IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.1446 OF 2017
AND
C.M.P.NO.7659 OF 2017

M/s.The New India Assurance Co.Ltd.
No.128/A, Thiru V.Ka.Road
Villupuram. ... Appellant/2nd Respondent

Vs

Rajamanickam (died)

1.Malarkodi ... 1st Respondent/Claimant
2.Dandapani ... 2nd Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.06.2016 made in MCOP No.342 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Kallakkurchi.

For Appellant : Mr.G.Udaya Sankar

For Respondent : Mr.S.Sounthar for R1

: Exparte - R2

JUDGMENT

This appeal has been preferred by the Insurance Company against the award of a sum of Rs.38,79,000/- towards compensation to the first respondent, due to the death of her son in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 01.11.2011, the deceased Vetrivelmurugan was returning to the house after completing his work at Government School, Kallakurichi, in the Yamaha motorcycle bearing Reg.No.TN-32-W-5311. When he was proceeding in the Chennai-Trichy National Highway and reached near Kolapakkam Bridge at about 07.30 p.m., the Tata Indica car bearing Reg.No.PY-01-Q-8696 belonging to the second respondent herein and insured with the appellant Insurance Company, came from behind in a rash and negligent manner and dashed against the two-wheeler, which the deceased was riding. Due to the said impact, the deceased sustained grievous injuries and died on the spot. The father and mother of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.30,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.38,79,000/- with interest at the rate of 7.5% per annum from the date of claim petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has submitted that there was contributory negligence on the part of the deceased and that had the deceased been little careful in riding the motorcycle, the accident would have been avoided. He also submitted that the Tribunal ought not to have awarded the loss of dependency relying on the income of the deceased, without deducting the income tax at 15% for the financial year 2001-2002, which is as per the decisions of the Hon'ble Supreme Court and this Court. He further submitted that the compensation awarded towards other heads are also exorbitant.

5.The learned counsel for the first respondent / claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has arrived at the compensation, which is fair, just and reasonable and hence the same does not require any interference at the hands of this Court.

6.Heard the learned counsel for the appellant/Insurance Company as well as the learned counsel for the first respondent and perused the materials available on record carefully.

7.With regard to the manner in which the accident took place, the Tribunal has given a clear finding that the accident had occurred only due to the rash and negligent driving of the driver of the Tata Indica car, since the police fixed the car driver as the person responsible for the accident and the Insurance Company has not proved the negligence on the part of the deceased. It is also specifically observed that the Insurance Company has not proved that the second respondent has violated the policy conditions and hence the Insurance Company, being the insurer of the Tata Indica Car owned by the second respondent, is liable to pay compensation to the claimants. This

Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

8.With regard to compensation, taking note of Ex.P8-Service Register, Ex.P7-Pay drawn particulars of the deceased and also relying upon the judgments of the Hon'ble Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another, reported in (2009) 4 MLJ 997 and in Amrit Banu Shali vs. National Insurance Co.Ltd., reported in 2012 ACJ 2002, the Tribunal has calculated the loss of dependency at Rs.37,44,000/-, taking the monthly income of the deceased at Rs.26,000/-, adding 50% of the amount as per the dictum laid down in Sarla Verma's case, thereafter deducting 50% of the amount towards personal expenses of the deceased as he was a bachelor, and adopting the multiplier of 16. The Tribunal has also awarded a sum of Rs.1,00,000/- towards loss of love and affection to the claimants, Rs.10,000/- towards loss of estate and Rs.25,000/- towards transport and funeral expenses.

9.Even though it is seen that the Tribunal has awarded the compensation over and above the amount as claimed by the claimants, it remains to be stated that the Tribunal has relied upon the exhibits, evidence of witnesses and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimants. But one aspect which is relevant to be considered is with regard to deduction of income tax in respect of the amount awarded towards loss of dependency. The amounts awarded by the Tribunal towards other heads are confirmed. The interest rate fixed by the Tribunal at the rate of 7.5% per annum from the date of petition till the date of deposit (excluding the period of dismissal for default if any), is also confirmed.

10.It is the submission of the learned counsel for the appellant that while awarding compensation towards loss of dependency, the Tribunal ought to have deducted income tax at 15% for the financial year 2011-2012. This Court finds considerable force in the said submission. In view of the same, out of the total award amount of Rs.38,79,000/-, the Insurance Company is permitted to deduct income tax applicable only for the amount of Rs.37,44,000/- which has been awarded towards loss of dependency, at the rate which was prevailing at the relevant point of time and thereafter deposit the total modified compensation, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. It is seen that during the pendency of the proceedings before the Tribunal, the father of the deceased died. In this connection, the Tribunal has observed that the first respondent herein, mother of the deceased, is entitled to receive the entire compensation. Hence, on such deposit being made, the first respondent herein, mother of the deceased, is permitted to withdraw the same, on making proper application before the Tribunal.

11.The Civil Miscellaneous Appeal is partly allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Kallakurichi.

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

+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No.26794

C.M.A.No.1446 of 2017
and C.M.P.No.7659 of 2017

SV(CO)
CS/10/05/2021