

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.11.2021
Pronounced on	05.01.2022

CORAM:

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

C.M.A.No.4157 of 2019
and
C.M.P.Nos.23492 of 2019, 3406 & 3409 of 2020

National Insurance Co. Ltd.,
No.930, Sathy Road, Gandhipuram,
Coimbatore - 641 012,
Having Regional Office,
Coimbatore Stock Exchange Building II Floor,
No.684, Trichy Road,
Coimbatore - 641 005. ... Appellant/3rd Respondent

Vs.

1.Leela Shankar ...1st Respondent/Claimant
2.V.Maruthachalam ...2nd Respondent/1st Respondent
3.A.Palanisamy ...3rd Respondent/2nd Respondent
4.Keith Williams
5.Ragan Williams ...Respondents 4 & 5/Respondents 4 & 5

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 08.03.2019 passed in M.C.O.P.No.1731 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge) at Coimbatore District.

For Appellant :Mr.J.Chandran

For Respondents :Mr.N.E.A.Dinesh (for R1)

JUDGMENT

V.SIVAGNANAM, J

This appeal arises out of the order passed by the Motor Accident Claims Tribunal, Special Sub-Judge, Coimbatore in MCOP No.1731 of 2014 dated 08.03.2019.

2.This is a case of compensation for the death of a foreign citizen by name, Mrs.Tess Williams, a freelance writer, who came down to India, met with a road accident and succumbed to the injuries. According to the claimant, he was a Chef and he married the deceased on 05.01.2013 at North Carolina. On 26.04.2014, the deceased met the claimant at Coimbatore and stayed at Hotel SBS Grand She. In order to change the hotel, the deceased left the hotel on 03.05.2014 at an early hours of the day and boarded an Auto Rickshaw bearing Reg.No.TN-37-U-2738 to go to Hotel Residency. The said auto was driven by its driver on the Avinashi High Road and when the auto was nearing Peelamedu, the deceased said to have thrown from the auto, due to the rash and negligent driving of the driver. In the accident, the deceased sustained several injuries. Immediately, she was taken to the CMC Hospital, Coimbatore, where she died. The 2nd respondent herein is the driver and the 3rd respondent herein is the owner and the appellant is the insurer of the offending auto. Respondents 4 and 5 are the parents of the deceased. According to the claimant, the deceased was a Freelance writer and she had authored several novels and her earning for the year 2013, \$ 13,589 USD which was equivalent to INR 8,31,850/-. Hence, he claimed Rs.1,50,00,000/- as compensation.

3.Resisting the claim, the appellant Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4.To substantiate the case, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P1 to Ex.P.26 were marked. On the side of the appellant/Insurance Company, no witness was examined and no document was marked.

5.The Tribunal, after considering the oral and documentary evidence, held that the driver of the auto was responsible for the accident and awarded compensation of Rs.1,08,00,000/- to the claimant. Assailing the award, the appellant Insurance Company has filed the present appeal.

6.The learned counsel appearing for the appellant/Insurance Company contended that the relationship between the claimant and the deceased as husband and wife is not proved and there is no material to support his claim and in the income tax return, the status of the deceased was mentioned as single. If the deceased

married the claimant, she should have mentioned her status as married. The Tribunal without considering the fact, relying upon the marriage certificate (Ex.P.8) concluded that the claimant is the husband of the deceased and awarded compensation. He would further submit that the postmortem certificate (Ex.P.5) revealed that she was sustained so many injuries. Though the claimant being the husband, he did not travel along with the deceased. There is a suspicious circumstances with regard to the accident register. The Tribunal, without considering the evidence, allowed the claim petition and fixed the income of the deceased on the higher side by relying upon the income tax return. He would further contend that except the income tax return, there is no document to support over income. The Tribunal committed an error in fixing the higher income to the deceased. The decision of the Tribunal is not on the basis of the documentary available on record. The award is against the fact and evidence. The learned counsel reiterated the other grounds, thus, pleaded to set aside the award and allow the appeal.

