IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.983 of 2016

1.Ponnammal @ Thirumalayee @ Thummal

2.Devi

3.Minor AjeethKumar

4.Minor Vijay

(Minor petitioners 3 and 4
rep.by guardian Next friend/mother 1st petitioner)
...Appellants/Petitoners

/versus/

1.Vadivel

2.Universal Sompo General Insurance Co.Ltd,
Rep.by Manager, Capital Nagar, 5th floor,
554 & 555, Annasalai, Thenampettai, Chennai-18.
...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the Judgement and Decree dated 18.11.2014 in M.C.O.P.No.709 of 2013 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Namakkal.

For Appellant : Mr.C.Kulanthaivel

For Respondents: Mrs.R.Sreevidhya for R2
R1 - exparte

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel appearing for the appellants and the second respondent.

2. The appeal is filed by the claimants for enhancement of compensation.

3. The case of the claimants is that Chinasamy was aged about 39 years at the time of accident, earning a sum of Rs.15,000/- per month as construction worker. On 23.04.2013, while Chinasamy was riding his two-wheeler bearing Registration No.TN38 AD 7889, carrying his son/Ajithkumar as pillion rider near Namakkal to Salem Main Road, near PerumalKoil Medu, near the Best Backery, a TATA Tempo Van bearing Registration No.TN45 AT 5700, proceeding from behind, rash and negligently, hit the two-wheeler of the deceased/Chinasamy while overtaking. Chinasamy sustained severe injuries and got admitted at C.M.Hospital, Nammakkal and then shifted to Salem Vinayaka Mission Hospital, on the next day. He was treated as in-patient in Vinayaka Mission Hospital from 24.02.2013 to 07.03.2013. Thereafter, he got discharged and came back to Namakkal. His health got relapsed so got admitted in Akshya Hospital on 09.05.2013. On the same day, he died in Akshya Hospital.

4. Alleging that they spent nearly Rs.5,60,000/- towards the medical expenses and due to his death, they have lost around Rs.20,00,000/- of his income, the claim petition restricted to Rs.20,00,000/- was filed before the Motor Accident Claims Tribunal, Principal District Judge, Namakkal by his wife and children.

5. The claim petition was resisted by the Insurance Company on the ground that the accident was not occurred due to the negligence of the TATA Goods Vehicle, insured under them. Therefore, they are not liable to indemnify the injured, since the said vehicle did not cause accident. Further, the negligence was on the part of the deceased. It is pleaded in the counter that the deceased had no valid driving license, due to his negligence and incompetence, the accident occurred. Therefore, without impleading the insurer of the motor cycle, the claim petition is liable to be dismissed.

6. The Tribunal, on considering the FIR registered against the driver of the Tempo van and the Motor Vehicle Inspector Report, held that the accident occurred due to the negligence of the Tempo Van driver. After considering the Medical Bills marked as Ex.P6 series and other medical records issued by the C.M.Hospital, Vinayaga Mission Hospital and Akshya Hospital, the Tribunal has awarded a sum of Rs.8,70,000/- as compensation. It has fixed the monthly income of the deceased at Rs.5,500/- notionally, and applied multiplier "15", deducted 1/3 for his personal expenditure. As far as the medical bill is concerned, a sum of Rs.1,50,000/- was awarded as against the bills for Rs.4,96,387/- produced under Ex.P6 series.

7. The learned counsel for the appellant would submit that the deceased is a construction worker, had unique skill and was

an expert in laying foundation. Therefore, fixation of Rs.5,500/- per month is very low. Further, when the deceased had four dependents, deduction towards his personal expenditure ought to have been 1/4th and not 1/3rd. Regarding the medical bill, the counsel would submit that the Tribunal has rejected the consolidated bill for Rs.4,57,000/- given by Vinayaga Mission Hospital on the ground that no separate bill produced for each and every head of expenses such as CTC Scan, Ventilator, Formacy and Doctor Fees etc., The learned counsel would submit that the rejection of the consolidated bill given by the Vinayaga Mission Hospital is erroneous. Further, the counsel would also state that the compensation towards the rejection of loss of love and affection, funeral charges is also not in commensuration with the Pranay Sethi Case and the same should be enhanced.

