IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM

THE HONOURABLE MR. JUSTICE **R. SUBRAMANIAN**
AND
THE HONOURABLE MR. JUSTICE **N.SENTHILKUMAR**

C.M.A.No.868 of 2022

1.Domnic Savio
2.Sheela
3.Geetha
4.Sridhar ... Appellants

Vs.

1.R.Fleurentin Michael

2.National Ins. Co., Ltd.,
No.46, Regina Mansion 2nd Floor,
Moore Street, Chennai – 600 001. ... Respondents

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order and decreetal order dated 29.11.2018 made in M.C.O.P. No.8624 of 2015 on the file of Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

For Appellants	:	Ms.S.Ramya for Mr.J.Mahalingam
For Respondents	:	Mr.J.Michael Visuvasam for R2 R1 – Notice dispensed with

JUDGMENT

(Judgment of the Court was delivered by **R. SUBRAMANIAN, J.**)

The claimants are on appeal voicing grievance on the quantum of compensation awarded at Rs.15,96,000/- for the death of Ms.Fathima, wife of the first appellant and mother of appellants 2 to 4 in a road accident that occurred on 27.09.2015. According to the claimants, when the deceased Fathima was standing in the bus stop opposite to Karpaga Vinayagar Hospital in Kolambakkam Village on Grand Southern Trunk Road, a car bearing Registration No.TN 31 BA 3754 driven by its driver in a rash and negligent manner dashed against her. The said Fathima sustained fatal injuries and died on the same day. Contending that there was negligence on the part of the driver, which was the sole cause of the accident, the claimants sought for a compensation of Rs.47,00,000/-. The quantum of compensation was sought to be supported by contending that the said Fathima was doing fish vending business and she was earning atleast Rs.600/- per day.

2. The insurance company resisted the claim contending that the accident did not occur in the manner stated by the claimants and the deceased also contributed to the accident by suddenly attempting to cross the road. The age and income particulars of

the deceased were denied and the claimants are put to strict proof of the same.

3. At trial, the first claimant/husband of the deceased was examined as P.W.1, one Robin Sharma, an eye witness was examined as P.W.2 and one Reeta Mari, a co-vendor was examined as P.W.3. Exs.P1 to P13 were marked. The insurance company did not let in any evidence.

4. The Tribunal, on the evidence of P.W.2 coupled with the First Information Report which was marked as Ex.P1, concluded that the accident occurred due to rash and negligent driving of the car by its driver. Therefore, the Tribunal held that the insurance company is liable to pay the compensation.

5. Though it was claimed that the deceased was earning Rs.600/- per day and P.W.3 a co-vendor was examined in support of the income, the Tribunal took the income at Rs.9,000/- per month, added 25% towards future prospects, deducted 25% towards personal expenses, applied multiplier of 13 and arrived at the total loss of dependency at Rs.13,16,250/-. It also awarded a sum of Rs.40,000/- towards loss of consortium to the first claimant and Rs.2,00,000/- towards loss of love and affection for

other three claimants. A sum of Rs.15,000/- each was awarded towards loss of estate and funeral expenses apart from a sum of Rs.10,000/- for transportation charges. Thus, the total compensation was arrived at Rs.15,96,250/- and the same was rounded off to Rs.15,96,000/-. The insurance company has accepted the award. The claimants are on appeal seeking enhancement.

6. We have heard Ms.S.Ramya, learned counsel for the appellants and Mr.J.Michael Visuvasam, learned counsel for the second respondent/insurance company.

7. Learned counsel for the appellants would vehemently contend that the Tribunal ought to have accepted the evidence of P.W.3, a co-vendor, who has specifically spoken about the income of the deceased. She would also fault the Tribunal for not having discussed the effect of the evidence of P.W.3. She would submit that in the absence of any contra evidence and the evidence of P.W.3 not having been controverted, in the cross-examination, in any manner, the Tribunal was not justified in taking just about half of the amount as monthly income.

8. Contending contra, Mr.J.Michael Visuvasam, learned

counsel for the second respondent insurance company would submit that there was no documentary evidence to support the claim that the deceased was doing fish vending business. The evidence of P.W.3 according to the learned counsel is wholly unsatisfactory and unreliable. Learned counsel would also fault the Tribunal for having deducted only $1/4^{th}$ amount when there are only three dependants and two of them are married daughters. Therefore, according to Mr.J.Michael Visuvasam, learned counsel for the second respondent, while the Tribunal was right in fixing the monthly income at Rs.9,000/-, it erred in deducting only $1/4^{th}$ amount towards personal expenses. Learned counsel would also point out that the daily income of Rs.600/- to Rs.700/- for a fish vendor is an exaggerated version.

