

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:06.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.2843 of 2016

and

C.M.P.No.20561 of 2016

Manager,
SBI General Insurance Company Limited,
New No.64, Old No.149,
Ground and Mezzani Floor,
Greens Road, Chennai 600 006. ... Appellant /2nd Respondent

/versus/

1.Savithri
2.Siva
3.Ananda
4.Manju

...Respondents 1 to 4/Claimants

5.M/s Sathyam Roadways,
No.64/1C, Parapanna Agrahara,
Opposite to ACES Lay-Out,
Near to S.L.V. Estate,
Electronic City,
Bangalore-106. ...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under
Section 173 of the Motor Vehicles Act, 1988 against the judgment
and decree in M.C.O.P.No.58 of 2014, dated 15.12.2015 on the
file of the Motor Accident Claims Tribunal, Additional District
Court, Krishnagiri.

For Appellant :Ms.Harini for

M/s N.Vijayaraghavan

For Respondents:Mr.S.C.Vishwanath for R1 to R4

R5-Not ready notice

J U D G M E N T

(The case has been heard through Video Conferencing)

Heard the learned counsel appearing for the appellant and
the learned counsel appearing for respondents 1 to 4.

2.The appeal is preferred against the liability fixed on
the Insurance Company by the Tribunal in respect of the road
accident occurred on 15.12.2013 in which Narayanan @ Poori died
after sustaining fatal injury.

3. On 15.12.2013, Eicher lorry bearing Regn.No.KA-51-A-4540 hit the deceased, who was walking along Kandhikuppam-Varatanapalli Junction in Krishnagiri-Chennai road. The Tribunal had taken the age of the deceased as 58 years, based on the post-mortem certificate and has applied multiplier '9' to arrive at loss of income of the deceased. Whereas, the Insurance Company contends that the deceased at the time of the death was 66 years old, as per the Voter ID Card which was marked as Ex.R1. If that is taken as age of the deceased, the multiplier ought to have been applied only '5' and not '9'. So, on that score, the present appeal is filed to revise the award and reduce it by applying appropriate multiplier.

4. A short point for determination is, whether the age shown in the post mortem certificate should be taken into account for fixing the age of the deceased or the age reflected in the voter ID card. The Tribunal has observed that there is possibility of error in age reflected in the voter ID card and therefore, it cannot be taken into consideration for fixing the age of the deceased. So, the Tribunal has accepted the opinion given by the post-mortem Doctor and has fixed the age of the deceased at 58 years.

5. The learned counsel appearing for the appellant submitted that between the post-mortem certificate and the voter ID card, the age reflected in the voter ID card is more authenticated. The age reflected in the post-mortem certificate is only an opinion of an expert and it cannot be precise. Whereas, the age shown in the voter ID card is the reflection of information given by the person concerned.

6. This Court on weighing the rival submissions holds that the age shown in the ID card of the deceased is relevantly more probable comparing to the opinion of the post-mortem Doctor. Even if there is any possibility of an error, it cannot be more than two or three years. Whereas, the Doctor opinion regarding the age always variable given with $\pm$ two years. Therefore, for the purpose of assessing loss of income, this Court fixes the age of the deceased between 61 and 65, and the multiplier '7' instead of '9' as applied by the Tribunal and to that extent, the award is modified as below:-

Sl. No.	Compensation under various heads	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Enhanced/ Confirmed/ Reduced/
1.	Loss of income	6,48,000-00 6000x12x9	5,04,000-00 6000x12x7	Reduced
2.	Transport to Hospital	20,000-00	20,000-00	Confirmed
3.	Funeral expenses	20,000-00	20,000-00	Confirmed

Sl. No.	Compensation under various heads	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Enhanced/ Confirmed/ Reduced/
4.	Loss of consortium to the 1 st claimant	50,000-00	50,000-00	Confirmed
5.	Loss of love and affection to the claimants 1 to 4 each Rs.50,000/- (50000x4)	2,00,000-00	2,00,000-00	Confirmed
Total		9,38,000-00	7,94,000-00	Reduced

7.The Award of the Tribunal is modified from Rs.9,38,000-00 to Rs.7,94,000-00 as compensation with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation. The award amount shall be apportioned to the claimants 1 to 4 as below:-

First claimant Rs.3,00,000-00
Second claimant Rs.1,64,667-00
Third claimant Rs.1,64,667-00
Fourth claimant Rs.1,64,667-00

8.The appellant/Insurance Company is directed to deposit the award money, less the amount already deposited, if any, within a period of six weeks from the date of this order. The claimants 1 to 4/respondents 1 to 4 are permitted to withdraw their respective share amount, on filing appropriate application before the Tribunal.

9.In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

The Motor Accident Claims Tribunal,
Additional District Court, Krishnagiri.

AKM/5.3.21 /3P-2C/

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