

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4794 OF 2019

AND

C.M.P.NO.27534 OF 2019

The New India Assurance Co. Ltd.,
Motor Third Party Claims Office,
No.232, N.S.C. Bose Road,
Bombay Mutual Building, 6th Floor,
Chennai - 600 001. Appellant/2nd Respondent

Vs.

1.Selvamani
2.Nirmala
3.Ammu
4.Rajeswari
5.Nithya
6.Karthi
7.Kesavan
8.R.Velusamy
... Respondents 1 to 7/Respondents 1 to 7
.... 8th Respondent/1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.06.2019 made in M.C.O.P.No.2909 of 2017 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.S.Dhakshnamoorthy
For Respondents : Mr.C.Richard Sureshkumar
1 to 7 for Mr.K.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 15.06.2019 made in M.C.O.P.No.2909 of 2017 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.By consent of both the learned counsel appearing for the appellant/Insurance Company as well as the respondents 1 to 7, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.2909 of 2017 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. The respondents 1 to 7 filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Deivanai, who died in the accident that took place on 23.03.2017.

4.According to the respondents 1 to 7, on the date of accident, i.e., on 23.03.2017 at 14.30 hours, while the deceased Deivanai was travelling as a pillion rider in a motorcycle bearing Registration No.TN 73 L 2997 at Tirutani to Sholinghur Road, near Pilanji Gangai Amman Koil, another motorcycle bearing Registration No. TN 10 U 2136 belonging to the 8th respondent, came behind in a rash and negligent manner and dashed against the motorcycle in which the deceased was a pillion rider and caused the accident. Due to the accident, the deceased Deivanai sustained grievous injuries and died on the way to hospital. Hence, the respondents 1 to 7 have filed the claim petition seeking compensation.

5.The 8th respondent, owner of the motorcycle, remained exparte before the Tribunal.

6.The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 to 7 and contended that at the time of accident, the driver of the vehicle did not possess valid driving license and the owner of the vehicle has violated the policy conditions. The accident occurred due to rash and negligent riding by the rider of the motorcycle and hence the appellant/Insurance Company is not liable to pay compensation to the respondents 1 to 7.

7.Before the Tribunal, the 1st respondent, husband of the deceased, examined himself as P.W.1, 6th respondent/son of deceased and the rider of the motor cycle, was examined as P.W.2 and marked twenty documents as Exs.P1 to P20. On the side of the appellant, One Laxmi, Assistant Manager, was examined as R.W.1, one Magendiran, Investigation Officer, was examined as R.W.2 and marked five documents as Exs.R1 to R5.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 8th respondent and directed the appellant/Insurance Company being insurer of the offending motorcycle to pay a sum of Rs.14,66,600/- as compensation to the respondents 1 to 7.

9.Against the said award dated dated 15.06.2019 made in M.C.O.P.No.2909 of 2017, granting compensation to the

respondents 1 to 7, the appellant/Insurance Company has come out with the present appeal.

10.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fixing the age of the deceased based on the postmortem certificate. The Tribunal ought to have ascertained the age of the deceased by way of documentary evidence. Further monthly income of the deceased fixed by the Tribunal at Rs.10,000/- is excessive in the absence of material evidence to prove the avocation and income of the deceased. The Larger Bench of the Hon'ble Apex Court in the judgment reported in "2017 (2) TNMAC 601 (SC)" in the case of "National Insurance Co. vs Pranay sethi and others" had not awarded any amount under the head of loss of love and affection or parental consortium. The Tribunal erred in awarding compensation towards loss of love and affection and parental consortium. The Hon'ble Apex Court in the judgment in "Central Board of Dawoodi Bohra Community and Ors. Vs. State of Maharashtra and Ors." has held that the law laid down by the Apex Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and secondly a Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. The Tribunal failed to appreciate the documentary evidence of Motor Vehicle Inspector's Report, which was marked as Ex.R4, wherein it was clearly stated that the rider of the insured vehicle did not produce valid driving license and CR was issued to that effect. Thus, he prayed for allowing this appeal.

11.Mr.C.Richard Sureshkumar, the learned counsel appearing for the respondents 1 to 7 contended that the Tribunal considering the age of the deceased mentioned in the post-mortem certificate, fixed the age of the deceased as 55 years and the same is proper. The appellant has not filed any material evidence to show that the rider of the motorcycle did not possess any valid driving license. The Tribunal has awarded compensation towards loss of love & affection and parental consortium to the respondents 2 to 7 by following the judgment of the Hon'ble Apex Court as they have lost their mother and lost love and affection in guidance by their mother and the same is valid and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the respondents 1 to 7 and perused the materials available on record.

13.From the materials available on record, it is seen that the respondents 1 to 7 did not file any document with regard to age of the deceased. In the absence of material evidence with regard to age of the deceased, the Tribunal considering the age

mentioned in the post-mortem certificate, fixed the age of the deceased as 55 years. The appellant has not let in any evidence to show that the age mentioned in the post-mortem certificate is not correct. The respondents 1 to 7 have contended that the deceased was a tailor by profession and was earning a sum of Rs.600/- per day. Except oral evidence, no document was filed by the respondents 1 to 7 to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal has fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident is of the year 2017 and the notional income fixed by the Tribunal is not excessive. The Tribunal has awarded a sum of Rs.25,000/- each towards loss of love & affection to the respondents 2 to 7. In addition to that, the Tribunal has also awarded a sum of Rs.25,000/- each to the respondents 6 & 7 and a sum of Rs.10,000/- each to the respondents 2 to 5 and totally, a sum of Rs.90,000/- towards parental consortium. The amounts awarded by the Tribunal towards loss of love & affection and parental consortium are not correct. The amount granted by the Tribunal towards loss of love & affection is confirmed. The amount granted by the Tribunal towards parental consortium is set aside. The amounts granted by the Tribunal under all the other heads are not excessive and the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	11,61,600	11,61,600	Confirmed
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of love and affection	1,50,000	1,50,000	Confirmed
4.	Medical expenses	10,000	10,000	Confirmed
5.	Parental consortium	90,000	-	Set aside
6.	Funeral expenses	15,000	15,000	Confirmed
	Total	Rs.14,66,600/-	Rs.13,76,600/-	Reduced by Rs.90,000/-

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.14,66,600/- awarded by the Tribunal is hereby reduced to Rs.13,76,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 7/claimants are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, as per the apportionment made by the Tribunal, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.2909 of 2017, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

1. The III Judge,
The Motor Accident Claims Tribunal,
Small Causes Court, Chennai.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.75

C.M.A.No.4794 of 2019

and

C.M.P.No.27534 of 2019

SVI (CO)
CS/30/09/2020

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