IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.3984 OF 2019
AND
C.M.P.NO.22515 OF 2019

(THROUGH VIDEO CONFERENCING)

Cholamandalam MS General Insurance Co. Ltd.,
Dare House, II Floor,
No.2, N.S.C.Bose Road,
Chennai – 600 001. ... Appellant/ 2nd Respondent

Vs.

1. N.Dheyvanai

2. N.Kanniyammal

3. N.Punitha (Minor)
rep. by her mother & guardian
N.Dheyvanai.

4. D.Pandiyan ... Respondents/ Petitioners 1 to 3 and 4th Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.02.2019 in M.C.O.P.No.728 of 2014 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

For Appellant : M/s.R.Sree Vidhya

For R1 to R3 : M/s.Vijaya

For R4 : No appearance

J U D G M E N T

Insurance Company is the appellant in this Civil Miscellaneous Appeal. It is aggrieved by the impugned Judgment and Decree dated 18.02.2019 passed by the Motor Accidents Claims Tribunal (In the Court of Small Causes, Chennai), Chennai in M.C.O.P.No.728 of 2014.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.11,06,000/- as compensation together with interest at 7.5% per annum from the date on which the claim petition was taken on file till the date of deposit to the first to third respondents.

3. The first to third respondents are the dependents of the deceased S.Narayanan who died in a motor accident. On 03.01.2014 at about 6.00 p.m., when the deceased was riding a Bi-Cycle on the ECR Road, a Share Auto bearing registration No.TN-19-C-9570 driven by its driver belonging to the first respondent insured with the appellant Insurance Company allegedly came behind the Bi-Cycle and hit the deceased, as result of which, the deceased sustained grievous injuries and later died at Govt. Hospital. Therefore, the first to third respondents filed the above claim petition, on which, the aforesaid compensation has been awarded. Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

4. The amount awarded by the Tribunal is questioned in this appeal on the ground that the Tribunal has wrongly considered the age of the deceased as 50 years contrary to the evidence on record. It is submitted that as per Ex.P-2 Copy of the Ration Card, the age of the deceased was 36 years in 2005. Therefore, at the time of the accident, the age of the deceased should be around 56 years in 2014. The Tribunal has, on the other hand, relied upon the age given in the death report and death certificate which have been marked as Ex.P3 & Ex.P4 respectively. It is submitted that the Tribunal has wrongly taken the multiplier of 13 applicable to the age of 50 years.

5. Per contra, the learned counsel for the first to third respondents submitted that the Tribunal has awarded just compensation. The learned counsel for the first to third respondents further submitted that the Tribunal has considered a very low income of Rs.9,000/- to arrive at the above compensation. The learned counsel for the first to third respondents submitted that though there are some mistakes in the compensation awarded in the impugned Judgment and Decree, nevertheless, on the over all amount awarded by the Tribunal is a just compensation and therefore, prayed for dismissal of this appeal.

6. Heard the learned counsel for the appellant Insurance Company and the learned counsel for the first to third respondents. I have perused the impugned Judgment and Decree passed by the Tribunal, the evidences on record and the exhibits marked before the Tribunal.

7. After considering the evidence on record, in my view, the Tribunal has wrongly considered the age of the deceased as 50 years based on the Ex.P3 & Ex.P4 death report and death certificate.

8. The Exhibit P2 Copy of Ration Card shows that the age of the first respondent/first claimant was 34 years when the card was issued in the year 2005 which more or less confirms the correct age of the first respondent / first claimant. Ex.P8 and P11 also show that the date of the birth of the first respondent / first claimant is 01.01.1973. Therefore, the age of the first respondent / first claimant stands confirmed as per these Exhibits.

9. Similarly, age of the second and third respondents, namely the second and third claimants given as 9 and 4 years in Ex.P2 Ration Card Copy respectively also cannot be questioned since Exs.P5, P10, P12 & P13 confirm the age of them as given in Ex.P2 Ration Card Copy when the card was issued.

10. Only Ex.P6 Photo Pass for Non-Dept Personnel gives the age of the deceased as 40 years as on 17.12.2013 which has been issued without verification and is contrary to claim of the claimants. The first respondent / first claimant has also deposed that she was aged about 47 years as on 20.09.2017 at the time of recording the evidence before the Tribunal. She further has deposed that the age of the deceased was aged about 56 years at the time of the accident. Thus, there is a mistake committed by the Tribunal in considering the age of the deceased as 50 years at the time of the accident. Therefore, considering the over all documents and the deposition of the first respondent / first claimant, it is clear that the age of the deceased would be 56 years at the time of the accident. Therefore, this Court is inclined to consider the same for the purpose of awarding compensation. Consequently, future prospects and correct multiplier has to be adopted as 10% and 9 respectively.

11. In my view, the Tribunal has committed error while awarding the compensation. It is also noticed that the Tribunal has considered the low income of the deceased as Rs.9,000/- per month. In my view, since the accident is of the year 2014, it would be fair to conclude that the notional income of the deceased as Rs.11,000/- per month. On the aforesaid amount, there shall be 10% future prospects considering the age of the deceased as 56 years.

12. Similarly, since the Tribunal has not awarded any amount towards Transportation, a sum of Rs.10,000/- is awarded towards Transportation.

13. Accordingly, the compensation of Rs.11,06,000/- awarded by the Tribunal is re-quantified as follows:-

Heads and Calculation	Compensation re-quantified by this Court
Income of the deceased : Rs.11,000.00 Add: Future prospectus at 10% *: Rs. 1,100.00 ------------------ : Rs.12,100.00 Less: Personal expenses (12,100 x 1/3) : Rs. 4,033.00 ------------------ : Rs. 8,067.00 Annual Income – 8,067 x 12 : Rs.96,804.00 Multiplier-9 (96,804 x 9): Rs.8,71,236.00	Rs.8,71,236/-
Loss of Consortium #	Rs. 40,000/-
Loss of Parental Consortium (40,000 x 2) #	Rs. 80,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Transportation	Rs. 10,000/-
Total	Rs.10,31,236/- rounded off to Rs.10,31,500/-

* As per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

As per the decision of the Hon'ble Supreme Court in Magma General Insurance Company Limited Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130.

14. Thus, the appellant is directed to deposit a sum of Rs.10,31,500/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit in method of payment ordered by the Tribunal, less any amount already deposited, within a period of eight weeks from the date of claim petition till the date of deposit.

15. The appellant Insurance Company is also entitled to

refund the amount deposited in excess of the amount awarded by this Court, if any, together with accrued interest thereon by filing suitable applicable before the Tribunal.

16. On such deposit, the first and second respondents/ first and second claimants are permitted to withdraw their share in the same proportion awarded by the Tribunal, less any amount already withdrawn, by filing suitable application.

17. Since the third respondent is minor, her share shall be deposited in any one of the Nationalised Banks under reinvestment scheme till she attains the age of majority. The first respondent, who is the guardian of the minor, is permitted to withdraw the accrued interest from the minor's deposit once in three months directly from the said Bank. On attaining majority, the third respondent is to be permitted to withdraw her share, by filing suitable application before the Tribunal.

18. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

jen

To

The Motor Accident Claims Tribunal
(II Judge, Court of Small Causes), Chennai.

Copy To

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

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.25843
+1cc to M/s.Vijaya & Anandh, Advocate, S.R.No.25511

C.M.A.No.3984 of 2019 and
C.M.P.No.22515 of 2019

VSNII(CO)
PM/29/10/2021