IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.3436 OF 2013
AND
M.P.NO.1 OF 2013

M/s New India Assurance Co. Ltd.,
Motr third party claims office,
No.69, 70, Sheikpet Nadu Street,
Kancheepuram

... Appellant/III Respondent

Vs.

1. D.Vijayakumari
2. D.Deenadayalan

... I, II Respondent/ Claimants

3. E.Elangovan

... III Respondent/I Respondent

4. M/s New India Assurance Co. Ltd.,
   No.92, G.N.Chetty Street, T.Nagar,
   Chennai-17.

... IV respondent/II respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 02.03.2013 passed in MCOP No.195 of 2008 by the Principal Subordinate Judge, Motor Accident Claims Tribunal, Chengalpattu, Kancheepuram District.

For Appellant : Mr.J.Chandran for Ms.Janani

For respondents : Mr.N.Sankaravadivel for R1 and R2
R3- died
Notice served to R4

JUDGMENT

Aggrieved over the award passed by the Tribunal, the insurance company has filed the present appeal challenging the quantum of compensation.

2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.15,00,000/- for the death of their son Arun , in a road accident that took place on 12.02.2000.

3. The brief case of the claimants is as follows: On 12.02.2000, at about 05.00 p.m. the deceased along with their family were travelling in a car bearing registration No.TN-09-S-0545, belonging to the first claimant from Bangalore to Chennai and while the car was nearing Palamanr NH-4 cross roads, a Tata safari Jeep bearing registration No.TN-21-C-7610 came from the opposite side, hit against the car, thereby the deceased sustained multiple grievous injuries and died on the spot and the driver of the car namely Ramesh also died on the same day. According to the claimants, the rash and negligent driving of the driver of the Jeep was the cause of accident and since the first respondent/ owner of the vehicle insured his Jeep with the third respondent/ insurance company, both of them are liable to pay compensation. The second respondent is the insurer of the claimant's car and for proper adjudication, they are impleaded as a necessary party.

4. The claim petition was resisted by the third respondent/ Insurance company by filing counter affidavit by stating that the negligent is only on the part of the driver of the car and not on the part of the driver of the Jeep.

5. Before Tribunal, on the side of the claimants, two witnesses were examined as PW1 and PW2 and Ex.P1 to Ex.P8 were marked. On the side of the respondents, one witness was examined as RW1 and Ex.R1 was marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.11,73,000/- as compensation to the claimants under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency	1,09,200
2	Transportation charges	10,000
3	Damages to clothes	1,000
4	Funeral expenses	20,000
5	Loss of love and afection	50,000
	Total	11,73,000

The Tribunal has concluded that the negligent is only on the part of the driver of the first respondent and hence, on behalf of the first respondent, the third respondent is liable to pay the above compensation to the claimants. Challenging the liability as well as the quantum of compensation awarded by the Tribunal, the third respondent/insurance company has filed the present appeal.

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

8. The learned counsel appearing for the appellant / third respondent submitted that the negligent is only on the part of the driver of the car, who drove the vehicle in a rash and negligent manner and a criminal case was also filed against him, however, since the driver of the car namely Ramesh died due to the accident, charges framed against him was abated and hence, the appellant is not liable to pay compensation. He further submitted that without any proper documentary evidence, the Tribunal has wrongly taken the yearly income of the deceased as Rs.1,26,000/- and instead of deducting 50% of the income towards personal expenses, has wrongly deducted 1/3 of the income and hence he prayed to allow the appeal.

9. The learned counsel appearing for the respondents/ claimants submitted that based on the evidence, the Tribunal has rightly concluded that the cause of the accident was only due to the negligence on the part of the driver of the first respondent and since the first respondent has insured his vehicle with the third respondent, both of them are liable to pay compensation and prayed for dismissal of the appeal.

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

11. Point

It is the contention of the appellant/third respondent that the driver of the Jeep bearing Registration No.TN-21-C-7610 was proceeding his Jeep at a moderate speed, however, the driver of the car bearing registration No.TN-09-S-0545 namely Ramesh drove the vehicle in a rash and negligent manner and lost his control over the car and dashed against the Jeep, thereby the accident occurred. One P.Anbalagan was examined as RW1 on the side of the respondents and he deposed that a criminal case was registered against the driver of the car in Crime No.16 of 2000 under Section 304(A) and 337 of IPC by the Gangavaram Police Station and since the driver of the car died in the accident, the case was abated on 25.02.2000.

12. It is an admitted fact that the driver of the car namely Ramesh was died during the accident and hence, the criminal case filed against him was ended as abatted. However, there is no evidence before the Tribunal to prove that the negligent is on the part of the driver of the car bearing registation No.TN-09-S-5045. In the absence of such material, this court affirmed that the findings of the Tribunal by fixing the negligence on the part of the driver of the Jeep and directing the third respondent/ appellant to pay compensation is correct.

13. In so far as the quantum of compensation is concerned, the appellant raised grounds that the compensation awarded by the Tribunal is on the higher side. However, after perusal of the findings of the Tribunal, the learned counsel appearing for the appellant has not seriously disputed to agitate the matter on the quantum of compensation.

14. It is contended by the learned counsel appearing for the respondents/claimants that though the claimants have not filed any cross objection challenging the quantum of compensation, as per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 , they have a statutory right for getting compensation by adopting proper multiplier '18' instead of '17', since the age of the deceased was 23 years on the date of

accident. Accepting the said contention, the claimants are entitled for adoption of proper multiplier '18' in arriving the compensation under the head loss of dependency. Further, as per the decision 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% of the income should be added to the actual income of the deceased towards " Future prospects". But the Tribunal has not awarded the same. The deceased was died as a bachelor. Hence, as rightly pointed out by the counsel for the appellant/insurance company, 50% should be deducted towards personal expenses of the deceased. As per the income tax return Ex.P7, the annual income of the deceased was Rs.1,26,000/-. Thus, loss of dependency is calculated as 1,26,000 + 50400 = 1,76,400 - 50% = 88,200 x 18 = 15,87,600. As far as the other heads awarded by the Tribunal is concerned, this court is of the view that they are just and reasonable and hence, it does not warrant any interference by this court.

15. At this juncture, the learned counsel appearing for the respondents/ claimants submitted that the claimants are restricted their claim only to Rs.15,00,000/-. Accordingly, the claimants are entitled to get the revised compensation of Rs.15,00,000/- along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit.

16. In the result,

(i) The Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is enhanced from Rs.11,73,000/- to Rs.15,00,000/-. No costs. The civil miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the revised compensation of Rs.15,00,000/- along 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 six weeks from the date of receipt of a copy of this order.

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

(iv) The claimants are directed to pay necessary court fee for the enhanced compensation amount, before drafting decree and the registry is directed to draft the decree, after receipt of the court fee for the enhanced compensation.

Sd/-
Assistant Registrar(CJ Conf)

// True Copy //

Sub Assistant Registrar

mst

To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Chengalpattu, Kancheepuram District.

Copy To

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.20666

+1cc to Mr.N.Sankaravadivel, Advocate, S.R.No.20838

CMA. No.3436 of 2013 and
M.P.No.1 of 2013

PP(CO)
RLP(20/10/2021)