IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2022

Pronounced on : 22.03.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 1176 of 2018
and
C.M.P.No.9719 of 2018

The New India Assurance Company Limited
66-C, North Car Street
Tiruchengodu Taluk
Namakkal District .. Appellant/2nd Respondent

Versus

1. Saraswathy
2. Kavitha
3. Senthilmurugan .. Respondents 1 to 3 /Petitioners
4. Prabakar .. 4th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 24.08.2017 made in MCOP.No.172 of 2015 on the file of Motor Accident Claims Tribunal (Sub Court) Sankagiri.

For Appellant : Mr.K.Vinod

For Respondents (1 to 3) : Mr.C.Kulanthaivel

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Appellant-Insurance Company praying to set aside the decree and judgment dated 24.08.2017 made in MCOP.No.172 of 2015 on the file of Motor Accident Claims Tribunal (Sub Court) Sankagiri.

2. The Insurance Company has come forward with this appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal in favour of the respondents/claimants in this appeal.

3. In the claim petition in M.C.O.P.No.172 of 2015 filed by the respondents 1 to 3 in this appeal, it was stated that on

08.04.2015 at about 8.30 pm, the deceased Perumal was riding the two wheeler – TVS 50 on the Sangagiri - Bhavani main Road. When the deceased was nearing a place called Oolaipattiyan Branch Road, Sankagiri, the driver of the lorry bearing Registration No.TN-33-AU-5565 (Tarus Lorry) came from Bhavani to Salem Road, driven it in a rash and negligent manner and severed the lorry on the wrong side of the road and hit the deceased. In the impact, lorry ran tyre over the head of the deceased resulting in his instantaneous death. According to the claimants, the deceased was 54 years at the time of accident and he was earning a sum of Rs.35,000/- through his employment as heavy equipment operator in India Cements Limited. That apart the deceased also engaged himself in agricultural work and milk vending as part time business and earned substantial income. Therefore, for the death of the deceased, the claimants have filed the claim petition, claiming a sum of Rs.40,00,000/- as compensation.

4. The appellant/Insurance Company resisted the claim petition by stating that the lorry was driven by its driver slowly but it was the deceased who had contributed to the accident by swearing to the right side of the road without noticing the on-coming lorry. It was further submitted that the driver of the lorry was not in possession of a valid driving licence at the time of accident and therefore, the appellant/Insurance Company cannot be fastened with any liability to pay compensation to the claimants. The insurance company also denied the age, income and avocation of the deceased and prayed for dismissal of the claim petition.

5. Before the Tribunal, the first claimant examined herself as PW1, one Palanisamy, eye witness to the accident as PW2 and Mr. Darwin, employer of the deceased, as PW3. Exs. P1 to P10 were marked on behalf of the claimants. On behalf of the respondents in the claim petition, no witness was examined or document marked. Prominent among the documents marked on behalf of the claimants are Ex.P9 identity card issued by PW3 and Ex.P10 salary slip of the deceased. Ex.P7 is the patta No.366, 839 and 1055 issued by the Tahsildar, Sankagiri to show that certain agricultural lands stand in the name of the deceased measuring a total extent of 1.99.00 hectare from which he is in receipt of income.

6. The Tribunal, taking note of the above oral and documentary evidence has concluded that the deceased was earning a sum of Rs.48,000/- per year through the agricultural activity and Rs.2,55,631.68 as Machine Operator in India Cements Limited and thus the total income of the deceased was arrived at Rs.3,03,631.68 rounded off to Rs.3,04,000 as annual income. The Tribunal added 15% (Rs.45,600/-) as future prospects of the deceased to arrive at a sum of Rs.3,49,600/- as yearly income.

Out of this, 1/3 (Rs.1,16,533/-) was deducted towards personal expenses to arrive at a sum of Rs.2,33,067/- as the annual loss of income. By applying multiplier '11' as per the decision of the Honourable Supreme Court in Sarla Verma vs. Delhi Transport Corporation (2009) (2) TN MAC 1 (SC) as also the case of Amrit Bhanu Shali and others vs. National Insurance Company Limited and others (2012) ACJ Page 2002 the Tribunal has totally awarded a sum of Rs.26,64,000/- as loss of income of the deceased. That apart the Tribunal awarded Rs.75,000/- towards loss of consortium to the deceased. A sum of Rs.2,25,000/- towards loss of love and affection to the claimants at the rate of Rs.75,000/- each and Rs.25,000/- towards funeral expenses. Thus, a sum of Rs.29,89,000/- was awarded by the Tribunal as compensation to the deceased.

