IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1003 of 2020
and
C.M.P No.6285 of 2020

National Insurance Company Ltd.,
Regina Mnsion 46, Moor Street
Parrys, Chenai-600 001. .. Appellant/2nd Respondent

vs.

1.R.Amutha
2.R.Banumathi (Minor)
3.R.Kannan (Minor) ..Respondents 1 to 3/Petitioner
(2nd and 3rd minor petitioners are rep.
by their mother R.Amutha)
4.Muniammal
5.G.Mahalakshmi ..4th Respondent/1st Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 06.09.2019 passed in MCOP.No.3291 of 2016 on the file of the Motor Accident Claims Tribunal/ II Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : M/s.Ramya V.Rao for R1 to R4
R5 - Exparte

J U D G M E N T

The appeal on hand is filed against the judgment and decree dated 06.09.2019 passed in MCOP No.3291 of 2016, on the file of the Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai.

2. The National Insurance Company Limited is the appellant, who filed this appeal questioning the quantum of compensation.

3. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation granted by the Tribunal is exorbitant and the principles settled in the case of National Insurance Company

Ltd., v. Pranay Sethi & others reported in 2017(2) TN MAC 609 (SC) by the Apex Court has not been followed by the Tribunal. The compensation granted under various heads are on the higher side and based on that, the appellant/Insurance Company has chosen to file the present appeal. The Tribunal has erroneously granted future prospects and adopted the wrong multiplier. Instead of 14 multiplier, the Tribunal has adopted 15 multiplier which is wrong. This apart, the age of the deceased at the time of the death is 45 years and it was erroneously considered as 40 years. Thus, taking note of the fact that the age of the deceased was 45 years, 25% future prospects alone is to be ordered. Contrary, the Tribunal has ordered 40% future prospects which is erroneous. Thus, the compensation awarded is not only exorbitant, but also the Tribunal had committed an error in adopting the multiplier as far as the future prospects is concerned. It is further stated that the monthly income of the deceased fixed by the Tribunal at Rs.15,000/- is also improper. The claimants have not submitted any proof to establish the income of the deceased. In the absence of any such acceptable document, the Tribunal ought not to have fixed the monthly income of the deceased as Rs.15,000/-. For the aforesaid reasons, the award is liable to be scrapped.

4. The learned counsel for the respondents/claimants disputed the contentions by stating that the deceased was self-employed and he was a Centering Contractor. He was doing centering work in many buildings and he was earning more than Rs.15,000/- per month. The Tribunal has not fixed any excess monthly income for the purpose of calculating the compensation. This apart, the deceased died leaving behind his wife, two minor children and aged mother. He was aged about 45 years and he was actively performing his job as Centering Contractor. Therefore, the monthly income of Rs.15,000/- fixed by the Tribunal is proper and therefore, the award is to be confirmed. The compensation granted under the other heads is also based on the judgment of this Court and there is no perversity as such.

5. The accident occurred on 23.05.2015 at 6.45 hours, at Pazhaveli to Chengalpattu Route bus stop, near GST Road. The Chengalpattu Taluk Police Station registered a case in Crime No.350 of 2015. The deceased N.Ravi was a pillion rider in a two wheeler bearing Registration No.TN 21 L 6664 and he was proceeding at Pazhaveli to Chengalpattu Route bus stop, near GST Road. Due to the accident, he sustained fatal injuries all over the body and died on the spot. Thereafter, the claim petition was filed by the wife, two minor children and the mother of the deceased. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respondent parties.

6. As far as the negligence aspect is concerned, the Tribunal has considered the contentions made in the FIR and as well as the oral evidence. There is no contra evidence to that effect. Thus, the Tribunal has arrived a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the first respondent Car. Accordingly, the Tribunal has awarded the quantum of compensation. Undoubtedly, the Tribunal considered all these aspects. Even the judgment of the National Insurance Company vs. Pranay Sethi and others, has also been considered by the Tribunal. However, the Tribunal has treated the age of the deceased as 40 years and accordingly, granted 40% future prospects. Contrary, it is established before this Court that the age of the deceased was 45 years at the time of the accident.

7. The learned counsel appearing on behalf of the appellant/Insurance Company relying the documents, viz., Ex.P2 postmortem certificate and Ex.P3 death report could able to establish that the age of the deceased at the time of the accident was 45 years. Thus, the Tribunal has erroneously fixed the age of the deceased as 40 years at the time of the accident. Accordingly, the multiplier adopted as well as the future prospects granted are not in accordance with the principles laid down in the case of Sarla Verma and others v. Delhi Transport Corporation and another reported in 2009(2) TN MAC 1 (SC). This apart, in Pranay Sethi case, the compensation was granted towards love and affection and parental consortium and also filial consortium. Thus, the compensation granted under these head are not in consonance with the principles laid down by the principal Apex Court of India in the case of Pranay Sethi. In view of the fact that the Tribunal has erroneously fixed the age of the deceased as 40 years instead of 45 years, the award of compensation is to be modified. Thus, this Court is inclined to modify the compensation granted by the Tribunal as detailed hereunder:

1) Loss of dependency (18,750 x 12 x 14 x 3/4)	:	Rs.23,62,500/-
2) Loss of Consortium to wife	:	Rs. 40,000/-
3) Loss of Filial Consortium to two minor children (Rs.40,000 x 2)	:	Rs. 80,000/-
4) For Funeral Expenses	:	Rs. 15,000/-
5) Loss of Estate	:	Rs. 15,000/-
Total:		Rs.25,12,500/-

8. It is brought to the notice of this Court that the apportionment granted by the Tribunal is improper. In fact, two minor children were granted each Rs.13,00,000/- and lesser amount of Rs.6,00,000/- was granted to the wife of the deceased, which is also improper. Thus, the apportionment granted by the Tribunal is also to be modified as detailed hereunder:

1) Wife of the deceased	:	Rs. 8,00,000/-
2) First minor claimant/ daughter	:	Rs. 7,50,000/-
3) Second minor claimant/ son	:	Rs. 7,50,000/-
4) Mother of the deceased	:	Rs. 2,12,500/-
Total	:	Rs.25,12,500/-

9. Thus, the appellant/Insured Company is directed to deposit the modified award amount of Rs.25,12,500/- along with interest at the rate of 7.5% per annum excluding the amount already deposited within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit, the first and fourth respondents/major claimants are permitted to withdraw their portion of the award amount by filing an appropriate application. As far as the minor shares are concerned, the same has to be deposited in any one of the nationalised bank in the interest bearing cumulative deposit scheme which has to be renewed periodically till the minors attain the age of majority.

10. Accordingly, the Judgment and Decree dated 06.09.2019 passed in M.C.O.P.No.3291 of 2016 stands modified and the Civil Miscellaneous Appeal stands allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The II Judge, Court of Small Causes
  Chennai.

+2 CCS to Mr.A.N. Viswanatha Rao, Advocate sr 30792.

C.M.A.No.1003 of 2020
and
CMP No.6285 of 2020

CNR(CO)
SP(13/10/2020)