IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.NO.1029 OF 2022
AND
C.M.P.NO.7570 OF 2022

M/s.National Insurance Company Ltd.,
Pondicherry.

... Appellant/3rd Respondent

.Vs.

1. Deepa

2. Minor Gokul,
   Son of Shankar,
   Represented by his Mother
   and Guardian Deepa

3. Minor.Divya,
   Represented by her mother
   and Guardian Deepa

4. Minor.Sabarinathan,
   Represented by his Mother
   and Guardian Deepa

... 1st to 4th Respondents/
1st to 4th Petitioners

5. Raju ... 5th Respondent/1st Respondent

6. The Managing Director,
   Puducherry Transport Corporation Limited,
   Puducherry.

... 6th Respondent/2nd Respondent

PRAYER:-

Appeal filed under Section 173 of the Motor Vehicle Act, to set aside the Decree and Judgment dated 09.01.2020 passed in M.C.O.P.No.68 of 2011 by the learned Subordinate Judge, Motor Accidents Claims Tribunal, Chidambaram.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.T.Gobinath

JUDGEMENT

Aggrieved by the quantum awarded in M.C.O.P.No.68 of 2011 by the learned Subordinate Judge, Motor Accidents Claims Tribunal, Chidambaram, the Insurance Company, who is the 3rd respondent before the Tribunal, is before this Court. The parties are referred to in the same array as before the Tribunal.

The facts in brief are as follows:

2. The claimants had filed the above petition seeking compensation for the death of one Sankar in a road accident on 05.12.2009. The 1st claimant is his wife and the claimants 2 to 4 are his children. The claimants would submit that the said Sankar who is aged about 34 years was a Furniture and Wood work Specialist at Cruzlan Corpantary Noman and Selch at Dubai and was earning a sum of Rs.25,000/- to 30,000/- per month. The Accident had occurred only on account of the rash and negligent driving of the driver of the bus. It is the case of the claimants that on the said date, the said Sankar was riding his Hero Honda Motor Cycle, bearing Registration No.TN.31 AW 0474, while so, the bus belonging to the 2nd respondent and driven by the 1st respondent dashed against the bike, as a result of which, the said Sankar sustained fatal injuries. The 2nd respondent bus was insured with the 3rd respondent. Therefore, the claim sought for compensation from the respondents.

3. The Insurance Company who is the 3rd respondent entered appearance had filed their counter inter alia denying the contents of the claim petition and put the claimants to strict proof of the allegations contained in the claim petition. They had also contended that the driver of the 2nd respondent's vehicle did not possess his driving license and put the claimants to strict proof that the bus was insured with them. They would also contend that the deceased had driven the bike without holding a valid driving license and therefore, the claimants cannot seek compensation from the Insurance Company.

4. The Tribunal below after considering the evidence had held negligence upon the 2nd respondent's bus. They had also held that the claimants have not been able to establish the income of

the deceased, but however, adopted a notional income of Rs.15,000/-. 25% was added towards future prospects and after deducing 1/4th towards personal expenses had arrived at a compensation of Rs.23,62,500/- under the head of loss of dependency and ultimately, had awarded a sum of Rs.25,87,500/-. Aggrieved by the compensation that had been awarded the Insurance Company is before this Court.

5. The claimants had entered caveat. Therefore, both the counsels were heard.

6. As rightly pointed out by the learned counsel for the appellant/Insurance Company, the claimants had not let in any evidence to show the income of the deceased Sankar. They have just marked his Identity Card and his Passport. No documents have been produced from the employer. The accident had taken place on 05.12.2009. The deceased was aged about 34 years on the date of the death. The Tribunal has however on perusal of the various records come to the conclusion that the deceased was aged about 41 years and therefor, had adopted a multiplier of 14.

7. In the claim statement, the petitioners had contended that the deceased Sankar was aged about 34 years, however, the Tribunal has on perusal of various records and School Certificate has come to the conclusion that the deceased Sankar was aged 41 years. The Tribunal has erred in adopting the notional income of Rs.15,000/-. The accident has taken place in the year 2009 therefore, a sum of Rs.10,000/- can be taken as notional income in the interest of Justice was taken as future prospects to which 25% can be added towards future prospects. Out of this, 1/4th has to be deducted towards personal expenses and the loss of dependency has to be re-worked in the above lines. The future prospects will be Rs.3,125/- (Rs.12,500/4). The notional income is Rs.9,375/- (12,500 - 3125). Hence, a sum of Rs.15,75,000/- is awarded under the head of loss of dependency (9375 x 12 x 14 = 15,75,000/-).

8. The Tribunal has awarded a sum of Rs.50,000/- each to the respondents 2 to 4 for loss of love and affection which is contrary to the Judgment reported in 2017 (16) SCC 680 [National Insurrance Company v. Pranaya Sethi and another]. The said head is therefore reduced to a sum of Rs.1,20,000/-. In all other respects, the Award of the Tribunal below is confirmed. Therefore, taking into consideration the above aspects, the modified amount is as follows:

Loss of dependency	:	Rs.15,75,000/-
Transportation	:	Rs. 5,000/-
Funeral Expenses	:	Rs. 15,000/-
Loss of estate	:	Rs. 15,000/-
Loss of consortium	:	Rs. 40,000/-
Loss of love and affection	:	Rs. 1,20,000/-
Total	:	Rs.17,30,000/-

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the amount is reduced to a sum of Rs.17,30,000/-. The respondent Insurance Company is directed to deposit the entire compensation amount with interest @ 7.5% per annum, less the statutory deposit already made, to the credit of M.C.O.P.No.68 of 2011 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Chidambaram, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st claimant is permitted to withdraw the amounts as apportioned by the Tribunal by making necessary applications. The share of the minors 2 to 4/claimants shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the 1st claimant/mother of the minors, once in three months, till they attain majority. Consequently, connected Miscellaneous Petition is closed. No costs.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as the certified copy showing proof of payment of Court Fee has been produced by the claimants.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mps

To

1. The Motor Accident Claims Tribunal,
   The Subordinate Judge,
   Chidambaram.

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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.29847
+1cc to Mr.T.Gobinath, Advocate, S.R.No.30095

C.M.A.NO.1029 OF 2022 AND
C.M.P.NO.7570 OF 2022

SJ(CO)
PBS/24/06/2022
PBS/29/06/2022