BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.03.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.515 of 2018
and
CMP(MD)No.6076 of 2018

United India Insurance Company Limited
Through the Branch Manager,
Trissur Trade Centre Kuruppam Road,
Trissur, Kerala. : Appellant/2nd Respondent

Vs.

1.Ramalakshmi
2.Minor Karthick
3.Minor Manohar
(R2 and R3 are represented through their mother/guardian, the 1st respondent)
4.Seethalakshmi : R1 to R4/Petitioners
5.P.K.Ayyoob : 5th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli, in MCOP No.1307 of 2015, dated 19.07.2017.

For Appellants	:	Mr.J.S.Murali
For R1 to R4	:	Mr.V.Sasikumar
For 5th Respondent	:	Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli, in MCOP No.1307 of 2015, dated 19.07.2017.

2.The short facts of the case is that on 09.08.2015 at about 7.00 pm, when the deceased Srinivasan was riding his motor cycle TN-41-K-1918 on Sankarankovil-Kalugumalai Main road, near Chidambarapuram Vilakku, the Vehicle TN-28-K-5689 came in a rash and negligent manner and dashed against the motor cycle. In the accident, the deceased sustained grievous injuries and died on the spot. The legal heirs of the deceased Srinivasan filed a claim petition seeking compensation of Rs.25,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimants have stated that the deceased was 48 years at the time of accident and he was doing Coolie work, thereby he was earning Rs.6,000/- per month. It is alleged that the said Srinivasan died only due to the negligence of the driver of the offending vehicle.

4.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 3 witnesses were examined and marked 5 documents. On the side of the Appellant Insurance Corporation, no witness was examined and no document was marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle caused the accident and awarded compensation of Rs.14,00,000/- together with interest @ 9% p.a.

7.Heard both sides and perused the materials available on record.

8.The manner of the accident and the findings on negligence are not in dispute and the appeal is confined only to quantum of compensation awarded by the Tribunal.

9.The learned counsel for the appellant Insurance Company mainly argued that the tribunal erred in awarding higher quantum of compensation to the claimants and failed to award a fair compensation and the tribunal ought to have adopted correct multiplier and erred in arriving at the monthly income of the deceased and the award of the tribunal under the conventional heads are also on the higher side, hence, the award of the tribunal has to be reduced.

10.On the other hand, the learned counsel for the respondents submitted that the tribunal has erred in calculating the meagre monthly income for the deceased and in respect of conventional heads, some additional amount may be given.

11.It is not in dispute that the deceased was doing Coolie work. It is not in dispute that the deceased died at the age of 48 years. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, the tribunal has fixed the monthly income of the deceased at Rs.6,000/-. By adding 30% towards future prospects and by applying multiplier '13' and after deducting 1/4th from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.9,12,600/- towards loss of income. Further, the tribunal has awarded Rs.3,00,000/- towards loss of love and affection to the claimants 1 to 3; Rs.1,00,000/- towards loss of consortium to the 1st claimant; Rs.

50,000/- towards loss of love and affection to the 4th claimant; Rs.10,000/- towards transport expenses; Rs.25,000/- for funeral expenses and Rs.2,400/- towards loss of estate. In total, the tribunal has awarded Rs.14,00,000/- to the claimants along with interest @ 9% p.a.

12.Perusal of the records would reveal that the deceased was doing Coolie work. Even though, no proof was filed on the side of the claimants, the tribunal has fixed the monthly income of the deceased at Rs.6,000/-. However, considering the facts of the case and the cost of living at the relevant of time, this court fixed the notional income of the deceased at Rs.7,000/- per month.

13.It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 25% of the established income should be the warrant where the deceased was between the age group 40 and 50. In the instant case, the tribunal has added 30% towards future prospects. Hence, this court is of the considered view that 25% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493** ***(National Insurance Company Limited vs. Pranay Sethi and others)***. By doing so, the monthly loss of income of the deceased is calculated at Rs.8,750/- (Rs.7,000/- + Rs.1,750/-). After deducting 1/4th towards his personal and living expenses, the monthly income is arrived at Rs.6,563/- (Rs.8,750/- x 1/4). By applying proper multipler 13, this court awards **Rs.10,23,828/-** (Rs.6,563/- x 12 x 13) towards loss of income. In addition to that, as per the decisions in the case of **Pranay Sethi and Megama General Insurance Company**, this Court awards Rs.40,000/- towards loss of consortium to the 1st claimant; Each Rs.40,000/- towards filial consortium to the claimants 2 to 4; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.12,13,828/**-. The interest awarded by the tribunal is reduced to 7.5% p.a.

14.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is reduced to **Rs.12,13,828/-** from Rs.14,00,000/-. The Appellant Insurance Company Corporation is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the 1st claimant is entitled to withdraw Rs.2,38,828/- and the 4th claimant is entitled to withdraw Rs.75,000/-. The minor claimants 2 and 3 are entitled to Rs.4,50,000/- each. Insofar as the share of the minor claimants is concerned, the Tribunal is directed to deposit their share in any one of the Nationalised Bank, in a fixed deposit scheme initially for a period of three years renewable thereafter, till they attain majority. The 1st claimant/being the mother and guardian of minors is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare of the minor children. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

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/ /2021

Sub Assistant Registrar(CS)

To,

1.The Motor Accident Claims Tribunal/
The Special Sub Court,
Tirunelveli.

2.The Record Keeper,(2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-12399[F] dated 19/03/2021)

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18.03.2021

KMK(CO)
KB(07.06.2021) 4P 5C