IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
18.02.2020	22.03.2020

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.1014 of 2013,
Cross Obj.No.124 of 2014
and M.P.No.1 of 2013

National Insurance Company Ltd.,
Branch office, 2nd Floor, 81-D, Chetty street,
Opposite bus stand, Tiruchengode,
Namakkal - 637 211. ...Appellant in C.M.A.No.1014/2013/ 1st Respondent in Cr.Ob.124/2014/ 3rd Respondent

..Vs..

1. Lakshmi @ Ammani
2. Seerangan ...Respondents 1 & 2 in C.M.A.No.1014/2013/ Cross Objectors in Cr.Ob.124/2014/Claimants
3. M.Shanmugham

4. The Managing Partner
   Mohan Transports,
   No.10, S.S.S. Building,
   Chamrajpet, Bangalore-560018 ...Respondent-3&4 in C.M.A.No.1014/2013/Respondents 2 & 3 in Cross Ob.124/2014/ Respondents 1,2 M.C.O.P.

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 1.2.2012 made in M.C.O.P.No.532 of 2009 on the file of Principal District Judge (Motor Accidents Claims Tribunal) Erode.

Cross Objection filed under Order 41 Rule 22 of C.P.C., against the Judgement and decree dated 1.2.2012 made in M.C.O.P.No.532 of 2009 on the file of Principal District Judge (Motor Accidents Claims Tribunal) Erode.

For Appellant/Ins.Co. : Mrs.N.B.Surekha
For Respondents 1 & 2/ Claimants : Mr.Ma.Pa.Thangavel

COMMON JUDGMENT

Both appeal and Cross objection filed by the parties are against the very same award, dated 1.2.2012 passed by the tribunal, in M.C.O.P.No.532 of 2009 on the file of Principal District Judge (Motor Accidents Claims Tribunal) Erode and hence, both appeal and Cross objection are heard together and are being disposed of common judgment.

2. Brief facts of the claimants' case is as follows:

On 22.01.2005 at about 11.25 a.m., the deceased Shankar was standing on Trichy road near Travellers Bungalow, at that time, third respondent herein drove the lorry bearing registration No.KA-01-B 2639 towards Namakkal from Trichy in rash and negligent manner and hit against the deceased, thereby caused accident, resulting in the deceased sustained fatal injuries and died at hospital. A case has been registered by Namakkal police in Cr.No.152 of 2009 under Sec.279, 304(A) of I.P.C. The parents of the deceased have filed a claim petition before the tribunal claiming Rs.27,18,000/- and restricted their claim to Rs.12,00,000/-.

3. Counter affidavit has been filed on behalf of the third respondent/Insurance Company wherein the Insurance Company specifically denied that there was no accident as alleged by the claimants and the police who have registered the case referred the matter as mistake of fact. Therefore, the respondents are not liable to pay compensation.

4. On the side of the claimants, P.W.1 to 4 were examined and Ex.P1 to P14 were marked. On the side of the respondent, no document was marked and R.W.1 was examined. Respondents 3 and 4 remained exparte before the tribunal.

5. Tribunal, based on the oral and documentary evidence adduced by both sides, came to the conclusion that accident occurred due to the rash and negligent driving of the lorry bearing registration No. KA-01-B 2639 by the first respondent and awarded Rs.4,49,000/- as compensation to the claimants along with interest at the rate of 7.5% p.a. from the date of claim petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Compensation awarded by the tribunal in Rs.
Loss of income 3450 x12x 10	4,14,000/-
Love & Affection	20,000/-
Transport charges	5,000/-
Funeral expenses	5,000/-
Medical expenses	5,000/-
Total	4,49,000/-

6. Challenging the said award, Insurance Company has filed the present appeal both against the liability as well as the quantum of compensation awarded by the tribunal. The respondents/claimants also filed Cross objection No.124 of 2014 for enhancement of compensation.

7.Heard the learned counsel appearing for the appellant/ Insurance Company, learned counsel appearing for the respondents/claimants and perused the materials available on record.

8.According to the counsel appearing for the appellant, P.W.2 Village Administrative Officer is an author of the complaint lodged before the Station House officer and the investigation officer also sent the vehicle to the Motor Vehicle Inspector for examination of the vehicle and filing report. Motor Vehicle Inspector gave his report which was marked as Ex.P4. P.W.2 V.A.O. in his evidence has stated that he did not know who was the dead person. According to the appellant/Insurance Company, the evidence of P.W.2 is doubtful and unbelievable. According to the counsel appearing for the appellant/Insurance Company, the alleged offending insured vehicle is not involved in the accident. The learned counsel appearing for the appellant/Insurance Company has further stated that the Inspector of Police investigated the case and filed a report as mistake of fact. But no record was produced before the Court below to that effect.

