IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1937 of 2020
(Through Video Conferencing)

1.Ruckmani @ Chellammal

2.Marimuthu

3.Murugesan ...Appellants/Petitioners

Vs.

1. Sheeja Chandrakanthan

2. The National Insurance Co., Ltd.,
Div No.10, 803-A, 8th Floor,
Tower C, Connectus Building,
Opp. New Delhi Railway, Bhavbhuti Marg,
New Delhi – 110 002.

3. The National Insurance Co. Ltd.,
Branch Office 73, Perundurai Road,
Erode – 638 011. ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.842 of 2017, dated 10.01.2020, on the file of the Motor Accident Claims Tribunal / Special District Judge Court, Erode.

For Appellants : Mr.T.S.Arthanareeswaran

For Third Respondent : Mr.J.Chandran

J U D G M E N T

The claimants are the appellants in this Civil Miscellaneous Appeal. They are aggrieved by the impugned Judgment and Decree dated 10.01.2020 passed by the Motor Accident Claims Tribunal (Special District Judge Court), Erode in M.C.O.P.No.842 of 2017.

2. By the impugned Judgment and Decree, the Tribunal has arrived at a total compensation of Rs.12,76,130/- and has deducted a sum of Rs.3,19,033/- towards 25% contributory

negligence of the deceased Ramasamy and has awarded a sum of Rs.9,57,097/- (12,76,130 - 3,19,033) together with interest at 7.5% per annum from the date of claim petition till the date of deposit along with proportionate cost to the appellants/ claimants.

3. Aggrieved by the same, this appeal has been filed for enhancement of compensation primarily on the ground that the Tribunal has wrongly deducted 25% towards contributory negligence of the deceased Ramasamy and that the Tribunal has also wrongly considered the notional income of the deceased Ramasamy as Rs.9,000/- per month while arriving the above compensation. That apart, it is submitted that as per the recent decision of the Division Bench of this Court in National Insurance Company Limited Vs. Thangadurai and Another, in its Judgment dated 13.04.2018 passed in C.M.A.Nos.624 & 2413 of 2016, deduction towards contributory negligence can be made only on the amount awarded under the head of loss of dependency and not on the other amounts awarded under the conventional heads. In this connection, a reference was made to paragraph No.10 of the said decision which is reproduced below:-

> 10.Since the claimant lost his avocation, multiplier method has to be adopted to calculate the loss of income. As per the judgment of the Honourable Supreme Court in Sarla Verma & Others Vs. Delhi Transport Corporation & another, reported in 2009 (2)TNMAC 1(SC), the appropriate multiplier is “14” for the age of 42 years. Therefore, loss of income comes toRs.15,72,480/- (11700 x 12 x14x80/100). Since 20% contributory negligence has been fixed on the claimant, 80% income alone has been taken.

4. On behalf of the second respondent Insurance Company, it is submitted that the impugned Judgment and Decree is well reasoned and requires no interference as the Tribunal has come to a correct conclusion and awarded a just compensation under Section 166 of the Motor Vehicles Act, 1988.

5. It is further submitted that the deceased was negligent at the time of the accident in as much as he crossed the road negligently and therefore became an accessory to his own death due to the accident. Therefore, it is submitted that the Tribunal has come to a fair conclusion that the deceased was partially responsible for the accident and the death.

6. I have considered the arguments advanced by the learned counsel for the appellants and the learned counsel for the second respondent Insurance Company. I have perused the impugned Judgment and Decree passed by the Tribunal.

7. In my view, the Tribunal has come to a fair conclusion on facts based on the evidence, particularly oral evidence and the deposition, that the deceased was also negligent and contributed to the accident and his death. That being the case, I am inclined to uphold decision of the Tribunal that the deceased contributed to the accident and his death.

8. At the same time, the Tribunal has only considered the notional income of the deceased as Rs.9,000/- per month. The deceased was said to be a Vendor of Tapioca selling it from place to place and was riding a moped bearing registration No.TN-36-S-1928 at the time of the accident. Considering the fact that the deceased was self employed and the vendor of Tapioca on the TVS Xl Super Heavy Duty, considering the accident is of the year 2017 and considering the fact that the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735 was rendered in the context of an accident in 2008, I am of the view that to award a just compensation, the Tribunal ought to have considered slightly higher income of the deceased for the aforesaid purpose. Therefore, I am inclined to re-quantify the compensation by considering the notional income of the deceased as Rs.12,000/- per month.

9. There shall be an addition of 10% towards future prospects as per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680. The deceased was aged about 58 years at the time of the accident though there are no direct evidences. Ex.P19 Post mortem report indicates that he would be aged about 58 years. The age of the first respondent who is the wife of the deceased is 52 years at the time of filing of the claim petition.Considering the age of the first respondent, conclusion of the Tribunal that the deceased was aged about 58 years based on the Ex.P19 Post mortem report appears to be reasonable. Under these circumstances, compensation under the loss of dependency is re-quantified as follows:-

Loss of dependency:-

Monthly Income of the deceased - Rs.12,000/-

Annual Income (12,000 x 12)	: Rs.1,44,000/-
Add: Future prospectus 10% (1,44,000 x 10/100)	: Rs. 14,400/-
	: Rs.1,58,400/-
Less: Personal Expenses 1/3 (1,58,400 x 1/3)	: Rs. 52,800/-
	: Rs. 97,600/-
Multiplier - 16 (97,600 x 9)	: Rs.8,78,400/-

10. Since the Division Bench of this Court in National Insurance Company Limited Vs. Thangadurai and Another, referred to supra has held that there shall be a deduction towards contributory negligence only on the loss of dependency and not on the conventional heads, the 25% contributory negligence is to be deducted from the amount arrived towards loss of dependency as follows:-

Loss of dependency arrived by this Court: Rs.8,78,400/-

Less : Contributory negligence at 25%
(8,78,400 x 25/100) : Rs.2,19,600/-

Total : Rs.6,58,800/-

11.Accordingly, the amount of compensation of Rs.9,57,097/- awarded by the Tribunal is re-quantified as follows:-

Heads	Amount
Loss of dependency	Rs.6,58,800/-
Funeral Expenses	Rs. 15,000/-
Loss of clothes	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Loss of love and affection	Rs. 50,000/-
Transportation	Rs. 10,000/-
Medical Expenses	Rs.4,33,330/-
Total	Rs.12,22,130/- rounded off to Rs.12,23,000/-

12. Thus, the second respondent Insurance Company is directed to deposit a sum of Rs.12,23,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit and costs, less any amount already deposited in the method of payment ordered by the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment.

13. On such deposit, the appellants are permitted to withdraw their shares together with interest and costs in the same proportion awarded by the Tribunal, less any amount already withdrawn, by filing suitable application before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-
Deputy Registrar(spl.Cell CJ Conf)

//True Copy//

Sub Assistant Registrar

jen

To

1. Motor Accident Claims Tribunal,
   Special District Judge Court,
   Erode.

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

+1cc to M/s.J.Chandran, Advocate, S.R.No.26870

C.M.A.No.1937 of 2020

CNR(CO)
RGA(25/10/2021)