IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE Mr. JUSTICE V.SIVAGNANAM

C.M.A. No.135 of 2022
and
CMP.No.984 of 2022

The Oriental Insurance Co. Ltd.,
Old No.115, New No.216, 2nd Floor,
Prakasam Salai, Broadway, Chennai-108.

... Appellant/2nd Respondent

Vs.

1. B.Vasugi
2. Minor Bavana
3. Minor Kanishka
   (Minors 2 & 3 are represented by their mother and natural Guardian first petitioner herein)
   M.Vasantha (died)
   Muthusamy (died)
4. M.Senthil
5. M.Karthik
   (R4 & R5 are legal heirs of deceased M.Vasantha & Muthusamy)

... Respondents/R1 to R5 Claimants

6. E.Jayachandran
   (R6-set ex-parte) ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, praying to set aside the award and decree in M.C.O.P.No.473 of 2019 dated 20.09.2021 on the file of the Motor Accidents Claims Tribunal (III Additional District & Sessions Court) Tiruvallur at Poonamallee.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.K.Varadhakamaraj for RR1 to 5
: R6-Set Ex-parte by the Tribunal

J U D G M E N T

[Judgment of the Court was delivered K.KALYANASUNDARAM, J]

The second respondent in MCOP.No.473 of 2019 on the file of the Motor Accidents Claims Tribunal/III Additional District and Sessions Court, Tiruvallur @ Poonamallee has preferred this appeal, questioning the award of compensation at Rs.1,23,49,184/-.

2. The claim petition was filed by the wife, children and the parents of the deceased Balan. It is the case of the claimants that the deceased was riding a motor-cycle on 08.08.2019 at about 17.45 hours from East to West on Chennai to Bangalore National Highways and when he was nearing St.Johns International Residential School at Pazhanjur, a Ashok Leyland Lorry bearing Registration No.TN-04-T-2999, belonging to the sixth respondent herein and insured with the appellant/Insurance Company, came in the same direction in a rash and negligent manner, endangering public safety with high speed and attempted to over-take the Motor-cycle of the deceased bearing Registration No.AP-31-AF-9303, thereby caused the accident. Due to the accident, the deceased sustained fatal injuries and died in the hospital.

3. The claimants have further stated that the deceased was working as Head Cashier-II, Andhra Bank, Poonamallee Branch and his monthly salary was Rs.66,326.25/- and was also getting pension at Rs.28,911/- and he died at the age of 43 years. Since the accident had taken place due to the negligence of the driver of the Lorry, the owner and insurer, both are jointly and severally liable to pay a compensation of Rs.1,70,00,000/-.

4. The claim petition was resisted by the appellant/Insurance Company stating that the accident had occurred due to the negligence of the deceased. It is also stated that the deceased was riding the motor-cycle in a zig-zag manner and dashed against the lorry and the driver of the Lorry did not posses any valid and effective driving licence at the time of the accident. Hence, the claimants are not entitled for any compensation.

5. Before the Tribunal, the claimants examined 3 witnesses and in all, 30 documents were marked. PW2-R.Muthu was examined as eye-witness to the accident. After analysing the evidence, the Tribunal held that the driver of the Lorry was solely responsible for the accident and awarded compensation of Rs.1,23,49,184 to the claimants with interest at 7.5% per annum from the date of claim petition till the date of payment. Questioning the same, the present appeal has been filed.

6. The learned counsel appearing for the appellant Mr.M.Krishnamoorthy vehemently contended that the Tribunal has erred in fixing the monthly income of the deceased at the excessive amount of Rs.83,237/- and by fixing Rs.66,326.25/- as the gross salary from Andhra Bank and adding Rs.16,911/-(28,911-12,000) from the pension received from Navy and adding future prospects at the rate of 30%, awarded excessive compensation of Rs.1,21,19,184/- towards loss of contribution to the family by adopting improper multiplier. The Tribunal has erred in not considering and deducting statutory deductions such as Income Tax from the salary inclusive of the future prospects. Hence, the award of the Tribunal is liable to be set aside.

7. He further submitted that the appellant/Insurance Company has specifically stated that the deceased was riding his vehicle in a Zig-Zag manner on the road and dashed against the Lorry and therefore, the deceased was solely responsible for the accident. Hence, he prayed to fix contributory negligence on the part of the deceased.

