IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3330 of 2014 and
M.P.No.1 of 2014

The Branch Manager,
The New India Assurance Co. Ltd.,
Tiruvannamalai ... Appellant/3rd respondent

Vs.

1. Shanthi
2. Ananthbabu
3. Aruna
4. Minor Suganthi
5. Minor Bharathi
   (minors are represented by their guardian
   mother Shanthi) ... Respondents 1 to 3 /claimants

6. Praveen
7. Adhimoolam ... Respondents 5,6/respondents 1 and 2

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 16.06.2014 passed in MCOP No.175 of 2005 by the Subordinate Judge, Motor Accident Claims Tribunal, Arni.

For Appellant : Mr.M.Krishnamoorthy
For respondents 1 to5 : Mr.A.Bharathi

J U D G M E N T

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.10,00,000/- for the death of one Subramani, husband of the first claimant and father of the claimants 2 to 5, in a road accident that took place on 02.05.2005.

3. The brief case of the claimants is as follows: On 02.05.2005 at about 11.45 a.m., the deceased Subramaniam, who was a Village Assistant, was proceeding to Polur Tahsildar Office to attend his official work, by riding his motorcycle bearing registration No. TVS XL Super TN 25 Y 3114 along Polur-

Chetput Road and while nearing Selvampettai opposite to I.T.I, a speedy carriage auto bearing registration No.TN-25-D 0690 hit the motorcycle, thereby he sustained grievous injuries all over his body and succumbed to injuries. According to the claimants, the rash and negligent driving of the driver(first respondent) of the carriage auto was the cause of accident and since the second respondent/ owner of the vehicle insured his motorcycle with the third respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the Insurance company by filing counter affidavit.

5. Before Tribunal, the first claimant and one another witness were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P7 were marked. On the side of the respondents, two witnesses were examined as RW1 and RW2 and Ex.R1 to Ex.R10 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.10,41,200/- as compensation to the claimants under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency to the claimants(6867-1717=5150 x12x14)	865200
2	Loss of consortium to first claimant	50000
3	Loss of love and affection to second claimant	25000
4	Loss of love and affection to the third claimant	25000
5	Loss of Love and affection to the fourth claimant(minor)	30000
6	Loss of love and affection to the fifth claimant (minor)	30000
7	Funeral expenses	10000
8	Transportation charges	5000
9	Damages to clothes	1000
	Total	10,41,200

Challenging the quantum of 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 the counsel for the claimants and I have perused the materials on record.

8. The learned counsel appearing for the appellant submitted that the deceased Subramaniam was employed as Village Assistant and drawing gross salary of Rs.3,563/- and the net salary was Rs.2,548/-. , but the Tribunal has erred in fixing the income excessively at Rs.6,867/-. He further submitted that as per the certificate issued by the Tahsildar, the deceased was aged 50 years on the date of accident and had only ten more years of service for superannuation. However, the Tribunal had erred in applying the multiplier of fourteen years, with the same multiplicand, without considering the fact that the deceased would be retiring from service in ten years and after his retirement, he would not be contributing the same amount to the claimants. He also submitted that the compensation awarded towards "Loss of Consortium" and "Loss of love and affection " is highly excessive and therefore, the compensation awarded by the Tribunal has to be scaled down.

9. The learned counsel appearing for the respondents/ claimants submitted that after considering the various factors and taking into account the salary would be drawn in future, the Tribunal has correctly fixed the monthly income of the deceased and awarded a just and reasonable compensation and hence, the findings of the Tribunal does not warrant any interference by this court.

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

11. Point

As rightly pointed out by the learned counsel appearing for the insurance company, the gross salary of the deceased was Rs.3,563/-. This fact is not disputed by the counsel for the claimants also. Hence, this court fixed the monthly income of the deceased at Rs.3,563/-. 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), 15% should be added towards " Future prospects". The deceased was aged 51 years on the date of accident and therefore, proper multiplier to be adopted in the instant case is ' 11 ', as per the decision rendered in Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. There are more than 4 dependants. Hence, it is appropriate to deduct ¼ of the income of the deceased towards his "Personal expenses". Thus, loss of dependency is calculated as 3563+ 534 = 4094 – ¼ = 3073 x12x11=4,05,636/-. Accordingly a sum of Rs.4,05,636/- is awarded towards " Loss of dependency " and a sum of Rs.40,000/- is awarded towards " Loss of consortium" to the wife. Further, the compensation awarded under the heads " Funeral Expenses" and " Loss of estate" is enhanced to Rs.15,000/- each. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of dependency to the claimants	8,65,200 (6867-1717=5150 x12x14)	4,05,636 (3563+534=4097 – 1 /4 x 12 x 11)
2	Loss of consortium to first claimant	50000	40000
3	Loss of love and affection to second claimant	25000	25000
4	Loss of love and affection to the third claimant	25000	25000
5	Loss of Love and affection to the fourth claimant(minor)	30000	30000
6	Loss of love and affection to teh fifth claimant (minor)	30000	30000
7	Funeral expenses	10000	15000
8	Transportation charges	5000	5000
9	Damages to clothes	1000	1000
10	Loss of Estate	-	15000
	Total	1041200	591636

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 01.12.2014 in M.P.No.1 of 2014, the entire compensation awarded by the Tribunal has already been deposited by them and the petitioners were permitted to withdraw 50% of the deposited amount. 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. The point is answered accordingly.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is scaled down from Rs.10,41,200/- to Rs.5,91,636/-. No costs. The connected civil miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the revised compensation of Rs.5,91,636/- 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, as per the apportionment made by the Tribunal, after following due process of law.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

mst

To
1. The Subordinate Judge, Motor Accident Claims Tribunal, Arni.

Copy to
The Section Officer, VR Section, High Court, Madras.

+1CC to Mr.M.Krishnamoorthy, Advocate, SR.No. 11313
+1CC to M/s.A.Bharathi, Advocate, SR.No. 11599

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and M.P.No.1 of 2014

CP(CO)
B.VC (15/09/2021)