9. The contention of the appellant is that the Inspector of Police submitted a report that the alleged complaint was reported as mistake of fact. Therefore, according to the appellant, there was no accident as alleged by P.W.2. P.W.2 made contradictory statement and hence, his evidence is doubtful. One R.Subramanian, working as Head Constable in Namakkal Police station at the time of accident was examined as R.W.1. He denied the allegation that the accident occurred due to the rash and negligence of the driver of the offending

insured vehicle. He is not an eye witness of the accident. Further, the investigation officer concerned was not examined on the side of the Insurance Company. Whereas Village Administrative Officer was examined as P.W.1 on the side of the claimant. P.W.2 in his cross examination has clearly stated that he saw the accident and sent the injured to the hospital for treatment and he immediately lodged complaint before the Namakkal Town Police station. P.W.4 in his cross examination has stated that the accident occurred at about 11.00 or 11.30 hours and he along with one Maniakarar admitted the deceased in the hospital. There is no rebuttal evidence on the side of the appellant/Insurance Company to disprove the statement of P.W.2 and P.W.4 in their cross examination. Further, the alleged report said to have been filed by the police stating that ''the complaint was a mistake of fact'', was not filed before the tribunal to disprove the claim. Therefore, the contention of the appellant/ Insurance Company that the alleged complaint was reported as mistake of fact cannot be accepted and the same is liable to be rejected.

10. Cross Objection was filed by the respondent/Claimant. According to the respondent/claimants, Ex.P12 to P14 would prove that the deceased was working as driver at the time of accident and earned Rs.10,000/- per month. P.W.3 deposed that he is having transport Company and the deceased was working in his company and earned Rs.10,000/- per month. The learned counsel appearing for the respondents/claimants would submit that they produced driving licence Ex.P11 to prove that the deceased was having valid driving licence and Salary Certificate Ex.P12 to prove that he has earned Rs.10,000/- by way of salary, batta and other allowances. The parents who filed the claim petition depending on the income of the deceased. The award passed by the tribunal is only meagre and without considering the claimants' case in proper perspective, simply rejected the documents Ex.P12 to P14 and fixed the notional income of the deceased at Rs.3450/- per month. Therefore, the claimants also filed Cross Objection for enhancement of compensation.

11. Admittedly, the deceased was having driving licence as per Ex.P11, the accident was held during the year 2009 and therefore, the tribunal has fixed Rs.3450/- as monthly income of the deceased and as per schedule, the tribunal adopted 10 multiplier and awarded Rs.4,49,000/- as total compensation. The respondents/ claimants did not produce any other materials to establish that the deceased was working as driver under P.W.3. Therefore, the tribunal has rightly rejected Ex.P12 letter issued by P.W.3 as income of the deceased. During cross examination, P.W.2 admitted that he has paid income tax and also maintained salary register. But the same were not produced by P.W.3. He also admitted that Ex.P12 was typed copy and the same

was signed and marked as exhibit. Therefore, Ex.P12 cannot be relied upon for fixing the salary of the deceased.

12. During examination of P.W.3, no relevant register or record in respect of salary, batta and other allowances to the deceased and no particulars have been furnished by P.W.3 to prove the income of the deceased as Rs.10,000/- per month or he was regular employee under P.W.3. Therefore, the tribunal rejected the said claim and determined that the deceased would have earned Rs.200/- per day. Tribunal has deducted Rs.50/- towards his personal expenses. However, the tribunal has taken 23 days, the deceased would have gone to work and fixed the notional income of the deceased at Rs.3450/- per month and adopted 10 multiplier and awarded a total compensation of Rs.4,49,000/- in favour of the claimants.

13. According to the counsel appearing for the respondents/ claimants, even as per the Minimum Wages Act, the monthly salary is to be taken as Rs.7500/- per month. In support of his contention, he relied on the Division Bench judgment of this Court reported in CDJ 2013 MHC 5937 [JAGHAN & OTHERS VS. M/S.ARUDRA ENGINEERS PVT. LTD., CHENNAI & ANOTHER]. According to the learned counsel appearing for the respondents/claimants, as per the judgment cited supra, monthly income of the deceased could be fixed at Rs.9000/-.

