IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1568 of 2020
and
CMP.No.11560 of 2020

The Divisional Manager,
The New India Assurance,
CSI Building,
Katpadi Road, Vellore. ... Appellant /Respondent 2

Vs.

1. A.Sulochana,
   W/o. Late Anbu
2. R.Suganya,
   W/o. Ramu
3. S.Sumathi,
   W/o. Sathish
4. A.Arun,
   S/o. Late Anbu,

1 to 4 are residing at
No.59, Muka Kollai,
1st Street, Kaspa B,
Ambur Town, Vellore Dt.
... Respondents 1 to 4/Petitioner 1,2,3,4

5. K.Anbarasu,
   S/o. Kumar,
   No.1/7, Mettu Street,
   Vaipoor Village, Mathur,
   Sriperumbudur-602 105. ...Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the Award and decree dated 17/12/2019 made in MCOP No.164 of 2018 on the file of the Motor Accidents Claims Tribunal Subordinate Judge, Vaniyambadi.

For Appellant : Mr. M.Krishnamoorthy

For Respondents : Mr.A.G.F.Terry Chella Raja
for R1 to R4

J U D G M E N T

Feeling aggrieved with the quantum of compensation awarded by the Tribunal, the insurance company is before this Court by filing this Civil Miscellaneous Appeal.

2. The case of the claimant in brief as follows :-

The deceased by name A.Anand @ Anandan, was working as a Washerman. According to the claimant, at the time of accident, he was 28 years old and earning a sum of Rs. 14,000/- per month. On 24.07.2018 at about 02.30 p.m., the deceased was standing on the left side of the mud road, near Vellore to Ambur main road, a car bearing Regn. No.TN-87-0254 owned by the 1st respondent therein came in a rash and negligent manner and hit the deceased. Immediately, he was admitted in the Government Hospital, Vellore, subsequently he succumbed to injuries. The claimants, who are mother, two married sisters and brother of the deceased, claiming the compensation of Rs.25 lakhs, have filed the claim petition before the Tribunal.

3. The 1st respondent / owner of the vehicle remained exparte. The appellant insurance company has contested the claim petition on the ground that the accident was taken place due to the negligence of deceased and no liability could be fixed on the insurance company. That apart, they have disputed the monthly income of deceased and stated that the compensation sought by the claimants are highly excessive and speculative.

4. Before the tribunal, the claimants have examined two witnesses and marked as many as 11 documents as Ex.P1 to P11. On the side of respondents, no witness was examined and no document was marked.

5. The Tribunal, after considering the materials available on record, has held that the accident has been taken place due to the rash and negligent driving of driver of a car. So far as quantum of compensation is concerned, the Tribunal had fixed the monthly income of deceased at Rs.14,000/- per month, and adding 50% of monthly income towards future prospects, arrived the

notional monthly income of deceased at Rs.21,000/-. After deducting 1/3rd towards personal expenses, the Tribunal has taken the notional monthly income as Rs.15,750/-. The Tribunal, considering the age of deceased as mentioned in the post-mortem certificate as 25 years, applying the multiplier of 18, has arrived the loss of dependency at Rs.34,02,000/-. Apart from that, the Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses, and awarded a sum of Rs.50,000/- towards loss of love and affection. Thus, totally, the Tribunal has awarded a sum of Rs.34,67,000/- as compensation. Feeling the quantum of compensation arrived by the Tribunal is highly excessive, the appellant insurance company is before this Court with this appeal.

6. Mr.M.Krishnamoorthy, learned counsel appearing for appellant insurance company would contend that the deceased was working as a Wahserman at Ambur and he was aged about 29 years old at the time of accident. The Tribunal had fixed the monthly income as Rs.14,000/-, which is highly excessive. Apart from the oral evidence of P.W.1, there is other materials available on record to support the monthly income of deceased. That apart, the deceased, being self-employed, 40% of monthly income should be taken as future prospects as per the judgment of Hon'ble Supreme Court of India in the case of National Insurance Co. Ltd., /vs/ Pranay Sethi and others reported in 2017 (16) SCC 680, however, the Tribunal has taken 50% of monthly income for future prospects. That apart, applying the multiplier, the claimants themselves have stated in the claim petition that the age of deceased was 28 years. But, without considering the same, the Tribunal had fixed the age of deceased as 25 years based on the post-mortem certificate, which is not authenticated one and applying the multiplier of 18, awarded a sum of Rs.34,02,000/- towards loss of dependency, which is highly excessive and speculative.

