IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

C O R A M

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

CMA No.991 of 2020

1. S.Uma
2. Minor S.Gokulanathan
3. Minor S.Sabarinathan
4. C.Kannan
5. K.Masilammal ... Appellants
[Minors 2 and 3 are represented by
their mother and next friend/1st appellant]

-vs-

1.G.Vijayalakshmi

2. The United Indian Insurance Co. Ltd.,
No.13-A, Nethaji Road, Manjakuppam,
Cuddalore. ... Respondents
[R1-set exparte before the claims tribunal]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 26.06.2019 made in M.C.O.P.No.607 of 2014 on the file of the Motor Accident Claims Tribunal [Principal District Judge], Cuddalore.

For Appellants : Mrs.Ramya V.Rao

For Respondents : Mr.D.Bhaskaran [for R2]

J U D G M E N T

R.PONGIAPPAN, J.

Aggrieved over the award passed by the Motor Accidents Claims Tribunal [Principal District Judge], Cuddalore in MCOP No.607 of 2014, the appellants herein, who are the claimants in the said claim petition, have filed this appeal, in which they were seeking the relief to enhance the compensation, determined by the claims tribunal.

2. Before the Claims Tribunal, the appellants have filed a Claim Petition under Section 166 of the Motor Vehicles Act, in which they claimed a compensation of Rs.50,00,000/- [Rupees

Fifty Lakhs], for the death of the 1st claimant's husband-Sivakumar, who died in the road accident. After elaborate enquiry, the Claims Tribunal awarded a compensation of Rs.10,15,000/- with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred.

3. For the sake of convenience, the parties are hereinafter referred to as per their litigative status, before the claims tribunal.

4. Before the Claims Tribunal, the case of the claimants is as follows:

(i) On 30.04.2013, at about 10.30 am while the deceased was riding his motorcycle bearing Regn.No.TN-60-B-5972 on the extreme left side of the Thirthamalai to Aandiyur Road, at Udalur, a tanker lorry bearing Regn.No.TN-25-AD-0934, driven by its driver in a rash and negligent manner, without blowing the horn and without following the traffic rules and regulations, hit against the motorcycle. As a result of which, the deceased fell down, from his motorcycle and sustained grievous injuries all over his body. He was immediately, admitted in the Government Hospital, Harur, in which he was declared as dead. For the said occurrence, the SHO, Kottapatti Police Station has registered a criminal case against the driver of the tanker lorry in Crime No.94 of 2013.

(ii) The accident was due to the rash and negligent act of the driver of the tanker lorry. The 1st respondent is the owner of the offending vehicle and the 2nd respondent is the insurer of the said vehicle. Since the accident had occurred due to the rash and negligent act of the 1st respondent's driver, both the 1st and 2nd respondent, are jointly and severally liable to pay the compensation to the claimants.

(iii) The deceased K.Sivakumar was aged about 40 years at the time of accident. He was working as a Knitting Master in Prima Fashion, Tirupur and earned a sum of Rs.17,000/- per month. The 1st claimant is his wife, 2nd and 3rd claimants are his sons. Further, the 4th and 5th claimants are the parents of the deceased Sivakumar.

5. Before the claims tribunal, the 1st respondent, remained exparte.

6. Opposing the claim made by the claimants, the 2nd respondent-Insurance company filed his counter and states as follows:

(i) The claim application filed by the claimants are not maintainable either on law or on facts. The age, avocation and monthly income of the deceased are all denied. The accident had not occurred due to the rash and negligent act on the part of the driver of the 1st respondent's vehicle. The accident had occurred solely on account of the deceased, on his own negligence while riding the two wheeler in a Highway. The driver of the 1st respondent's vehicle, has no valid driving licence at the time of accident. The amount claimed by the claimants are excessive one. The claim petition filed by the claimants are liable to be dismissed.

