IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3437 of 2012
and
M.P.No.1 of 2012

National Insurance Company Ltd.
66, Greams Road,
Chennai 600 008.
... Appellant/2nd respondent

Vs.

1. Krishnamurthy

2. Jayagandham ... 1,2 respondents/claimants 1 & 2

3. Arumugam ... 3rd respondent/first respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.04.2012 passed in M.C.O.P.No.428 of 2009 by the Principal Subordinate Judge, Motor Accident Claims Tribunal, Tindivanam.

For Appellant : Mr.S.S.Vadivel

For I, II respondent : No appearance

J U D G M E N T

Aggrieved over the orders passed by the Tribunal, the insurance company is before this court to scale down the compensation awarded by the Tribunal.

2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.15,00,000/- for the death of their son Natarajan in a road accident that took place on 08.03.2009.

3. The brief case of the claimants is as follows: On 08.03.2009 at about 2.00hours, the deceased Natarajan was travelling as a pillion rider in a motorcycle bearing registration No.TN-07-BB 8461 and while the vehicle was nearing Opposite to Unkle Sams Kitchen, Giundy five furlang road, the rider of the motorcycle has ridden the vehicle in a rash and negligent manner, thereby the deceased fell down from the motorcycle. According to the claimant, the rash and negligent riding of the rider of motorcycle the cause of accident and since the first respondent/ owner of the vehicle insured his motorcycle with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the second respondent by filing counter affidavit.

5. Before Tribunal, first claimant and one another witness were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P10 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.13,90,000/- as compensation to the claimants under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency (10000x12 - 1/3 x 16)	12,80,000
2	Love and affection Rs.50,000/- each	1,00,000
3	Transportation charges	5,000
4	Funeral expenses	5,000
	Total	13,90,000

Aggrieved over the compensation awarded by the Tribunal, the insurance company has filed the present appeal to scale down the compensation.

7. Heard the learned counsel for the appellant and I have perused the materials on record.

8. The learned counsel appearing for the appellant submitted that on the date of accident the deceased was a bachelor and hence 50% of the income of the deceased should be deducted towards his personal expenses. He further submitted that the Tribunal has taken the age of the mother of the

deceased for calculating pecuniary loss and since the mother's age was 40, the proper multiplier is 15, but the Tribunal has wrongly adopted multiplier '16'. He also submitted that though a salary certificate was produced to show that the deceased was earning a sum of Rs.10,000/- per month, the employer, who has given the salary certificate was not examined to support the above material and that the compensation of Rs.1,00,000/- awarded to the parents of the deceased towards " Love and affection " is highly excessive and therefore, the compensation awarded by the Tribunal has to be scaled down.

9. Now the point for consideration is whether the compensation awarded by the Tribunal has to be scaled down.

10. Point

It is contended by the claimants that the deceased was working as a car driver in a private concern and earning a sum of Rs.10,000/- per month. However, no proof of income was adduced by the claimants. Therefore, a sum of Rs.8,000/- is fixed as monthly income of the deceased. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards future prospects. The deceased was aged 25 years on the date of accident and therefore, proper multiplier to be adopted in the instant case is ' 18 ', as per per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. In the instant case, the deceased was died as a bachelor. Therefore, as per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), when a person died as a bachelor, 50% of income should be deducted towards personal expenses of the deceased. Thus, loss of dependency is calculated as 8000+ 3200 x12x18= 24,19,200 (-) 50% = 12,09,600/-. Accordingly a sum of Rs.12,09,600/- is awarded towards " Loss of dependency ". Apart from this amount, the claimants are also entitled to Rs.40,000/- each towards " loss of love and affection " and Rs.15,000/- Rs.15,000/- towards "loss of estate" and "funeral expenses" respectively. The revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of dependency	12,80,000	12,09,600
2	Love and affection	1,00,000	80,000

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
3	Transportation charges	5,000	-
4	Funeral expenses	5,000	15,000
5	Loss of estate	-	15,000
	Total	13,90,000	13,19,600

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. It is represented by the counsel for the appellant that as per the order of this court dated 22.01.2013 in M.P.No.1 of 2012, the entire compensation awarded by the Tribunal has already been deposited by them and the petitioners were permitted to withdraw a sum of Rs.5,70,000/- with accrued interest and costs. Therefore, the insurance company/appellant is at liberty to withdraw the excess amount paid by them, over and above the revised compensation awarded by this court.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is scaled down from 13,90,000/- to Rs.13,19,600/-. No costs. The civil miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the revised compensation of Rs.13,19,600/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The appellant is at liberty to withdraw the excess amount, deposited by them, over and above the compensation awarded by this court.

(iii) On such deposit being made by the insurance company, the claimants are entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tindivanam.

Copy to:

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No.9412

CMA. No.3437 of 2012
and
M.P.No.1 of 2012

CA(CO)
SU(28/10/2021)