14. Learned counsel appearing for the appellant/Insurance Company in the absence of material to prove the salary of the deceased, relied upon the judgment of the Hon'ble Supreme Court in the case of K.SIVARAMAN & OTHERS VS. P.SATHISHKUMAR & ANOTHER [C.A.No.9046 of 2019 dated 13.2.2020] wherein the Hon'ble Supreme Court observed that while fixing the monthly income of the deceased, the present day salary should be taken into account. According to the learned counsel appearing for the appellant/Insurance Company, as per the Act 45 of 2009, monthly wages of an employee would be Rs.4,000/- per month and the same would apply to accidents took place prior to the amended act coming into force i.e. 18.1.2010 and where final adjudication is pending. In the instant case, the accident was occurred prior to 18.1.2010.

15. The aforesaid case arising out of employees compensation Act, 1923 where the deceased was aged 26 years, engaged as driver of trailor and the deceased was employee of the first respondent. Further, even though monthly salary of the deceased was claimed as Rs.32,000/- per month, the claimant in the aforesaid case, approached the Court under Workman Compensation Act. Therefore, the Hon''ble Supreme Court relying upon the provisions of the said Act, and following the various decisions of the Supreme Court and the amended Act 45 of 2009,

has held that the benefit of Act 45 of 2009 does not apply to the accidents that took place prior to its coming into force. The Hon'ble Supreme Court further observed as under:

> ''33. In the present case, the accident occurred on 31 January, 2008 i.e. prior to the coming into force of Act 45 of 2009. Consequently, the High Court erred in extending the benefit of Act 45 of 2009 which deleted Explanation II to Section 4 to the present case. The High Court was required to determine the compensation payable on the date of the accident on which date, the deemed cap of Rs.4000/- as monthly wages was applicable.''

Therefore, the said amended act is only prospective in nature and same cannot be retrospectively apply to the accident which was taken place prior to the amended act. Moreover, the said decision was arises under Workman Compensation Act.

16. While considering the evidence of P.W.2, P.W.3, and taking note of the fact that the claimant has not proved that the deceased was regular employee of P.W.3 or any other company, the notional income of the deceased would be Rs.6,000/- per month (Rs.200/- per day). Therefore, it is appropriate for this Court to safely fix the monthly income of the deceased as Rs.6000/-. At the time of accident, the deceased was aged about 28 years and therefore 40% of the salary to be added towards future prospects in addition to the monthly salary, i.e. Rs.6000/- + 40% (Rs.2400/-) = 8400/-. As per Sarala Varma case, 50% of the monthly salary should be deducted towards personal expenses of a bachelor, which comes to Rs.4200/-. Thus, in view of the above discussion, the compensation awarded by the tribunal is modified as follows:

Heads	Compensation awarded by the tribunal (Rs.)	Compensation enhanced/awarded by this Court (Rs.)
Loss of income of the deceased 4200 x 12 x 17	4,14,000/-	8,56,800/-
Love & Affection Rs.25,000/- each	20,000/-	25,000/- + 25,000/-
Transport charges	5,000/-	15,000/-
Funeral expenses	5,000/-	15,000/-
Medical expenses	5,000/-	5,000/-
Loss of estate	--	15,000/-
Total	4,49,000/-	9,56,800/-

The compensation awarded by the tribunal is enhanced from Rs.4,49,000/- to Rs.9,56,800/- and the award is modified to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed.

17. Accordingly, the claimant/appellant is entitled to withdraw Rs.9,56,800/- (Rupees nine lakhs fifty six thousand eight hundred only) along with interest at the rate of 7.5% p.a. from the date of petition till realization. The respondent/Insurance company is directed to deposit Rs.9,56,800/- along with interest at the rate of 7.5% p.a. from the date of petition till realization, within a period of six weeks from the date of receipt of copy of the judgment, after deducting the amount if any, already deposited before the tribunal. On such deposit being made by the appellant/Insurance Company, the respondent/ claimant is entitled to withdraw the amount by filing appropriate application.

18. Consequently, the appeal stands dismissed. Cross Objection No.124 of 2014 is allowed to the aforesaid extent. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vaan

To

1. The Principal District Judge
   (Motor Accidents Claims Tribunal), Erode.

2. National Insurance Company Ltd.,
   Branch office, 2nd Floor, 81-D,
   Chetty street,Opposite bus stand,
   Tiruchengode, Namakkal - 637 211.

3. The Section Officer, V.R.Section, Madras High Court,
   Chennai-104.

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.18687
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.19069

C.M.A.No.1014 of 2013,
Cross Obj.No.124 of 2014 and M.P.No.1 of 2013

RSV(CO)
RGA(01/11/2021)