7. As against the award passed by the Tribunal, the learned counsel for the appellant submitted that the Tribunal ought not to have adopted multiplier 11 to award compensation. According to the learned counsel for the appellant, the Tribunal ought to have applied multiplier "6" by considering the age of the deceased as 60 and thereafter, split multiplier '5' ought to have been adopted. Thus, the multiplier "11" adopted by the Tribunal is contrary to the decision of the Hon'ble Supreme Court of India in the case of Sarala Verma and others v. Delhi Transport Corporation and another reported in 2009 TN MAC 1. It is also the contention of the learned counsel for the appellant that a sum of Rs.75,000/- awarded towards loss of consortium and Rs.75000/- towards loss of love and affection to each of the claimants are on the higher side. Therefore, he prayed for appropriate reduction in the amount awarded by the Tribunal.

8. On the above contention, this Court heard the learned counsel for the respondents/claimants, who has only supported the award passed by the Tribunal as reasonable and prayed for dismissal of this appeal.

9. Even though this appeal has been filed questioning both liability and quantum of compensation, this Court is of the considered view that the question of liability advanced by the learned counsel for the appellant cannot be sustained. The reason being, the driver of the lorry had hit the two wheeler driven by the deceased from behind. The first information report in this case was registered against the driver of the lorry in Crime No.164 of 2015 (Ex.P1) Under Ex.P4 it was categorically stated that there was no technical defect in the lorry driven by the driver of the lorry. Furthermore, there is no evidence adduced on behalf of the appellant/Insurance Company to disprove the manner in which the accident had taken place, as narrated in the claim petition. Therefore, this Court hereby

confirm the findings rendered by the Tribunal insofar as it relates to the liability on the part of the appellant Insurance Company.

10. The claimants have proved, by filing Ex.P10, salary slip of the deceased that he was working as Machine Operator in India Cements Limited at the time of accident and he was earning a sum of Rs.26400/-. The employer of the deceased was also examined as PW3, through whom the salary slip under Ex.P10 salary slip. Even though it was projected on behalf of the claimants that the deceased was also owning agricultural land, carrying out agricultural operation and also milk vending business there was no evidence adduced thereof, except Ex.P7, patta in respect of agricultural land standing in the name of the deceased. On the basis of Ex.P7, the Tribunal notionally fixed the monthly income of the deceased at Rs.4,000/- per month and arrived at a sum of Rs.48,000/- per year as notional income. That apart, based on Ex.P10 Salary Slip, the Tribunal arrived at a sum of Rs.2,33,067/- as the yearly earning of the deceased, which includes 15% towards future prospects $1/3^{rd}$ deduction towards personal expenses. By placing on the reliance decision of the Honourable Supreme Court in Sarala Verma case, the Tribunal applied multiplier 11 and arrived at a sum of Rs.26,64,000/- as loss of income. Therefore, this Court is of the view, that the Tribunal based on acceptable evidence has arrived at the income of the deceased. It is not the case of the appellant insurance company that this is a case of no evidence as regards income of the deceased. The income of the deceased is proved by marking Ex.P10, salary slip. Therefore, it cannot be said that the Tribunal, without any evidence, has awarded a huge compensation amount.