7. Before the claims tribunal, during the time of enquiry, the claim petitions filed in MCOP No.606 of 2014 and 608 of 2014, which have been filed on account of the same accident, were jointly tried along with MCOP No.607 of 2014. In order to prove the case of the claimants, they have examined the 1st claimant as PW1, and exhibited 7 documents as Exs.P1 to P7. On the side of the respondents, 2nd respondent has examined one witness as RW1 and marked two documents as Ex.R1 and R2. Apart from that Ex.C1, was also marked.

8. Having considered all the materials placed before him, the Presiding Officer of the Claims Tribunal came to the conclusion that the accident had happened only due to the rash and negligent act of the driver of the 1st respondent. Further, he came to the conclusion that since the offending vehicle was insured with the 2nd respondent, both the 1st and 2nd respondents are jointly and severally liable to pay the compensation to the claimants. Ultimately, compensation of Rs.10,15,000/- was awarded and directed to pay the same by the 2nd respondent.

9. Now, with the prayer to enhance the same, the claimants are before this Court with the present Civil Miscellaneous Appeal.

10. Today, when the appeal is taken up for hearing, Mrs.Ramya Rao, learned Counsel for the claimants/appellants and Mr.D.Bhaskaran, learned counsel for the 2nd respondent-Insurance company, made their respective submissions.

11. It is an appeal against the quantum of compensation, arrived at by the claims tribunal. In otherwise, the learned counsel appearing on behalf of the 2nd respondent-Insurance company had not challenged the findings arrived at by the claims tribunal in respect to the aspect of negligence committed by the 1st respondent's driver and about the liability. Therefore, it is sufficient to consider as to whether the quantum of compensation determined by the claims tribunal is in accordance with the principles set out in the Motor Vehicle's Act or not.

12. Before the claims tribunal, at the time of enquiry, PW1, who is the wife of the deceased gave evidence that before the death, her husband was working as a Knitting Master at Tiruppur and earned Rs.17,000/- per month. In this regard, while at the time of determining the monthly income of the

deceased, the claims tribunal came to the conclusion that since the employer of the deceased was not examined on the side of the claimants, the salary certificate issued by the employer alone is not sufficient to hold that the deceased earned Rs.17,000/- per month. Conclusively, it was fixed that the deceased earned Rs.6,000/- per month.

13. In this regard, the learned counsel appearing for the claimants/appellants would contend that since the accident had happened in the year 2013, the monthly income assessed by the claims tribunal is not within the parameters already laid in various decisions.

14. In fact, while at the time of determining the monthly income, the claims tribunal perused the judgment of Damodar and Another Vs. Rajendrasingh and others, reported in 2005 ACJ 474 and then only came to the conclusion that mere marking the certificate is not enough to accept the contents of the said certificate.

15. In fact, the said findings arrived at by the claims tribunal is against the principles set out in the judgment referred by the claims tribunal. Even assuming that the salary certificate exhibited on the side of the claimants is a false one, during the time of enquiry, on the side of the respondents, the nature of employment what the deceased was doing alleged by the claimants are not disputed. Therefore, we are of the considered opinion that in 2013, a Knitting Master working in Tiruppur, can easily earn Rs.10,000/- as monthly income. Accordingly, Rs.10,000/- is determined as the monthly income of the deceased-Sivakumar.

16. Coming to the point of future prospects, it is not in dispute, at the time of accident, the deceased was aged about 42 years. It is evident from the copy of the post mortem certificate which was exhibited as Ex.P2, in which the age of the deceased is mentioned as 42 years. So, as per the principles of our Hon'ble Supreme Court in National Insurance Company Ltd Vs. Pranay Sethi and Ors, reported in 2017 ACJ 2700 (SC), for a self employed aged about 42 years, 25% of the monthly income should be added towards future prospects for calculating the monthly income of the deceased. Accordingly, after adding 25% of the monthly income towards future prospects [i.e Rs.2,500/-], the monthly income of the deceased for calculating the loss of dependency is Rs.12,500/- [Rs.10,000/- + Rs.2,500/-].