8. Per contra, the learned counsel for the respondents 1 to 5 / claimants made his submissions supporting the award passed by the Tribunal and prayed to dismiss the appeal.

9. Heard rival submissions and perused the entire materials available on record.

10. In the instant case, the claimants examined an eye-witness and also produced the copy of the FIR to prove the negligence. The Tribunal on the basis came to the conclusion, in our view rightly that the driver of the offending vehicle was solely responsible for the accident. Hence, we confirm the finding.

11. It is not in dispute that the deceased was working as Head Cashier-II at Andhra Bank, Poonamallee and was a pensioner from Indian Navy and was earning a sum of Rs.66,326.25/- per month and Pension at Rs.28,911/- per month. Based on Ex.P-23 Bank Statement, Rs.83,237/- is taken as the monthly income of the deceased. As pointed out by the learned counsel for the Insurance Company, before deducting income tax, future prospects is added at 30% and the actual monthly income works out to Rs.1,08,208/- [83,237 +24,971]. Then, the annual income of the deceased is arrived at Rs.12,98,496/- [1,08,208 x 12]. The Tax slab, at the time of the accident, i.e., for the year Financial Year 2019-20, is as under:

| Income | | Percentage of tax | | Amount of Tax |
|---|---|---|---|---|
| Upto 2,50,000 | - | Nil | - | 0 |
| 2,50,001 - 5,00,000 | - | 10% | - | 50,000 |
| more than 5,00,000 | - | 20% | - | 1,09,699 |
| | | Total | | 1,59,699 |

Thus, the actual annual income of the deceased is arrived at Rs.11,38,797/- [12,98,496 - 1,59,699]. Considering the age of the deceased, multiplier 14 is applied and the Loss of Contribution to the family is assessed as Rs.1,59,43,158/- [11,38,797 x 14]. After deducing the 1/3rd from the income of the deceased, the loss of contribution to the family would be arrived at Rs.1,06,28,772/-.

12. In addition to that, this Court deems it fit to award a sum of Rs.1,20,000/- under the head of Love and Affection to the family, Rs.15,000/- towards Loss of Estate and Rs.15,000/- towards Funeral Expenses. Loss of consortium to the wife at Rs.2,00,000/- shall stand set aside. Thus, the total compensation comes to Rs.1,07,78,772/-. The interest granted by the Tribunal is confirmed. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

| S. No. | Heads under which the amount is awarded by the Tribunal | Amount awarded by the Tribunal in Rs. | Amount awarded by this Court in Rs. |
|---|---|---|---|
| 1. | Loss of contribution to the family | 1,21,19,184 | 1,06,28,772 |
| 2. | Love and affection | - | 1,20,000 |
| 3. | Loss of Consortium | 2,00,0000 | - |
| 3. | Loss of Estate | 15,000 | 15,000 |
| 3. | Funeral Expenses | 15,000 | 15,000 |
| | Total | 1,23,49,184 | 1,07,78,772 Rounded off to 1,07,80,000/- |

13. In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,23,49,184/- is reduced to Rs.1,07,80,000/-, out of which, the first claimant is allotted to Rs.40,00,000/-; the claimants 2 and 3 (minors) are granted Rs.30,00,000/- each and the claimants 4 and 5 are entitled to Rs.3,90,000/- each. The Insurance Company is directed to deposit the above quantified amount of compensation, less the amount, if any already deposited, within a period of eight (8) weeks from the

date of receipt of a copy of this judgment, to the credit of claim petition. On such deposit, the respondents 1, 4 and 5 / claimants 1, 4 and 5 are permitted to withdraw their share. As far as the shares of the minor claimants 2 and 3 are concerned, the same shall be deposited in any one of the Nationalised Bank, in the interest bearing Fixed Deposit, till the minors attain majority and the natural guardian of the minors, being the mother of the claimants 2 and 3 i.e., first respondent herein, is permitted to withdraw the accrued interest thereon once in three months. No costs.

14. With the above directions, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs in this Appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmi

To

1. The III Additional District & Sessions Judge,
   Motor Accident Claims Tribunal,
   Tiruvallur @ Poonamallee.

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

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.29764

C.M.A. No.135 of 2022 and
CMP.No.984 of 2022

JPL(CO)
CT 09/06/2022