IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.1315 of 2020 &
C.M.P.No.9513 of 2020
(Heard through VC)

The Manager,
M/s.Royal Sundaram General Insurance Company Limited,
Corporate Office, Visharanti Melaram Towers,
No.2/319, Rajeev Gandhi Salai (OMR),
Karapakkam, Chennai -600 097. ...Appellant/2nd Respondent

Vs.

1.Bindu, W/o.Late Sunilkumar
2.Minor Greeshma, D/o.Late Sunilkumar
3.Venkatalakshmaiah, S/o.Chinnabbaiah
4.Nagaveniyamma, W/o. Venkatalakshmaiah

(Minor represented by Next friend,
Mother Bindhu,
All are residing at
Door No.3/126, Ragavendra Nagar,
Bagalur, Hosur Taluk,
Krishnagiri District.

5.V.Balasundaram ...Respondents 1 to 4/
Claimants 1 to 4/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree made in M.C.O.P.No.1072 of 2018, dated 30.08.2019, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Krishnagiri.

For Appellant : Ms.C.Harini
For Respondents : Mr.Mukund R.Pandiyan
for R1 to R4

J U D G M E N T

Judgment of the Court was delivered by V.SIVAGNANAM. J.

Questioning the award passed by the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri in M.C.O.P.No.1072 of 2018, dated 30.08.2019, the present appeal has been filed by the Insurance Company.

2. The facts in brief are that on 29.08.2017, the deceased Sunil Kumar was driving Qualis car bearing No.KA-35-MB-1859 from Bangalore. Along with him, two other persons also travelled. When the car was proceeding in Kakanoor to Bagalur Road, near TLT Company, a Tipper lorry bearing registration No.TN-70-Q-3632, which came from the opposite direction driven by its driver in a rash and negligent manner, dashed against the car. In the impact, the driver Sunil Kumar was thrown away from the car and sustained fatal injuries, while the other passengers sustained some injuries. Immediately, they were taken to Chandrasekar Hospital, Hosur for treatment, then, the deceased was referred to Sprash Hospital, Bangalore, however, on examination, the duty doctor revealed that he is dead. The claimants are the wife, children and parents of the deceased.

3.According to the claimants, at the time of accident, the deceased Sunil Kumar was 34 years and they are depending upon the income of the deceased. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the tipper lorry, the claimants laid a petition, claiming compensation of Rs.1,00,00,000/-.

4. In the counter, the Insurance Company denied and disputed the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

5. The claim petition was tried by the Tribunal and to substantiate the case, on the side of the claimants P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P19 were marked. On the side of the Insurance Company, one Venkatesh was examined as R.W.1 and no document was marked.

6. The Tribunal, after considering the oral and documentary evidence held that the driver of the tipper lorry was responsible for the accident and awarded a compensation of Rs.53,90,224/- along with interest at 7.5% per annum. Assailing the award, the Insurance Company has filed the present appeal.

7. Ms.C.Harini, learned counsel for the appellant would contend that the Tribunal erred in holding the lorry driver negligent and awarding compensation, when the accident occurred only due to the rash and negligent driving of the deceased himself. It is further contended that the Tribunal at least ought to have fixed contributory negligence on the deceased, who caused the accident by hitting against the lorry coming in the opposite direction. It is further contended that there was no evidence to show that business was closed and not continued subsequent to the death of the deceased. It is next argued that the amount awarded by the Tribunal is excessive.

8. Per contra, the learned counsel for the respondents 1 to 3 / claimants made his submissions supporting the award passed by the Tribunal and prayed to dismiss the appeal.

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

10. It is the contention of the learned counsel for the appellant that the deceased also contributed to the accident and therefore the entire liability cannot be fastened upon the Insurance Company. Contributory negligence must be proved like any other fact, it cannot be a matter of assumption and presumption. There must be legal evidence to show that there is a contributing factor on the part of the victim of the accident, which is also responsible for the accident. In the absence of any evidence on the side of the Insurance Company, the Court does not find any infirmity in the findings rendered by the Tribunal that the accident had occurred due to the rash and negligent driving of the driver of the tipper lorry. P.W.2 has spoken about the accident in his evidence. Ex.P.1 First Information Report, Ex.P.17 rough sketch were produced to corroborate the evidence of P.W.2. The evidence produced by the claimants indicates that the criminal case was registered against the driver of the tipper lorry and he was also prosecuted before the criminal Court. On the basis of the evidence, the Tribunal came to the conclusion that the accident occurred due to the negligence of the driver of the tipper lorry.

