IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 04.08.2020
Judgment Delivered on: 31.08.2020

CORAM

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

C.M.A.No.4378 of 2019
and
C.M.P.No.24915 of 2019

Bharti Axa General Insurance Company Ltd.,
2nd Floor, Metro Plaza,
No.162, Anna Salai,
Chennai - 600002. ... Appellant/2nd Respondent

vs

1. L.Tharun Pranav (minor)
represented by his grand father
K.Lakshmanan

2.K.Lakshmanan

3.L.Kasthuri

4.Senthil (since deceased)
(4th respondent remained exparte,
hence, notice may be dispensed with)
... Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.09.2018 passed in M.C.O.P.No.4678 of 2013 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.K.Poomalai
For Respondents: Mr.K.Suryanarayanan [R1 to R3]

JUDGMENT
[Heard through Video Conference]

R.SUBBIAH, J

Challenging the quantum of compensation awarded by the Tribunal in and by its judgment and decree dated 03.09.2018 passed in M.C.O.P.No.4678 of 2013 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, appellant insurance company has filed the present appeal.

2. On 11.05.2013 at about 05.00 hours, while a Scorpio Car bearing Registration No.TN-06-F-3000 was proceeding on the Trichy-Chennai Road, the said Car capsized and fell into a pit due to the rash and negligent driving of the said Car by its driver. As a result of which four occupants died and others sustained grievous injuries. The deceased in the present case is one of the occupants. The wife of the deceased had also died in the accident.

3. Respondents 1 to 3 are son and parents of the deceased L.Loganathan respectively. First respondent is a minor and he lost his parents in the said accident. First respondent, represented by his grand father Mr.Lakshmanan and his grand parents filed M.C.O.P.No.4678 of 2013 seeking compensation in a sum of Rs.3,00,00,000/-. Fourth respondent was the owner of the Car and appellant insurance company is the insurer thereof.

4. To prove the claim, on the behalf of respondents 1 to 3/claimants as well as the claimants in other claim petitions, totally 6 witnesses were examined and 26 exhibits were marked. On behalf of fourth respondent and appellant insurance company, 2 witnesses were examined and 6 exhibits were marked. On appreciation of materials, the Tribunal, found that the accident had occurred due to the rash and negligent driving of the Car bearing Registration No.TN-06-F-3000. The Tribunal, under judgment dated 03.09.2018, has awarded a sum of Rs.1,25,57,620/- as compensation in the present case i.e. M.C.O.P.No.4678 of 2013. The break-up is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [(89483 + 25% - 1/3) *12*14]	1,25,27,620 /-
2.	Loss of estate	15,000/-
3.	Funeral expenses	15,000/-
	Total	1,25,57,620 /-

The said amount was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of deposit.

5. Heard learned counsel appearing for appellant insurance company and learned counsel appearing for respondents 1 to 3/claimants.

6. Learned counsel appearing for appellant insurance company submits that it was the case of respondents 1 to 3/claimants that the deceased was working as an Assistant Consultant in Tata Consultant Services, Lloyds Road, Gopalapuram, Chennai, and earning a sum of Rs.1,00,000/- p.m. The Tribunal has fixed the monthly income of the deceased at Rs.89,483/- based on Ex.P22 – Pay slips for the month of February 2013 to April 2013 and Ex.P23 – Quarterly Performance Pay to the deceased. On a perusal of Ex.P22 – Pay slips for the month of February 2013 to April 2013, it could be seen that the net salary was Rs.66,415/-, 68,887/- and 63,140/- respectively. Therefore, the average monthly income would be Rs.66,147/-. Further, a sum of Rs.24,000/- was paid to the deceased towards 'quarterly performance pay', as evident from Ex.P23 – Quarterly Performance Pay, i.e., Rs.8,000/- for every month. Therefore, by adding Rs.8,000/- with Rs.66,147/-, the monthly income of the deceased would be at Rs.74,147/- only. However, the Tribunal had taken into account the gross salary of Rs.81,483/- and added performance pay of Rs.8,000/- and fixed the monthly income of the deceased at Rs.89,483/-, which has resulted in awarding an exorbitant sum as compensation. Submitting as above, learned counsel prays this Court to allow this appeal by reducing the compensation amount.

