IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM

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

C.M.A.No.2597 of 2019
and
C.M.P.No.12520 of 2019

The New India Assurance Company Limited,
Sri Vari Shopping Mall,
Second Floor, 2/91,
New Bus Stand Road,
Meyyanur, Salem – 636 004. ... Appellant/2nd Respondent

vs

1.Annamalai
S/o.Kandasamy

2.Palaniammal
W/o.Annamalai ... Respondents 1 & 2/Petitioner 1 & 2

3.P.Selvaraj
S/o.Periasamy Nadar ... Respondents/1st respondent

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2018 passed in M.C.O.P.No.61 of 2014 on the file of Motor Accident Claims Tribunal, Sankari (Sub Court, Sankari).

For Appellant : Mr.R.Sivakumar

For Respondents: Mr.R.Ezhilarasan [R1 & R2]
Ex parte - R3

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

This matter is heard through Video Conference.

2. Questioning the quantum of compensation awarded by the Tribunal in and by its judgment dated 20.12.2018 passed in M.C.O.P.No.61 of 2014 on the file of Motor Accident Claims Tribunal, Sankari (Sub Court, Sankari), appellant insurance company has filed the present appeal.

3. The brief facts of the case is as follows: Respondents 1 and 2 are parents of the deceased

Muruganantham. On 01.12.2013 at about 11.00 a.m., while the deceased was riding a motorcyle bearing Registration No.TN-52-5352 with a pillion on the Sangagiri to Salem Main Road near Choolaimedu, on the left side of the road, a Car bearing Registration No.TN-77-Z-4155, came in a rash and negligent manner and hit the two-wheeler owing to which the deceased sustained grievous injuries and died. Third respondent is the owner of the Lorry and appellant is the insurer thereof. Respondents 1 and 2/claimants filed a claim petition seeking compensation in a sum of Rs.50,00,000/-.

4. Resisting the claim of respondents 1 and 2/claimants, appellant insurance company had filed a counter.

5. Before the Tribunal, on the side of respondents 1 and 2/claimants, 2 witnesses were examined and 12 documents were marked. On behalf of appellant insurance company, none were examined and no exhibits were marked. On appreciation of materials, the Tribunal had arrived at a finding that the accident had occurred due to the rash and negligent driving of the Car and awarded compensation as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [(20000+40%)*12 - 1/2*17] (Rs.28,56,000/- rounded off to Rs.30,00,000/-)	30,00,000/-
2.	Loss of love and affection (Rs.75,000 + Rs.1,00,000/-)	1,75,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
5.	Transport charges	10,000/-
	Total	32,15,000/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of filing of the claim petition till the date of realization.

6. Learned counsel appearing for appellant insurance company submits that though it was the case of respondents 1 and 2/claimants that the deceased was working as Electrical Supervisor and was earning Rs.50,000/- p.m., absolutely no document was produced to prove the same. But, the Tribunal has fixed the monthly income of the deceased at Rs.20,000/-, which resulted in awarding an exorbitant sum of Rs.30,00,000/- as compensation under the head 'loss of dependency'. In the absence of any proof, the Tribunal ought to have fixed a minimum sum as the monthly income of the deceased. Submitting

as above, learned counsel prays this Court to fix a notional sum of Rs.10,000/- as the monthly income of the deceased and accordingly, modify the compensation payable under the head 'loss of dependency'. Learned counsel also submits that the amount awarded under the other heads is also on the higher side.

7. Per contra, learned counsel appearing for respondents 1 and 2/claimants submits that in order to prove the avocation of the deceased, Ex.P7 - the identity card issued by the Tamil Nadu Electricty Board, Ex.P8 - Experience Certificate issued by the employer where the deceased was working and Ex.P9 - Certificate in Diploma Electrical and Electronic Engineering were marked. Accepting such documents, the Tribunal came to the conclusion that the deceased would have earned a reasonable amount and fixed the monthly income of the deceased at Rs.20,000/-. Therefore, it cannot be said no document was produced before the Tribunal to prove the income of the deceased. Submitting as above, learned counsel prays for dismissal of the appeal.

8. This Court has considered the rival submissions. Perused the materials on record.

9. Though Exs.P7 to P9 were marked, such documents will not prove the actual income earned by the deceased. Under such circumstances, fixing of monthly income of the deceased at Rs.20,000/- by the Tribunal appears to be on the higher side. However, considering the cost of living that was prevailing at the time of accident, it would be appropriate to fix a sum of Rs.18,000/- as the monthly income of the deceased to arrive at a just and appropriate compensation. Hence, by fixing a sum of Rs.18,000/- as monthly income, 40% is added towards future prospects. Since the age of the deceased at the time of accident was 29, the correct multiplier to be adopted is '17'. As the deceased was a batchelor, 1/2 is deducted towards personal expenses. Accordingly, the compensation payable under the head 'loss of dependency' is recalculated as follows:

Annual Income [18000*12]	:	Rs. 2,16,000/-
Add : Future prospects 40% of Rs.2,16,000/-	:	Rs. 86,400/-
		Rs. 3,02,400/-
Less : Personal expenses (1/2)	:	Rs. 1,51,200/-
		Rs. 1,51,200/-
Multiplier	:	17
Loss of dependency	:	Rs.25,70,400/-

Further, the amount of Rs.1,75,000/- awarded towards loss of love and affection is reduced to Rs.80,000/- (Rs.40,000/- each). In all other aspects, the award of the Tribunal is confirmed.

10. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of dependency	30,00,000/- [(20000+40%)*12 -1/2 *17] (28,56,000/- rounded off to 30,00,000/-)	25,70,400/- [(18000+40%) * 12 - 1/2 * 17]
2.	Loss of love and affection	1,75,000/- (75,000+1,00,000)	80,000/- [40,000 + 40,000]
3.	Loss of estate	15,000/-	15,000/-
4.	Funeral expenses	15,000/-	15,000/-
5.	Transport charges	10,000/-	10,000/-
	Total	32,15,000/-	26,90,400/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal in a sum of Rs.32,15,000/- is hereby reduced to Rs.26,90,400/- [Rupees Twenty Six Lakhs Ninety Thousand and Four Hundred only]. Appellant insurance company is directed to deposit the modified compensation of Rs.26,90,400/-, less the amount, if any, already deposited, 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, respondents 1 and 2/parents of the deceased are entitled to withdraw their respective shares, as apportioned by Tribunal, on due application. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Gm

To

1.The Motor Accident Claims Tribunal,
Sankari (Sub Court, Sankari).

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No. 37249
+1cc to Mr.R.Ezhilarasan, Advocate, S.R.No. 37144

C.M.A.No.2597 of 2019

RLD(CO)
GN(16/04/2021)