11. It is vehemently contended by the learned counsel for the appellant that even according to the claimants, the deceased was in a permanent job. They have also examined PW3, employer, through whom Ex.P10, salary slip was marked. This stands testimony to the fact that the deceased would have retired on attaining 60 years of age. In other words, had the deceased survived in the accident, he would have retired in another 6 years. Therefore, the Tribunal ought to have adopted split multiplier instead of adopting multiplier '11' throughout, to award compensation under the head loss of income. This submission of the counsel for the appellant has enormous force. Even according to the claimants, the deceased was in a regular job as Machine Operator in India Cements. At the time of accident, the deceased was 54 years old and he would have retired in another six years, had he survived the accident. After his retirement, it cannot be gainsaid that the deceased could receive the same salary as he was earning while in service. Undoubtedly the income of the deceased after

retirement could be reduced in the form of pension or in other form. Such income post-retirement could be reduced by 2/3rd of his regular income. Therefore, this Court is of the view that adopting split multiplier would meet the ends of justice. Accordingly, for the first six years, multiplier 6 is to be adopted and thereafter, multiplier '5' is to be adopted by reducing the salary of the deceased taking note of his retirement upon attaining the age of 60 years.

12. Having regard to the above, this Court takes a sum of Rs.2,33,067/- as the yearly income of the deceased until his date of retirement. For this purpose, multiplier 6 is adopted to arrive at a sum of Rs.13,98,402/- being the loss of income during the course of his employment. Post-retirement of the deceased, the loss of income is to be determined by taking 1/3rd of his annual income being Rs.77,689/- (Rs.2,33,067/3). If multiplier '5' is applied, the post-retirement loss of income of the deceased could be Rs.3,88,445/-. Thus, the total loss of income of the deceased will be Rs.17,86,847/- (Rs.13,98,402/- + Rs.3,88,445/-) as against the sum of Rs.26,64,000/- which would be the fair and reasonable compensation under the head loss of income.

13. The Tribunal awarded Rs.75,000/- towards loss of consortium to the first claimant, apart from awarding a sum of Rs.75,000/- each to the three claimants. The amount awarded under these heads are contrary to the decision of the Hon'ble Supreme Court of India in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 Supreme Court Cases 680. In Para No.59.8 of this judgment, it was held that normally, under conventional heads, a sum of Rs.40,000/- shall be awarded towards loss of consortium. Therefore, the amount of Rs.75,000/- awarded towards loss of consortium is hereby set aside.

14. Similarly, the Tribunal awarded Rs.75,000/- to each of the claimants towards loss of love and affection. It is noteworthy to mention that the deceased died at the age of 54 years. The dependents of the deceased were 51 years (first claimant) and the claimants 2 and 3 were aged 29 years and 24 years respectively at the time of accident on 08.04.2015. Taking note of the above, this Court is of the view that the sum of Rs.75,000/- awarded to each of the claimants towards love and affection is set aside, instead a sum of Rs.25,000/- is awarded thereof totaling Rs.75,000/- which would meet the ends of justice.

15. The Tribunal did not award any amount towards transportation expenses and loss of estate, which it ought to have awarded. Therefore, this Court hereby award Rs.15,000/-

each towards transportation charges and loss of estate, which would meet the ends of justice.

16. In effect, the amount of Rs.29,89,000/- awarded by the Tribunal is reduced to Rs.19,56,847/- as tabulated below:-

Loss of income	:	Rs.	17,86,847.00
Loss of consortium	:	Rs.	40,000.00
Loss of love and affection to claimants (3 in No)	:	Rs.	75,000.00
Funeral expenses	:	Rs.	25,000.00
Transportation expenses		Rs.	15,000.00
Loss of Estate	:	Rs.	15,000.00
Total		Rs.	19,56,847.00

17. In the result, the decree and judgment dated 24.08.2017 made in MCOP.No.172 of 2015 on the file of Motor Accident Claims Tribunal (Sub Court) Sankagiri is modified and the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to deposit the entire compensation amount now determined by this Court in this appeal to the credit of MCOP.No.172 of 2015 on the file of Motor Accident Claims Tribunal (Sub Court) Sankagiri within a period of eight weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited. On such deposit, the first claimant shall withdraw a sum of Rs.11,00,000/- and the claimants 2 and 3 shall withdraw the balance amount, with accrued interest.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Motor Accident Claims Tribunal,
(Sub Court) Sankagiri.

2. The Section Officer,
V.R.Section,
High Court of Madras.
Chennai-600 104.

+1cc to M/s.K.Vinod, Advocate, S.R.No.19243

+1cc to M/s.C.Kulanthaivel, Advocate, S.R.No.19063

CMA No. 1176 of 2018

JP-II(CO)
SU(06/05/2022)