8. Per contra, the learned counsel for the Insurance Company would submit that the avocation of the deceased was not proved. Though there is no evidence to show his income, the Tribunal has taken Rs.5,500/- as his income notionally. As far as the deduction under personal expenditure, the counsel would also concede since the deceased had four dependents, deduction may be 1/4th instead of 1/3rd. Regarding the medical bill produced by the claimants, the counsel would submit that the credibility of the medical bills are subject to scrutiny and in the absence of examining the representative of the Hospital regarding the genuineness of the bill, it is left to the satisfaction of the Court to award compensation. It is also contended by the learned counsel for the respondent that the deceased had no valid driving license and he has contributed to the accident due to the incompetence. Despite taking a specific plea in the counter, the Tribunal has failed to take note of the contributing negligence which is a fact. Therefore, the Tribunal ought to have taken note of the absence of driving license and deducted substantially for the contribution by the deceased for the accident.

9. On considering the rival submissions, this Court finds that regarding the income of the deceased, in the absence of any valid and acceptable evidence, the notional income of the deceased during the year 2013 at the most could be Rs.6,500/-. Since no additional compensation is given towards the future prospects, this Court, taking into consideration the age of the deceased, for notional income of Rs.6,500/-, 40% is added and the loss of income is fixed as Rs.9,100/- per month, after deducting ¼th towards personal expenditure, the monthly income of the deceased is fixed at Rs.6825/-. By applying multiplier “15”, the loss of income comes to Rs.12,28,500/-. Regarding the medical bill, this Court finds that Ex.P6 series consists of three bills issued by the C.M.Hospital for Rs.13,650/-, Vinayaga Mission Hospital for Rs.4,57,000/-, Akshya Hospital for

Rs.19,741/-, in which, the Pharmacy bill of Rs.4199/- is separately annexed, since it is issued by Bhuvana Medicals. However, the said amount is not claimed by the claimant, since it is included in Akshya Hospital Bill. Besides, the medical bills issued by Chitra Medical Stores, Namakkal for a sum of Rs.2,327/- is also enclosed. For CT Scan- Brain, Namakkal Scans and Diagnostics has issued a bill for Rs.2,000/-. On summing the medical bills furnished under Ex.P6, total expenditure for medical treatment is Rs.4,96,387.75/-. Applying the principle laid down by Pranay Sethi Case, the award under challenge is modified as below:

Loss of income	:	Rs.12,28,500/-
Medical Expenditure	:	Rs.4,96,387.75/-
Loss of consortium for the first appellant	:	Rs.40,000/-
Loss of Love and affection for the claimants 2 to 4	:	Rs.45,000/-
Funeral Expenses	:	Rs.15,000/-
Loss of Estate	:	Rs.15,000/-
		Rs.18,39,888/-

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by this Court is hereby rounded off to Rs.18,40,000/-. The award amount shall be deposited with 7.5% interest from the date of numbering the claim petition till the date of realisation. The award amount shall be equally apportioned by the claimants. The share of the minors shall be kept in the deposit in any one of the Nationalised Bank till they attain the age of majority. The interest of the compensation awarded to the minor children shall be withdrawn by the mother once in six months for the welfare of the minor boys. The claimants 1 and 2 are permitted to withdraw their share on proper applications. The Insurance Company is directed to deposit the award amount with interest 7.5% within a period of eight weeks from the date of receipt of copy of this Order. The decree shall be drafted on payment of the deficit Court fee. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

ssb

To

1. The Motor Accident Claims Tribunal,
   Principal District Judge, Namakkal.

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

C.M.A.No.983 of 2016

NMI(CO)
GMY(06/09/2021)