7.The learned counsel appearing for the second respondent/claimant would contend that the marriage between the deceased and the claimant was proved through marriage certificate (Ex.P.8) and the parents of the deceased filed an affidavit before the Tribunal reporting no objection for the claimant, that was marked as Ex.P.11. Accepting the income tax return of the deceased, the Tribunal has rightly fixed the income of the deceased and awarded just and reasonable compensation and there is no reason to interfere with the finding of the Tribunal, thus, pleaded to dismiss the appeal.

8.Heard Mr.J.Chandran, learned counsel appearing for the appellant Insurance Company, Mr.N.B.A.Dinesh, learned counsel appearing for the respondent/claimant and perused the materials available on record.

9.With regard to the accident, the First Information Report, Motor Vehicle Inspector's Report, Charge Sheet and Postmortem Certificate (Exs.P.1 to P.5) established the fact that the deceased died due to the road accident while she was travelling in the second respondent's auto. Even though the postmortem certificate (Ex.P.5) revealed so many injuries, but the cause of death is due to the accidental injuries sustained on her head. In the absence of any contra evidence that the deceased died

apart from the road accident, based on Exs.P.1 to P.5, the Tribunal rightly came to the conclusion that the deceased died due to the road accident while she was travelled in the offending auto.

10.With regard to the relationship of the claimant and the deceased, even though the learned counsel for the appellant disputed their status, the marriage certificate (Ex.P.8) and the affidavit filed by the parents of the deceased (Ex.P.11) evidenced the fact that the claimant married the deceased on 05.01.2013. Admittedly, in the income tax return (Ex.P.9), the status of the deceased mentioned as single for that alone, therefore, we cannot conclude that the claimant is not the husband of the deceased unless strong evidence is available and on that count, we cannot dispute the status of the claimant with the deceased. Therefore, the contention of the learned counsel in this regard does not support with any material on record.

11.With regard to the quantum, the Tribunal considered the evidence and document. According to the claimant, the deceased was a writer and her annual income of Rs.8,31,850/-. Income tax assessment of the deceased for the year 2013 was filed as Ex.P.9. As per Ex.P.9, calculation of the income of the deceased as declared as \$ 12,636 USD, which was equivalent to Indian Rs.7,97,963/-.

12.In this case, admittedly, the deceased was a USA resident and she filed income tax return for the year 2013 and her annual income is Rs,7,97,963/-. Further, undisputed fact was that she was journalist not having permanent job. As she was not a permanent employee in any department or any private concern and she being a freelance writer, her employment was not permanent in nature. Hence, her income may not be the same in future, it may be high or low. There is no assurance that she will get regular annual income as mentioned in the income tax assessment. Her income is depending upon her work and therefore, fixing of permanent income by the Tribunal is not tenable, hence, notional income is to be fixed. Therefore, we hereby fix the notional monthly income of the deceased as Rs.25,000/- which was equivalent to \$ 403 USD at that point of time. Further, the Tribunal has deducted 1/3rd towards personal and living expenses since the deceased was having three dependents. Admittedly, the deceased married the claimant on 05.01.2013 and she died on 03.05.2014 and they were living together only for one year. Further, the parents of the deceased have given no objection to the husband of the deceased to receive full compensation. Hence, we decide to deduct 50% of the income towards personal

and living expenses. Therefore, after deducting 50%, by adding 40% future prospects and by applying multiplier '18', this Court awards Rs.37,80,000/- (25000-50%+40%=17500x12x18) towards loss of dependency. The quantum of compensation under remaining heads, namely, loss of consortium, funeral expenses and loss of estate, were fixed by the Tribunal by following the Judgments of the Hon'ble Supreme Court in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017(2) TNMAC 609 (SC), and hence, they are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is also confirmed. Accordingly, the compensation awarded by the Tribunal to the claimant is re-quantified as follows:-

Heads	Rs.
Loss of dependency	37,80,000/-
Loss of consortium	40,000/-
Funeral expenses	15,000/-
Loss of Estate	15,000/-
Total	38,50,000/-

13.In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

skn
To

1.The Motor Accident Claims Tribunal,
(Special Sub-Judge) at Coimbatore District.

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

+1cc to M.V.Nicholas, Advocate Sr.1222
+1cc to Mr.J.Chandran, Advocate Sr.1210

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