IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA No. 1016 of 2018
And
C.M.P.No. 8227 of 2018

The Branch Manager
M/s. National Insurance Company Limited.,
Office address at
'Ambika A.V.Kadu'
M.G.Road, Tirussur
Kerala - 680 001. ...3rd Respondent/Appellant

Vs

1. N. Parvathi

2. N.Ganesh Balaji
...Petitioners 1 & 2/Respondents 1 & 2

3. J.Jobijose

4. P.Babu ...Respondents 1 & 2/Respondents 3, 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the Judgement and Decree dated 13.07.2017 made in M.C.O.P.No. 76 of 2015 on the file of Motor Accident Claims Tribunal (Subordinate Judge) at Pollachi.

For Appellant : M/s. R.Sree Vidhya

For RR 1 & 2 : Mr. M.N.Balakrishnan

For RR 3 & 4 : No appearance

J U D G M E N T

The third respondent in M.C.O.P.No. 76 of 2015 on the file of the Motor Accident Claims Tribunal, Pollachi / Sub Court, Pollachi, is the appellant herein. They are aggrieved by the quantum of compensation granted to the first and second respondents herein / petitioners in the claim petition which was filed consequent to the unfortunate death of M.Nagaraj in a motor accident on 14.09.2014.

2. The facts necessitating filing of the claim petition was that M.Nagaraj was driving his Honda Activa Motor Cycle

bearing Registration No. TN-41-AJ-9739 on 14.09.2014 at around 3 p.m., at Pollachi to Udumalpet Main Road. When he reached Maharaja Mahal, a Tempo Traveller bearing Registration No. KL-04-U-7682 had come from behind and had dashed against the motorcycle owing to which , he was thrown over and fell down and sustained grievous injuries leading to his death. Seeking compensation and placing negligence on the part of the driver of the Tempo Traveller, his wife and his son had filed the claim petition as aforesaid.

3. Counter statement was filed by the present Appellant/third respondent and they questioned the alleged manner in which the accident had been stated to have occurred and they also questioned the avocation of the deceased and they also questioned their liability to pay compensation for his death. This adversial stand required trial to be conducted.

4. The Tribunal had taken up for consideration the issues relating to the nature of the accident and on whom the negligence should be placed and also as to who is to pay the compensation and the quantum of compensation. With respect to the nature of the accident, the Tribunal, on considering the evidence presented had found that as a fact the motorcycle driven by the deceased M.Nagaraj was hit from behind by the Tempo Traveller vehicle and a basic presumption was drawn that since the accident was caused by the vehicle dashing against the motorcycle moving in front, then the vehicle coming from the back would be prima facie liable, had determined that the negligence for the accident was owing to the rash and negligent manner in which the driver of the Tempo Traveller vehicle had driven the vehicle, I would affirm that particular finding.

5. The Tribunal thereafter proceeded to determine the compensation. In this connection, it was found that the deceased was working as Block Development Officer and had retired from service. He was aged about 66 years at the time of the accident. It was stated that he was earning a pension of Rs.6,750/- per month. Quite apart from that particular fact, it was also stated that he was running a Xerox shop and that he was earning Rs.200/- per day and that amount also went up to Rs.500/- per day.

6. The Tribunal, on the basis of such oral evidence, though there were no documentary evidence for that particular aspect, had proceed to determine that the monthly income from the Xerox Shop would be around Rs.6,000/- and therefore, the total annual income would Rs.72,000/-. The Tribunal adopted a multiplier '7' and granted a compensation of RS.5,04,000/- on that particular head of loss of income owing to the death of M.Nagaraj. The Tribunal also granted a sum of Rs.10,000/- towards loss of consortium to the first claimant and a sum of Rs.1/- lakh towards loss of love and affection and a sum of

Rs.25,000/- towards funeral expenses. The Tribunal had granted a total compensation of Rs.6,39,000/-.

7. Aggrieved by grant of such compensation, the third respondent/insurer of the offending vehicle / Tempo Traveller had filed the present Appeal.

8. Mrs. R.Sree Vidhya assailed the order of the Tribunal by stating that there was no evidence presented before the Tribunal for the fact that a Xerox shop was actually run by the deceased and that even if a Xerox shop was run by him that there was income from the shop and even if there was income the income was Rs.200/- per day. The learned counsel also stated that the multiplier adopted at '7' is not proper and stated that since the age of the deceased age had been determined at 66 years, the proper multiplier should have been adopted by the Tribunal must have been '5' and not '7'. The learned counsel also questioned the grant of Rs.1/- lakh towards love and affection and simultaneously another sum of Rs.10,000/- towards loss of consortium and stated that this Court should revisit the amounts granted under this two particular heads. The learned counsel also stated that the funeral expenses had been granted at Rs.25,000/- which was also quite against the normal norms fixed for grant of such expenses and also very fairly stated that no amount had been granted towards loss of estate.

