



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.3396 of 2021
and CMP.No.19588 of 2021

The Branch Manager,
Shriram General Insurance Co. Ltd.,
Rajasthan

...Appellant/2nd Respondent

Vs.

1. Renuka
2. Dhanaselvi
3. Minor Bharathraj
4. Minor Logeshwaran
5. Minor Monisha

..Respondents 1 to 5/Petitioners

[Minors are represented by their mother/next friend
the 2nd respondent herein]

6. Kanchana

...6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award dated 07.04.2021 made in MCOP.No.776 of 2015 on the file of Motor Accident Claims Tribunal/II Additional Court, Puducherry.

For Appellant : Mr.S.Dhaksnamoorthy

J U D G M E N T

[Judgment of the Court was delivered by V.SIVAGNANAM, J]

The appeal is heard through video conferencing.

2. This appeal arises out of the award passed by the Motor Accident Claims Tribunal/II Additional Court, Puducherry in MCOP.No.776 of 2015, dated 07.04.2021.



3. The brief facts, which are necessary for disposal of the appeal would run thus:-

On 10.02.2015 at about 23.15 hours, the deceased Sivaraj was driving Swaraj Mazda bearing Registration No.TN-31-AD-2763 on Puducherry to Tindivanam Road. At that time, another Swaraj Mazda bearing Registration No.PY-01-S-5315 was parked on the middle of the road by its driver near Molasur Erikarai and the deceased without noticing the same, dashed against the said vehicle and sustained severe injuries. Immediately, he was taken to JIPMER Hospital, but he died on the very next day.

4. According to the respondents 1 to 5/claimants, the deceased was working as a driver and earning a sum of Rs.1,000/- per day. Since the accident had occurred due to the negligence of the driver of the sixth respondent's vehicle, they laid a claim petition claiming a sum of Rs.40,25,000/- as compensation.

5. The Insurance Company resisted the claim, disputing the manner of accident, age, occupation and income of the deceased and their liability to pay the compensation.

6. Before the Tribunal, on the side of the claimants, PW1 to PW3 were examined and Exs.P1 to P22 were marked. On the side of the Insurance Company, RW1 was examined, but no document was marked.

7. The Tribunal, on an appreciation of the evidence, came to the conclusion that the accident had occurred due to the negligence of the driver of the sixth respondent's vehicle. By coming to such conclusion, the Tribunal awarded a compensation of Rs.26,72,500/- along with interest at 7.5% per annum and directed the appellant/Insurance Company to pay the above compensation. Questioning the award, the present appeal has been filed by the Insurance Company.

8. The learned counsel appearing of the appellant/Insurance Company would submit that the monthly income taken by the Tribunal for calculating Loss of Income for the deceased was on the higher side. Further, the Tribunal has not followed the legal precedents of the Hon'ble Apex Court while arriving at the quantum.

9. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.



10. In the instant case, it is not in dispute that the deceased Sivaraj met with an accident and died on 11.02.2015 and his legal heirs, viz, wife, children and mother are claimants. In the claim petition, it is stated that the deceased was working as a driver and earning Rs.1,000/- per day. The Tribunal, by following the decision of this Court in Mythili and others vs. A.Lakshmi, Universal Sompo General Insurance Co. Ltd., Chennai, wherein the decision of the Supreme Court in the case of Neeta vs. Divisional Manager, MSRTC, Kothapur was relied upon, fixed the monthly income of the deceased at Rs.12,000/- p.m. Then, by adding 40% of the income towards future prospects, the Tribunal arrived the actual monthly income of the deceased at Rs.16,800/- [12,000 + 4,800]. Since the dependents are 5 in numbers, the Tribunal, by deducting 1/4 towards personal expenses of the deceased, arrived at the loss of dependency at Rs.12,600/- [16,800 - 4,200]. Considering the age of the deceased at the time of the accident, multiplier "16" was applied and thereby, the Tribunal arrived the Loss of Income at Rs.24,19,200/- [12,600 x 12 x 16].

11. In addition to that, the Tribunal awarded a sum of Rs.44,000/- towards Loss of Filial Consortium to the first claimant; Rs.44,000/- towards Loss of Spousal Consortium to the second claimant; Rs.1,32,000/- towards Loss of Parental Consortium to the claimants 3 to 5; Rs.16,500/- towards Funeral Expenses; and Rs.16,500/- towards Loss of Estate, and the same are confirmed. In total, the Tribunal has awarded a sum of Rs.26,72,500/- (by rounding of 26,72,200) along with interest at 7.5% from the date of claim petition till the date of deposit. In our considered view, the impugned award of the Tribunal is fair and reasonable, which does not warrant interference by this Court. In fine, the impugned award is confirmed and the appeal is liable to be dismissed.

12. In view of the above, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 and 2 are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. Insofar as the claimants 3 to 5/minor children of the deceased are concerned, their respective shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority



and the interest accrued thereon shall be withdrawn by the second claimant/mother once in three months. The apportionment of shares as fixed by the Tribunal to the claimants is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

pvs

To

1. The Motor Accident Claims Tribunal
II Additional Judge, Puducherry

C.M.A. No.3396 of 2021

SJ (CO)
SP (07/02/2022)