BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.01.2020
C O R A M
THE HONOURABLE MRS. JUSTICE **R. THARANI**
CMA(MD).No.843 of 2019

S.Rajeswari .. Appellant / Petitioner

Vs.

1. M.Kannappan

2. The Branch Manager,
   The Oriental Insurance Company Limited,
   Branch Office,
   RVK Building, 1st Floor,
   No54, Dhali Road,
   Udumalpet – 642 126 .. Respondents / Respondents
   (1st Respondent was set exparte before the Tribunal
   Hence the 1st respondent may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicle Act, praying to modify the Judgment and Decree passed in MCOP.No.63 of 2013 on the file of the Motor Accident Claims Tribunal / Sub Court, Vedasandur, dated 19.12.2018 and seeking enchancement of compensation of Rs.8,00,000/-.

For Appellant : Mr.N. Sudhagar Nagaraj
For 2nd Respondent : Mr. C. Jawahar Ravindran

JUDGMENT

This Civil Miscellaneous Appeal is filed against the Award dated 19.12.2018 passed in MCOP.No. 63 of 2013, on the file of the Motor Accidents Claims Tribunal / Sub Court, Vedasandur.

2. The appellant is the petitioner in MCOP.No.63 of 2013 on the file of the Motor Accidents Claims Tribunal / Sub Court, Vedasandur. She has filed a claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of her son, who met with an accident on 16.01.2013 at about 10.20 p.m.,.

3. The brief substance of the petition is as follows:

(i) On 16.01.2013 at about 10.20 p.m., the deceased Prakash was travelling as a pillion rider in a Two wheeler bearing Regn. No. TN-57-3330 along the Trichy-Perunthurai main road, near Koorapalayam cut road. When the rider of the vehicle drove the vehicle in a slow and steady manner following the Rules, an Innova Car bearing Regn. No.TN 37 AL-7777 was driven by its driver in a rash and negligent manner came from the opposite direction and dashed against the two wheeler and due to that accident, the said

Prakash died on the way to hospital. The deceased was working as an Electrician and was earning Rs.7,000/- per month. The petitioner claims Rs.20,00,000/- as compensation.

(ii) The brief substance of the counter is as follows:

The age, education and income of the deceased is to be proved by the petitioner. The accident had occurred only due to the rider of the two wheeler and it was not due to the rash and negligent driving of the first respondent's driver. There was no driving license for the rider of the two wheeler. Hence, the second respondent / Insurance Company is not liable to pay compensation.

(iii) On the side of the petitioner, two witnesses were examined as PW.1 and PW.2 and 14 documents were marked as Exs.P1 to P14 and on the side of the respondents no one was examined and no document was marked.

4. The Tribunal after considering the pleadings, both oral and documentary evidence let in by the parties, awarded a sum of Rs. 7,44,000/- as compensation. Not being satisfied with the quantum of compensation, the appellant / petitioner has filed the present appeal for enhancement of compensation.

5. The learned counsel appearing for the petitioner / appellant submitted that the Tribunal has committed an error in deducting the personal expenses of the deceased at 50% instead of 1/3rd. In support of his contention he has relied on the Judgment of the Hon'ble Supreme Court reported in ***2009(2) TNMAC 1 (SC) (Sarla Verma Vs. Delhi Transport Corporation Ltd.,),*** wherein at paragraph No.15 it has been stated as follows:

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the*

personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

6. The learned counsel appearing for the second respondent / Insurance Company submitted that since the deceased is a Bachelor, 50% of the income has to be deducted for his own expenses. It is further stated that mother is a single dependant and there is no other legal heirs or dependants to the deceased and even as per the Sarla verma case, the Tribunal has to deduct 50% of the income towards personal expenses of the deceased and there is no error in the award passed by the Tribunal.

7. Another contention of the petitioner / appellant is that the Tribunal has failed to add 40% of the income towards future prospects, considering the age of the deceased as 21 years. As per the Judgment of the Hon'ble Supreme Court reported in ***2017(2) TNMAC 609(SC) (National Insurance Company Limited Vs. Pranay Sethi and others)***, if the deceased is below the age of 40 years and if he is self employed, fixing the salary of the deceased on the date of accident, 40% of the income should be taken into account towards future prospectus. There cannot be any reasonable objection for the respondent on this aspect.

8. Since the deceased was working as an Electrician, the Tribunal has rightly taken a sum of Rs.7,000/- per month as monthly income. Thus, by adding 40% towards future prospectus, the monthly income comes to Rs.9,800/- (Rs.7,000/- + Rs.2,800/-). After deducting 50%, for his own expenses the monthly income comes to Rs.4,900/- (Rs.9,800/- (-) Rs.4,900/-) and the annual income comes to Rs.4,900/- X 12= Rs.58,800/-. In the present case, since the age of the deceased was 21 years, the Tribunal has rightly applied multiplier "17" and thus, by applying the same multiplier method for the annual income of the deceased, the loss of income comes to Rs.9,99,600/- (Rs.58,800/- x 17). Accordingly, the compensation awarded by the Tribunal towards loss of dependency is hereby modified and enhanced from Rs.7,14,000/- to Rs.9,99,600/-. In all other aspects, the amount amount awarded by the Tribunal is hereby confirmed.

9. The details of modified amount is as follows:

S.No.	Heads	Amount
1	Loss of income	9,99,600.00
2.	Loss of estate	15,000.00
3.	Funeral Expenses	15,000.00
	Total	**10,29,600.00**

10. Accordingly, the amount awarded by the Tribunal is enhanced from Rs.7,44,000/- to Rs.10,29,600/- together with interest at 7.5% per annum from the date of petition till date of deposit as compensation.

11. The 2nd respondent / Insurance Company is directed to deposit the entire award amount of Rs.10,29,600/- together with interest at 7.5% per annum from the date of petition till the date of deposit and costs to the credit of MCOP.No. 63 of 2013, on the file of the Motor Accidents Claims Tribunal / Sub Court, Vedasandur, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of copy this order. On such deposit, the Tribunal is directed to transfer the said amount to the appellant's / claimant's directly to her Bank account through RTGS within a period of two weeks, thereafter.

12. In fine, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Trp

To

The Subordinate Judge,
Motor Accident Claims Tribunal, Vedasandur.

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-373[F] dated 06/01/2020)

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