11. So far as quantum of compensation is concerned, we find that it is the case of the claimants that the deceased was running a mobile-cum stationary store, viz., Sri Vani Stores, and he was earning not less than Rs.1,00,000/- per month. However, from the Income Tax Returns marked as Ex.P6, we find

that he earned a sum of Rs.3,22,916/- during the year 2014-2015, a sum of Rs.4,07,848/- during the year 2015-2016, a sum of Rs.4,48,315/- during the year 2016-2017 and a sum of Rs.5,94327/- during the year 2017-2018. By considering these documents, the Tribunal has fixed a sum of Rs.4,43,351/- as annual income and after deducting 1/4th income of the deceased for his family expenses, fixed a sum of Rs.3,32,514/- as the yearly income of the deceased. Thereafter, the Tribunal by applying multiplier of '16' has passed an award for a sum of Rs.53,20,224/- under the head of total loss of dependency.

12. But, as contended by the learned counsel appearing for the appellant/Insurance Company, there cannot be any loss for the claimants in respect of the income earned from the business and there was no evidence to show that subsequent to the death of the deceased, the business was closed. Under such circumstances, we are of the opinion that the sum of Rs.3,32,514/- fixed by the Tribunal as yearly income of the deceased appears to be on the higher side. Further, at the same time, we are of the opinion that the documents marked as Ex.P6, Income Tax Returns filed by the deceased, would show that the deceased was making some considerable income. Hence, we are of the opinion that it would be appropriate to fix the monthly income of the deceased at Rs.22,000/- to arrive at a just and proper compensation. Since the age of the deceased at the time of the accident was below 40 years, 40% of the income is to be added towards Future Prospects as per the decision of a Larger Bench of the Hon'ble Supreme reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], if so added, the total income comes to Rs.30,800/-, which sum could be taken as monthly loss of income. Then, the annual loss of income works out to Rs.3,69,600/- (30,800/- x 12). If 1/4th amount is deducted towards personal expenses, the balance amount comes to Rs.2,77,200/- (3,69,600/- (-) 92,400/-), which shall be taken as actual annual loss of income. Considering the age of the deceased who was aged 34 years at the time of accident, the correct multiplier that has to be applied in this case is 16. If multiplier 16 is applied, the the total comes to Rs.44,35,200/- (2,77,200/- x 16), which shall be the just and proper compensation under the head of loss of income.

13. Further, as per the decision of the Hon'ble Supreme Court in National Insurance Co Ltd (cited supra), the 1st respondent/wife of the deceased is entitled to Rs.40,000/- towards loss of consortium and the respondents 2 to 4 each are entitled to a sum of Rs.40,000/- under the head of "filial consortium". The amount awarded by the Tribunal under the other

heads, viz., Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, are confirmed.

14. For the foregoing reasons, the total compensation amount of Rs.53,90,224/- awarded by the Tribunal is hereby modified and reduced to Rs.46,25,200/-. The break up details of the modified compensation amount are as follows:-

Loss of income	=	Rs.44,35,200/-
Loss of Consortium to the first claimant	=	Rs. 40,000/-
Filial Consortium to the claimants 2 to 4	=	Rs. 1,20,000/-
Funeral Expenses	=	Rs. 15,000/-
Loss of Estate	=	Rs. 15,000/-
	Total	Rs.46,25,200/-

15. In fine, the appeal is partly allowed and the compensation amount of Rs.53,90,224/- awarded by the Tribunal is hereby modified and reduced to Rs.46,25,200/-. The Appellant/Insurance Company is directed to deposit the entire modified compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% from the date of claim petition till the date of deposit. On such deposit being made, the 1st respondent/wife is entitled to Rs.18,00,000/-, the 2nd respondent/daughter is entitled to Rs.18,00,000/-, and the balance amount shall be equally apportioned by the parents of the deceased/respondents 3 & 4, with respective proportionate interests. The respondents 1, 3 & 4 are entitled to withdraw their respective shares by making necessary application before the Tribunal. The share amount of the minor (2nd respondent/daughter) is directed to be deposited in any one of the nationalized banks till she attains majority and the 1st respondent, mother of the minor, is permitted to withdraw the interest accrued thereon, once in three months. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

r n s

To

1. The Motor Accidents Claims Tribunal,
   Additional District Judge,
   Krishnagiri.

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

+1 CC to M/s. C. Harini, Advocate sr 2059.

C.M.A. No.1315 of 2020 &
C.M.P.No.9513 of 2020

NMI(CO)
SP(02/03/2022)