17. Coming to the point of deduction, during the time of death, the deceased Sivakumar, left his wife, two sons and parents as dependants. Hence, on following the celebrated judgment of our Hon'ble Supreme Court in Sarla Verma vs. Delhi

Transport Corporation reported in (2009) 6 SCC 121, it is necessary to deduct ¼th of the monthly income [i.e. Rs.3,125/-] towards the personal and living expenses of the deceased. Accordingly, after deducting the personal and living expenses, the pecuniary loss is calculated at Rs.9,375/- [Rs.12,500/- Less Rs.3,125/-].

18. In respect to the point of multiplier, since the age of the deceased is 42 years at the time of death, 14 is the correct multiplier as per Sarla Verma's case [cited supra]. By adopting those factors, the loss of dependency is calculated as follows:

Rs.9,375/- x 12 x 14 = Rs.15,75,000/-.

19. In respect to the conventional heads, as per the decision of our Hon'ble Supreme Court in Pranay Sethi's case [cited supra] a sum of Rs.40,000/- is awarded under the head 'loss of consortium' to the 1st claimant/wife of the deceased. Further, the claimants are entitled to Rs.15,000/- under the head 'loss of estate' and Rs.15,000/- under the head, 'funeral expenses'. More than that, the deceased left his two children, wife and parents in the early age. So, we are of the considered opinion that Rs.40,000/-each has to be awarded towards the loss of love and affection only to children and parents. Accordingly, the claimants are entitled to Rs.1,60,000/- as compensation under the said head.

20. From the above discussion, we are of the opinion that the compensation awarded by the claims tribunal has to be modified and the claimants are entitled to a sum of Rs.18,05,000/- as compensation with interest at the rate of 7.5% per annum from the date of claim till its realisation, under the following heads:

Head	Award of the Tribunal Rs.	Modified Award Rs.
Loss of dependency	9,45,000/-	15,75,000/-
Conventional Heads	70,000/-	-
Loss of consortium	-	40,000/-
Funeral expenses	-	15,000/-
Loss of estate	-	15,000/-
Loss of love and affection @ Rs.40,000/- each to claimants 2 to 5.	-	1,60,000/-

Head	Award of the Tribunal Rs.	Modified Award Rs.
Total	10,15,000/-	18,05,000/-

21. In view of the modification of the award of the claims tribunal, it is ordered as follows:

(i) the compensation of Rs.10,15,000/- awarded by the Claims Tribunal is modified to the extent of Rs.18,05,000/-.

(ii) Out of the enhanced compensation of Rs.18,05,000/-, minor claimants 2 and 3 are entitled to Rs.4,00,000/- each, parents/claimants 4 and 5 are entitled to Rs.1,50,000/- each and the wife/1st claimant is entitled to Rs.7,05,000/-, with proportionate interest at the rate of 7.5% per annum from the date of claim till its realisation and costs.

(iii) The 2nd respondent-Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment.

(iv) At the time of accident i.e. in the year 2013, appellants 2 and 3 were minors. They are aged 15 years and 7 years respectively. By this time, the 2nd appellant would have attained majority. Therefore, on such deposit being made, the Tribunal is directed to transfer the share apportioned to the claimants/appellants 1, 2, 4 and 5 to their respective Bank Accounts through RTGS/NEFT within a period of one week.

(vi) The share of the minor claimant/3rd appellant, shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minor/3rd appellant, shall be paid to the 1st appellant/mother of the minor, once in three months, till he attains majority.

(iv) Appellants/claimants are directed to pay the Court fee for the enhanced compensation, if any.

22. In the result, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
[Principal District Judge],
Cuddalore.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.23769

+2cc to Mr.AN.Viswanatha Rao, Advocate SR.No.24147

CMA No.991 of 2020

KS(CO)
GMY(17/06/2020)