

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1435 of 2020

and

C.M.P.No.10504 of 2020

The New India Assurance Company Limited,
Third Party Claims HUB, No.1, CSI Building,
2nd Floor, Officer Line, Vellore,
Policy No.62010431160100000137
period from 10.04.2016 to 09.04.2017

... Appellant/2nd Respondent

Vs.

1.J.Mohanambigai
W/o.Late Jaiganesh

2.Minor Badmanathan
S/o. Late Jaiganesh

3.Minor Chanthana Lakshmi
D/o.Late Jaiganesh ...Respondents 1 to 3/Petitioners
(minor petitioners are represented by
their next friend mother first Respondent
Mohanambigai)

4.Mutyalamma Polemera
W/o.P.Appa Rao

5.K.Vijayakumar
S/o.Kanan

6.Shriram General Insurance Company Limited,
E/8, EPIP, RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan - 302 022.
Policy No:10003/31/16/602361
Period from : 05.03.2016 to 04.03.2017

(Respondents 4 and 5 were set ex parte in the lower Court. Sixth respondent is given up as not a necessary party. Hence, notice to respondents 4, 5 and 6 is dispensed with) ... Respondents 4 to 6/Respondents 1,3 & 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.11.2019 passed in MACT O.P.No.136 of 2016 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Vaniyambadi.

For Appellant : Mr.R.Sivakumar

For Respondents: Mr.M.Malar [R1 to R3]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video Conference.

2. Challenging the quantum of compensation awarded by the Tribunal in and by its judgment dated 08.11.2019 passed in MACT O.P.No.136 of 2016 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Vaniyambadi, appellant insurance company has filed the present appeal.

3. The brief facts of the case is as follows:

Respondents 1 to 3/claimants are wife and minor children of the deceased Jaiganesh. On 23.06.2016 at about 12.30 a.m., while the deceased was driving a lorry bearing Registration No.TN-23-BZ-9303, belonging to fifth respondent, towards Chittoor, another lorry bearing Registration No.AP-31-TC-1229, belonging to fourth respondent and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the lorry of the deceased, due to which the deceased sustained grievous injuries and died on the spot. Respondents 1 to 3/claimants filed a claim petition seeking compensation in a sum of Rs.30,00,000/-. The appellant insurance company has filed a detailed counter resisting the claim made by respondents 1 to 3/claimants.

4. To prove the claim, on the side of respondents 1 to 3/claimants, the wife of the deceased was examined as PW-1 and one Rajendran was examined as PW-2 and 10 documents were marked. On the side of sixth respondent insurance company, official of the company was examined as RW-1 and on behalf of appellant

insurance company, official of the company was examined as RW-2 and 5 documents were marked.

5. On appreciation of materials, the Tribunal found that the accident had occurred due to the rash and negligent driving of the lorry belonging to fourth respondent and held that the appellant insurance company is liable to pay compensation indemnifying the fourth respondent. The tribunal awarded compensation in a sum of Rs.30,95,000/-. The break-up is as follows:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [(15000 + 50% - 1/3)*12*16]	28,80,000/-
2.	Loss of love and affection	1,00,000/-
3.	Loss of consortium	1,00,000/-
4.	Funeral expenses	15,000/-
	Total	30,95,000/-

The said sum was directed to be paid together with interest at 6% p.a. from the date of petition till the date of deposit. Challenging the quantum of compensation, the present appeal has been filed by the appellant insurance company.

6. Learned counsel for appellant insurance company submits that in the absence of any proof to establish that the deceased was earning a sum of Rs.15,000/- p.m., the tribunal has fixed the monthly income of the deceased at Rs.15,000/- and added 50% towards future prospects, which had resulted in awarding a huge sum of Rs.28,80,000/- as compensation under the head 'loss of dependency'. As per the judgment of the Supreme Court in Pranay Sethi and others vs. National Insurance Company Limited [(2017) 16 SCC 680], only 40% has to be added towards future prospects since the deceased was aged 32 at the time of accident. Submitting as above, learned counsel prays this Court to fix a notional sum of Rs.6,000/- as the monthly income of the deceased and 40% towards future prospects and accordingly, modify the compensation awarded by the tribunal.

7. On the other hand, learned counsel for respondents 1 to 3 submits that on proper appreciation of materials, the tribunal has awarded a reasonable sum as compensation, which does not require any interference by this Court. Submitting as above, learned counsel prays for dismissal of the appeal.

8. This Court has considered the rival submissions. Since only the quantum of compensation is challenged, this Court is not dealing with the other aspects of the award.

9. On a perusal of the judgment under challenge and the materials on record, this Court finds that the monthly income of Rs.15,000/- fixed by the tribunal is slightly on the higher side in the absence of any proof to establish the income of the deceased. Accordingly, a sum of Rs.14,200/- is fixed as the monthly income of the deceased to arrive at a just and proper compensation. Further, as rightly submitted by learned counsel for appellant insurance company, the tribunal went wrong in adding 50% towards future prospects and hence, the same is reduced to 40%. If it is so added, the monthly income works out to Rs.19,880/- (14,200+5,680). As the number of dependents are 3, 1/3 is deducted towards personal expenses and if it is so deducted, the total monthly income works out to Rs.13,253/- (19,880 - 6,627). The annual income would be Rs.1,59,036/- (13,253*12). The multiplier to be applied in this case is '16' and if it is so applied, the loss of dependency works out to Rs.25,44,576/- (1,59,036 * 16).

10. This Court finds that the sum of Rs.1,00,000/- awarded towards loss of consortium is on the higher side and hence, the same is reduced to Rs.40,000/-. Further, this Court finds that the tribunal has awarded interest only at 6% p.a. and hence, the same is hereby enhanced to 7.5% p.a. In all other aspects, the award of the tribunal is hereby confirmed.

11. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount awarded by the Tribunal	Amount awarded by this Court
		(in Rs.)	
1.	Loss of dependency	28,80,000/- [(15000 + 50% - 1/3) *12*16]	25,44,576/- [(14200 + 40% - 1/3) *12*16]
2.	Loss of love and affection	1,00,000/-	1,00,000/-
3.	Loss of consortium	1,00,000/-	40,000/-
4.	Funeral expenses	15,000/-	15,000/-
	Total	30,95,000/-	26,99,576/-
	Rounded off to		27,00,000/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.30,95,000/- awarded by the Tribunal is hereby reduced to Rs.27,00,000/- [Rupees Twenty Seven Lakhs only]. Out of the award amount, first respondent/wife of the deceased is entitled to a sum of Rs.15,00,000/- and respondents 2 and 3/minor children of the deceased are entitled to a sum of Rs.6,00,000/- each. Appellant insurance company is directed to deposit the modified compensation of Rs.27,00,000/- together with interest at 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of this judgment. On such deposit, first respondent/wife of the deceased is entitled to withdraw her share on due application. The shares of respondents 2 and 3/minor children of the deceased shall be deposited in fixed deposit in any nationalised bank till they attain majority. First respondent/mother of the minors, is entitled to withdraw the interest once in three months towards taking care of the minors. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gm
To

The Motor Accident Claims Tribunal,
Subordinate Judge,
Vaniyambadi.

+lcc to Mr.R.Sivakumar, Advocate Sr.31589
+lcc to M/s.M.Malar, Advocate Sr.31743

C.M.A.No.1435 of 2020

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