Towers, 2nd Floor,
177, Anna Salai,
Chennai - 600 006. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.01.2015, made in M.C.O.P.No.809 of 2013, on the file of Motor Accident Claims Tribunal, (III Additional District Court), Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj,

For R2 : Mr.N.Vijayaraghavan

For R1 : exparte

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellant and the Learned Counsel for the Respondent No.2

2. This Appeal is filed by the claimants for enhancement of compensation. The son of the claimants/respondent met with an accident, on 02.06.2013, while he was riding a Hero Honda Splendor Motor Cycle bearing Registration No.TN-22-CB-3821. The accident occurred while, he was proceeding in his two wheeler towards Kundrathur to Kovur Road, near Kovur Preethi Thirumana Mandapam, when a Mahendra Car bearing Registration No.TN-46-F-7989 came in the opposite direction, rash and negligently hit the motorcycle. The rider of the motorcycle sustained multiple grievous injury with fracture. He was admitted in the Government Hospital for treatment, in spite of treatment, he died. Hence, the mother of the deceased has filed claim petition seeking Rs.15,00,000/- as compensation from the owner of the vehicle and the insurer of the vehicle.

3. In the counter, the Insurance Company contended that on the date of accident, the vehicle was not under their insurance coverage. The Insurance Policy issued for the period from 03.05.2013 to 02.05.2014 in respect of the offending vehicle bearing Registration No.TN-46-F-7989 was later cancelled since the cheque issued towards premium was dishonoured for insufficient fund. The Cancellation was intimated to the insured/1st respondent as well as the Regional Transport Office, Trichy, well before the accident. Hence, the Insurance Company cannot be fastened with liability. Further, it was contended that the accident occurred due to the negligence of the victim and he has contributed for the accident.

4. The Tribunal, on considering the rival contentions and documents relied by the claimants as well as the Insurance Company has held that the accident occurred due to the negligence of the offending vehicle. i.e., Mahindra car. Relying upon the F.I.R, Ex.P.1, registered against the driver of the Mahindra Logan Car. Though the claimants have filed salary certificate issued by one M/s.Kamatchi Industries, informing that the deceased was earning Rs.5,000/- per month. The same was not marked through the author of the document. Hence, notional income of Rs.4,500/- per month was taken into consideration. Being a bachelor, 50% was deducted for his personal expenditure from Rs.4,500/-. While applying the multiplier, taking note of the claimant's age, who is mother of the victim, multiplicand 15 was applied. Thus, Rs.4,05,000/- towards loss of income, Rs.15,000/- for pain and sufferings, Rs.15,000/- for funeral expense, Rs.25,000/- for mental agony and Rs.1,00,000/- for pain and sufferings, totally, Rs.5,45,000/- with 7.5% from the date of petition (18.09.2013) till the date of realisation was awarded.

5. The claimants not been satisfied with the award, has preferred this appeal on the ground that the income of the deceased ought to have been fixed at Rs.9,000/-, based on Ex.P.7 salary certificate. The age of the deceased should have been taken for applying the multiplicand instead of age of the claimants. It is also contended in the appeal that the Tribunal ought to have awarded compensation for future prospects.

6. The Learned Counsel appearing for the Insurance Company, who is the 2nd respondent herein would submit that in the absence of proof of income, the Tribunal has rightly fixed the income of the deceased as Rs.4,500/-. There is no evidence to show is skill to earn and Ex.P.7 salary certificate issued by M/s.Kamatchi Industries, is not proved through its author.

7. As far as, multiplicand 15, the Learned Counsel for the 2nd respondent would fairly accept that after the clarification by Constitution Bench of the Hon'ble Supreme Court in Prenay Sethi Case, while applying multiplier, the relevant factor should be the age of the deceased and not the age of the dependants. In this case, the accident victim died at the age of 26. Hence, multiplier 17 is proper and appropriate.

8. The accident occurred on 02.06.2013. For daily wages and skilled employees, granting future prospects was not mandatory at that point of time. The law, in this regard settled only in the year 2017, after Pranay Sethi Case. Therefore, the Learned Counsel for the respondents would submit that the Tribunal award need not be disturbed.

9. Nevertheless, taking note of the fact involved in this case, the award of the Tribunal is modified as below:-

Loss of Income [Rs.4,500 + Rs.1,800 [FP] x ½ x 12 x 17]	Rs.6,42,600/-
Loss of consortium	Rs.40,000/-
Funeral expense	Rs.15,000/-
Loss of estate	Rs.15,000/-
Total	Rs.7,12,600/-

10. The award of Rs.5,45,000/- passed by the Tribunal is enhanced to Rs.7,12,600/-. The Insurance Company is directed to deposit the award amount with 7.5% interest from the date of filing the petition till the date of realisation, within a period of 12 weeks, from the date of receipt of a copy of this order. On such deposit, the Appellant herein is directed to

withdrawn the amount on filing proper application. The Insurance Company is permitted to recover the same from the vehicle owner since on the date of accident, the insurance coverage was cancelled and not in force.

11. Accordingly, the Civil Miscellaneous Appeal is Partly-Allowed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

bsm

To,

1.The III Additional District Judge,
The Motor Accident Claims Tribunal,
(III Additional District Court),
Poonamallee.

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

+1cc to Mr.Varadha Kamaraj, Advocate, S.R.No.30840

C.M.A.No.1588 of 2015

BR(CO)
CB(29/04/2021)