9. The learned counsel for the respondents however supported the reasonings of the Tribunal and the compensation granted and stated that the award requires no interfere and should be upheld and retained by this Court and that the Appeal filed by the insurer should be dismissed.

10. The learned counsel for the respondent also relied on the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 2836 of 2015 [Shashikala & Ors Vs. Gangalakshmamma & another], delivered on 13.03.2015. In that particular case, where it was found that the deceased was self employed, the Hon'ble Supreme Court was presented with documentary evidence in the nature of income tax returns filed showing different income. There was a gross income of Rs.1,08,713/- for assessment year 2005-06 and gross income of Rs.2,02,911/- for the assessment year 2006-07. Therefore, 10% was deducted towards income tax and other deductions and thereafter, the High Court had determined the income by taking the average. This Judgment cited is distinguishable on facts.

11. In the instant case, documentary evidence had not at all been produced for even running the Xerox shop or for the income from the Xerox shop. However, I shall affirm the oral evidence let in on behalf of the claimant that a Xerox shop was actually run by the deceased prior to his death.

12. I have carefully considered the arguments advanced and the materials available on records.

13. The deceased M.Nagaraj, who was aged 66 years and for which no contra evidence was afforded and which can be safely presumed to be 66 years had retired with pension. He had earlier worked as Block Development Officer. The pension which he was earning as stated in the order of the Tribunal was at Rs.6,500/- per month. The said amount would, naturally, on his death flow to the benefit of his wife/first claimant and therefore, owing to the death of M.Nagaraj for pension cannot be claimed by either one of the two claimants.

14. The only aspect which has to be examined is with respect to the income which is said to have been gained by running the Xerox shop. There is only oral evidence on this account. No documents have been produced that a Xerox shop was actually run by the deceased. But, let me place reliance on the oral evidence, since it may not be prudent on the part of this Court, to suspect the statement of the wife that her husband was running a Xerox shop. There is also no evidence produced to show that he was not actually running any Xerox shop. In the Grounds of Appeal, the said fact has also not been seriously assailed.

15. There is proof produced by the first claimant that there had been further income quite apart from the pension income and the said income had been attributed to the income from the Xerox shop. The claimants had also marked bank passbooks to show that there has been a continuous flow of money and that could be possible only when there had been an allied business, quite apart from the pension which a retired Government Staff gets. This flow is attributed to the income from the Xerox shop. Let me not disturb that particular finding of the Tribunal.

16. With respect to the income from the Xerox shop, the Tribunal had taken an average of 200/- per day after deducting the expenses. The Tribunal had actually taken a sum of Rs.500/- per day and towards recurring expenses had deducted a sum of Rs.300/- and had taken a sum of Rs.200/- per day as the reasonable income from the Xerox shop. This would indicate that the monthly income from the Xerox shop would Rs.6,000/-. The annual income would therefore be Rs.72,000/- (Rs.6,000/- x 12). Adopting a multiplier '5', the total loss of income which would accrue to the claimants would be Rs.2,40,000/- and 1/3rd has to be deducted towards the amount, which he would use for personal expenses and retaining 2/3rd , it would be Rs.2,40,000/- [Rs.72,000 x 2/3 x 5]. A sum of Rs.40,000/- has to be granted towards loss of consortium; a sum of Rs.20,000/- can be given to the second claimant towards loss of love and affection; a sum of Rs.15,000/- is granted towards funeral expenses; and a sum of Rs.15,000/- given towards loss

of estate. This would indicate that the total compensation now granted is as follows:-

(i)	Loss of income	=	Rs. 2,40,000/-
(ii)	Loss of consortium	=	Rs. 40,000/-
(iii)	Loss of love and affection	=	Rs. 20,000/-
(iv)	towards funeral expenses	=	Rs. 15,000/-
(v)	towards loss of estate	=	Rs. 15,000/-
	Total		Rs. 3,30,000/-

17. Accordingly, this Court hold that the award of the Tribunal to the extent of Rs.6,39,000/- has to be reduced to Rs.3,30,000/-.

18. It is brought to the notice of this Court by Mrs. R.Sree Vidhya, learned counsel appearing for the appellant that the entire award passed by the Tribunal was deposited along with interest @ 7.5% per annum.

19. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal is redetermined as aforesaid.

(ii)The excess amount deposited by the appellant/Insurance Company shall be refunded along with proportionate interest.

(iii) The first petitioner/claimant is permitted to retain a sum of Rs.2,00,000/- and the second petitioner can get a sum of Rs.1,30,000/- and both of them will get the above said amounts along with accrued interest from the Claims Tribunal without filing any formal application seeking permission.

(iv) The interest granted by the Tribunal at 7.5% per annum for the date of petition is confirmed.

(vii)There will be no order as to costs in these appeals.

(viii) Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Sub Court,
Motor Accident Claims Tribunal
Pollachi.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.

+1cc to M/s.R.Sree Vidya, Advocate SR. No.22631
+1cc to Mr.M.N.Balakrishnan, Advocate SR. No.22523

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RSV (CO)
PR (13/04/2022)