7. Countering the submissions of learned counsel appearing for appellant insurance company, learned counsel for respondents 1 to 3/claimants submits that as per the judgment of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. v Indira Srivastava and others [(2008) 2 SCC 763], the gross salary of the deceased alone has to be taken into consideration. Therefore, the monthly income fixed by the Tribunal is well within the principles laid down by the Hon'ble Supreme Court and various High Courts. Submitting as above, learned counsel submits that the award passed by the Tribunal does not require any interference.

8. This Court has considered the rival submissions. Since only the quantum of compensation is challenged in the present appeal, this Court is not dealing with the aspect 'rash and negligent'.

9. As per the judgment of the Honourable Supreme Court in National Insurance Co. Ltd. v Indira Srivastava and others [(2008) 2 SCC 763], the gross salary of the deceased has to be taken into consideration while calculating loss of dependency. Therefore, this Court does not find any error in the approach adopted by the Tribunal in fixing the monthly income of the deceased by taking into account the gross salary. However, this Court finds that the Tribunal has failed to deduct income-tax from the annual income. Hence, the amount awarded by the

Tribunal under the head 'loss of dependency' has to be recalculated by making necessary deductions towards income-tax from annual income. The calculation, after deduction of income-tax from annual income, is as follows:
Annual Income:

Gross salary	:	Rs.89,483/-
(+) 25% future prospects	:	Rs.22370/-
Monthly Income	:	Rs.1,11,853/-
Annual Income	:	Rs.13,42,236/-

Income Tax:

Income upto Rs.2,00,000/-		Nil
Rs.2,00,001 - Rs.5,00,001/-	10%	Rs.30,000/-
Rs.5,00,001 - Rs.10,00,000/-	20%	Rs.1,00,000/-
Rs.10,00,001/- & above	30%	Rs.1,02,671/-
Total tax to be deducted		Rs.2,32,671/-

Annual income after deduction of income tax (13,42,236 - 2,32,671) = Rs.11,09,565/-

As the number of dependents are 3, 1/3 is deducted towards the personal expenses of the deceased and taking into consideration the age of deceased i.e.44, at the time of accident, multiplier '14' is adopted towards arriving at compensation under the head loss of dependency. Accordingly, compensation payable under the head loss of dependency would be Rs.1,03,55,940/-.

10. This Court finds that no sum has been awarded towards loss of love and affection and hence, a sum of Rs.40,000/- is awarded to each of respondents 1 to 3/claimants. The amount awarded under the other heads is hereby confirmed. Accordingly, the modified compensation would be:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [(11,09,565 - 1/3) *14]	1,03,55,940/-

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
2.	Loss of love and affection [R1 - 40,000; R2 - 40,000; R3 - 40,000]	1,20,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
	Total	1,05,05,940/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal in a sum of Rs.1,25,57,620/- is reduced to Rs.1,05,05,940/- (Rupees One Crore Five Lakhs Five Thousand Nine Hundred and Forty only). Out of the award amount, first respondent/minor son of the deceased is entitled to a sum of Rs.1,00,00,000/- and respondents 2 and 3/parents of the deceased each are entitled to a sum of Rs.2,52,970/-. Appellant insurance company is directed to deposit the modified compensation of Rs.1,05,05,940/-, less the amount, if any, already deposited, together with interest at 7.5% p.a. within a period of six weeks from the date of receipt of this judgment. On such deposit, respondents 2 and 3/claimants are entitled to withdraw their respective shares on due application. The share of first respondent/minor claimant shall be deposited in any nationalised bank in fixed deposit till he attains majority. Second respondent/grand father of the minor is entitled to withdraw interest once in three months towards taking care of the minor. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Judge
II Court of Small Causes, Chennai
(Motor Accident Claims Tribunal)

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K.Suryanarayanan, Advocate sr 28248.

C.M.A.No.4378 of 2019

VGII(CO)
SP(03/02/2021)