7. Per contra, Mr. Terry Chella Raja, learned counsel appearing for respondents 1 to 4 would submit that the deceased was a washerman, he was a skilled labour and the accident was taken place in the year 2018. Hence, the Tribunal has rightly fixed the monthly income of deceased as Rs.14,000/-. He had also fairly submitted that as per the judgment of National Insurance CO.Ltd., /vs/ Pranay Sethi and others reported in 2017 (16) SCC 680, 40% of monthly income should be taken as a future prospects. The learned counsel had further submitted that even though the age of deceased would be 25 years old at the time of accident, the claimants have stated in the claim petition as 28 years, which is authenticated one. However, in the post-mortem certificate, it was stated as 25 years. Hence, the Tribunal has

fixed the age of deceased as 25 years and there is no illegality in it. That apart, towards loss of consortium, the Tribunal has awarded only a sum of Rs.50,000/-. Whereas the claimants are entitled more amount and towards loss of estate, no compensation was awarded by the Tribunal. According to him, the Tribunal has awarded just and fair compensation and there is no reason to interfere with it.

8. I have considered the rival submissions made by the learned counsel appearing for appellant as well as respondents 1 to 4 and perused the records.

9. The premortial contention of learned counsel appearing for appellant is that the monthly income of deceased fixed by the Tribunal is highly excessive. However, considering the fact that the deceased was an young man, working as a washerman and the accident was taken place in the year 2018, the Tribunal after following the judgment of Division Bench of this Court, applying the cost inflation index and arrived the monthly income of deceased at Rs.14,000/-. Hence, I am of the considered view that the monthly income fixed by the Tribunal is just and proper and there is no reason to interfere with the same. However, towards future prospects, as per the judgment of Hon'ble Supreme Court in the case of National Insurance CO.Ltd., /vs/ Pranay Sethi and others reported in 2017 (16) SCC 680, has held that, the deceased being a self-employed, only 40% should be taken as future prospects, which comes to Rs.19,600/- and the deceased is being a bachelor, 50% of his monthly income should be deducted towards personal expenses. In the said circumstances, the notional monthly income of deceased would be Rs.9800/- (Rs.19600 - 9800 = Rs.9800/-). So far as applying the multiplier is concerned, the claimants themselves have stated in the claim petition that the age of deceased at the time of accident as 28 years. However, the Tribunal relying upon the post-mortem certificate, which was marked as Ex.P3, has fixed the age of deceased as 25 years. It is a settled law, the age mentioned in the post-mortem certificate is only approximate age, and it is not a conclusive report. In the claim petition, the claimants have stated that the age of deceased as 28 years, and there is no reason to disbelieve the same and the Tribunal has erroneously fixed the age of deceased as 25 years. Hence, the age of deceased is fixed as 28 years. In that event, the appropriate multiplier would be 17, and applying that multiplier, the loss of dependency comes to Rs.19,99,200/-, which is rounded to Rs.20,00,000/-. Apart from that, the 1st claimant, being a mother is entitled for a sum of Rs.40,000/- towards filial consortium. So far as other claimants are concerned, they are only the married sisters and major brothers

and they are not entitled for any amount towards loss of consortium and loss of love and affection. That apart, the claimants are entitled for a sum of Rs.15,000/- towards funeral expenses and another sum of Rs.15,000/- towards loss of estate. In the said circumstances, the award passed by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of dependency	34,02,000	20,00,000	reduced
2	Funeral expenses	15,000	15,000	confirmed
3	Loss of love and affection to the 1st respondent	50,000	40,000	reduced
4	Loss of estate	Nil	15,000	granted
	Total	34,67,000	20,70,000	reduced

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.34,67,000/- is hereby reduced to Rs.20,70,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. The 1st claimant/1st respondent is a mother and other claimants 2 to 4/respondents 2 to 4 are married sisters and major brother. In the said circumstances, the mother is entitled to get a sum of Rs.14,70,000/- along with interest and the other claimants are jointly entitled to get a sum of Rs.6,00,000/- along with interest. Now, it is stated that the insurance company has already deposited 50% of award amount. Hence, the appellant/ insurance company is directed to deposit the remaining amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.164 of 2018, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Vaniyambadi. On such deposit, the respondents 1 and 4 / claimants are permitted to withdraw the award amount as

determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The respondents 1 to 4/ claimants are also entitled to refund of Court fee, in any, on the reduced amount of compensation now determined by this Court. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Vaniyambadi.

2.The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.41143
+1cc to M/s.M.Malar, Advocate Sr.41138

C.M.A.No.1568 of 2020
and
C.M.P. No.11560 of 2020

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srg 01/10/2021