9. We have considered the rival submissions. No doubt, P.W.3 has spoken about the fact that the deceased was doing fish vending business. P.W.3 would also depose that she used to invest a sum of Rs.3,000/- every morning and she would earn a profit of about Rs.600/- to Rs.700/- in a day. The claim appears to be quite reasonable but at the same time we cannot also ignore the vagaries in a business like this. It is common knowledge that sale of fish on auspicious days and days like Fridays and Saturdays is very low. Therefore, we cannot take it that fish vendor would earn

Rs.600/- per day all through the 30 days. It will necessarily fluctuate. If we have to exclude Fridays and Saturdays, at least 8 days in a month will go. Therefore, the average income should be worked out taking into account the very nature of the business. No doubt, the Tribunal's fixation at Rs.9,000/- per month appears to be slightly on the lower side. Even assuming that the deceased was not doing fish vending and she had been working as coolie, she would earn more than Rs.9,000/- per month. We are therefore unable to sustain the conclusion of the Tribunal that the income of the deceased would have been Rs.9,000/- per month. With a view to balance the rights of the parties and also taking into account the vagaries pointed out earlier, we fix the monthly income at Rs.12,000/-. If we add 25% towards future prospects, the monthly income would be Rs.15,000/-. As rightly pointed out by Mr.J.Michael Visuvasam, learned counsel for the second respondent insurance company, of the four dependants, the husband would be having his own income and the daughters have been married and they are staying with their respective husbands. Therefore, their dependency on the income of the mother may not be absolute. We therefore apply deduction of 1/3rd amount and take the monthly loss of dependency at Rs.10,000/-. If multiplier 13 is applied, total loss of dependency would be Rs.15,60,000/-(Rs.10,000/- x 12 x 13 = Rs.15,60,000/-).We have to necessarily accept the contention of

Mr.J.Michael Visuvasam, learned counsel for the second respondent insurance company, on the compensation that is awarded under the heads 'loss of consortium' and 'loss of love and affection'. There are four claimants and as per the judgment of the Supreme Court in ***National Insurance Co. Ltd vs Pranay Sethi and others*** (***2017 (2) TN MAC 271)***, compensation for 'loss of love and affection' or 'loss of consortium' shall be only Rs.40,000/- per claimant. Therefore, the compensation of Rs.2,40,000/- granted under these two heads is reduced to Rs.1,60,000/-. The awards made under the other heads namely 'funeral expenses', 'loss of estate' and 'transportation charges' are sustained. Thus, total compensation would be Rs.17,60,000/-. The claimants would be entitled to 7.5% interest on the compensation so awarded.

10. In fine, the civil miscellaneous appeal is partly allowed. The award of the Tribunal dated 29.11.2018 made in M.C.O.P. No.8624 of 2015 is set aside and a sum of Rs.17,60,000/- is awarded towards compensation. The interest as awarded by the Tribunal is sustained. We find that there was a delay of 209 days in filing the appeal. This Court while condoning the delay has observed that the claimants would not be entitled to interest for the period of 209 days. Therefore, the insurance company would be entitled to exclude the period of 209 days while computing the

interest on the enhanced compensation.

11. It is stated that the insurance company has deposited the entire amount as awarded by the Tribunal. The insurance company will have eight weeks time to deposit the enhanced compensation i.e., Rs.1,64,000/- with interest at 7.5% from the date of filing of petition till the date of deposit, of course, after excluding 209 days as per the order in C.M.P. No.5695 of 2022 in C.M.A. SR. No.3554 of 2021. Considering the facts and circumstances of the case, we make no order as to costs.

(R.S.M., J.) (N.S., J.)
23.11.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

To

1.The National Insurance Company Limited,
No.46, Regina Mansion 2nd Floor,
Moore Street, Chennai – 600 001.

2.The Record Keeper,
V.R. Section, High Court,
Madras.

R. SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

mmi

C.M.A.No.868 of 2022

23.11.2023