



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
04.02.2021

Date of Pronouncing Judgment
24.03.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.990 of 2016
and
C.M.P.Nos.7549 of 2016 & 1640 of 2021
and
Cros. Obj. No.26 of 2021

National Insurance Co. Ltd.,
No.7, Raja Street,
Gobichettipalayam.

..Appellant in Appeal /
1st respondent in Cross Objection

Vs.

1.Vijayalakshmi
2.K. Sureshkumar
3.K. Gowrishankar

..Respondents in Appeal /
Cross Objectors

4.Tamilselvan
5.A. Nagaraj

..Respondents in Appeal /
Respondents 2 and 3 in Cross Objection

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.02.2015 made in M.C.O.P.No.149 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District & Sessions Judge, Tirupur.

Cross Objection filed under order 41 Rule 22 of Civil Procedure Code against the award and Decree dated 18.02.2015 made in M.C.O.P.No.149/2013 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Tirupur.

For Appellant : Mr. S. Arun Kumar
For Respondents: Mr. Ma. P. Thangavel, for R1 to R3
No Appearance for R4 & R5



J U D G M E N T

The appeal has been filed by the Insurance Company challenging the award dated 18.02.2015 passed by the Motor Accidents Claims Tribunal, II Additional District & Sessions Judge, Tirupur in M.C.O.P.No.149 of 2013.

2. The factum of the accident; the manner of the accident and negligence on the part of the driver of the offending vehicle are not under challenge. The Insurance Company filed the appeal in C.M.A.No.990 of 2016, challenging the quantum while, cross objection is filed for enhancement of compensation. The date of the accident is 28.09.2012, the deceased/Kaliuthu was travelling in TVS 50 two wheeler. P.W.2 Sellakutty is the occurrence witness. The deceased said to have engaged in fencing worker cum contractor and agriculture business.

3. On going through the evidence given by the first respondent, it appears that the deceased was working as fencing worker cum contractor and agriculture at the time of accident, further she deposed that the deceased earned a sum of Rs.15,000/- per month. In this connection, it is necessary to refer the judgment of the Hon'ble Apex Court in the case of Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Since, in the present case, the accident had occurred during the year 2012, even in the absence of the proof regarding his income, this Court fixes Rs.6,500/- as his monthly income.

4. Now, in order to calculate the future prospects, it is necessary to refer the judgement of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12, in which, the Hon'ble Apex Court has held that, if the deceased was a self employed an addition of 10% of the established income should be the warrant where the deceased was between the age of 50 to 60 years. In this case as per Ex.P2 postmortem certificate, the age of the deceased at time of the accident is 52 years. So, with regard to calculating the future prospectus, 10% of the monthly income of Rs.6,500/- is added for calculating the pecuniary loss, which is arrived at Rs.7,150/- (6500 + 10% of 6500).

5. After deducting $1/3^{\text{rd}}$ towards personal expenses, the annual contribution of the deceased to his family comes to Rs.4,767/- (Rs.7,150/- - $1/3^{\text{rd}}$ of Rs.7,150/-).



6. The approximate multiplier for the age of 52 years is "11". Therefore, the total loss of income arrived at, is as follows:

$$\begin{aligned}\text{Total Loss of Income} &= \text{Rs.}4,767/- \times 12 \times 11 \\ &= \text{Rs.}6,29,244/-.\end{aligned}$$

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7. Loss of love and affection:-

This Court is inclined to award Rs.40,000/- to the first respondent/widow and Rs.40,000/- each to the respondents 2 and 3 under the same head.

8. Funeral Expenses:-

The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses and the same is enhanced to Rs.15,000/-.

9. Transportation:-

The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses and the same is enhanced to Rs.15,000/-.

10. Medical Bill as per Ex.P6

The Tribunal has awarded a sum of Rs.5,830/- towards medical bill and the same is confirmed.

11. Loss of estate:

No amount was awarded towards loss of estate by the Tribunal. Therefore, a sum of Rs.10,000/- is awarded towards loss of estate.

12. Hence, the total compensation payable in this case is Rs.7,95,074/-.

Head	Amount (Rs.)
Total loss of income	6,29,244/-
Loss of love and affection (for R1-Rs.40,000/- and for R2 and R3-Rs.40,000/- each)	1,20,000/-
Funeral expenses	15,000
Loss of estate	10,000/-
Medical Bill	5,830/-
Transportation	15,000/-
Total	7,95,074/-

13. Therefore, the Tribunal's award of Rs.11,39,430/- is reduced to Rs.7,95,074/-. The claimants are entitled to get share as fixed by the Tribunal. The interest fixed by the Tribunal at 7.5% shall remain unaltered.



14. The insurance company is directed to deposit the entire award amount along with interest and costs within a period of twelve weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of the claimants along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon. The cross objection filed by the claim petitioners is dismissed. The CMA filed by Insurance Company is ordered to the extent as indicated above. Thus, the award dated 18.02.2015, passed in M.C.O.P.No.149/2013, stands modified and C.M.A.No.990/2016 stands allowed in part. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AT

To

The Motor Accident Claims Tribunal,
II Additional District & Sessions Judge,
Tirupur.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 19067
+1 CC to Mr.S. Arun Kumar, Advocate sr 19218.

C.M.A.No.990 of 2016

AD(CO)
SP(12/11/2021)