IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3218 of 2019
and CMP.No.18339 of 2019

The General Manager
HDFC ERGO General Insurance Company Limited,
559, New No.528, 2nd Floor, Annasalai
Teynampet, Chennai – 600 018. .... Appellant

vs.

1.Padavatammal

2.Venda

3.Thirupathi

4.Dhatchayani ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 07.12.2018 made in M.C.O.P. No.287 of 2015 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge, Tirupattur.

For Appellant : Mrs.G.P. Bhargavi

For Respondents :

JUDGMENT

Challenge is made to the award passed in MCOP. No.287 of 2015 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Tirupathur by the Insurance company as regards the quantum.

2. Claim petition was filed under Section 166 of the Motor Accident Claims Tribunal 1988, claiming compensation of Rs.15,00,000/- for the death of one Sala in a road traffic accident that occurred on 27.05.2015.

3. The Tribunal after hearing both sides and upon consideration of oral and documentary evidence, has fastened the liability on the Insurance Company to pay compensation of Rs.10,96,200/- together with interest at 7.5% per annum from the date of petition till the date of deposit.

4. The learned counsel appearing for the appellant / Insurance company Mrs.G.P..Bargavi would strenuously argue that the age of the deceased was 55 years, as per Ex.P.2 Postmortem certificate. But, as per Aadhar card of the 1st petitioner, her age was 48 years. With regard to the employment of the deceased, no proof was filed. The Tribunal has fixed the notional income of the deceased as Rs.9,000/- and future prospects of 10% was added while computing in arraying the income, which is not correct. She would further contend that all the children of the deceased got married and all are living separately. Therefore, they are not depending upon the deceased and thereby, they are not entitled to compensation.

5. Per contra, the learned counsel appearing for the respondents / claimants would vehemently contend that the children of the deceased were not depending upon the income of the deceased is not correct. It is his argument that the deceased was financially supporting all her children. As per Ex.P.12, the Aadhar card of the first petitioner, age of the deceased is mentioned as 55 years. It is further argued that the age of the deceased fixed at 55 years by the Tribunal cannot be found fault with.

6. Heard the arguments of the learned counsels for both sides and perused the materials on record.

7. At Trial on the claimant's side, daughter of the deceased was examined as PW.1 and Ocular witness Jothilingam was examined as PW.2 and Ex.P.1 to Ex.P.22 were marked. On the respondent side neither any witness was examined nor any documents were marked.

8. It is the evidence of the ocular witness, PW.2 – Jothilingam that on 27.05.2015, when he was standing near Kethanpatti Government High School near Sudharkar chicken shop, at 4.10 p.m, his relative namely the deceased Sala was trying to cross Krishnagiri to Vaniyambadi NH road in order to return to here home. At that time, a car came from Krishnagiri to Vaniyambadi in a rash and negligent manner dashed against the said Sala and due to the said impact, she died on the spot, which is not in dispute. It is relevant to note that the name of PW.2 was also found in the list of witnesses enclosed along with the charge sheet.

9. It is the evidence of PW.1, daughter of the deceased Sala, that her

mother was 55 years old at the relevant point of time. Ex.P.2 is the postmortem certificate in which the age of the deceased is mentioned as 55 years. In the claim petition, the age of the first respondent / first claimant is mentioned as 34 years. As per Aadhar card of the first claimant her age at the relevant point of time is 48 years. She also admitted during cross examination that her age was 48 years. If the deceased got married at the age of 15 years, relying upon the aforesaid observations, the age of the deceased is fixed at 63 years.

10. It is the testimony of PW.1 that her mother was working as a coolie and earning a sum of Rs.15,000/- per month. The date of the accident is on 27.05.2015. The Hon'ble Supreme Court fixed the income of the 24 year old injured vendor at Rs.6,500/- per month reported in Syed Sadiq Vs. United India Insurance Company. Therefore, this Court deems it fit to fix the income of the deceased at Rs.8,500/- per month. As per the law laid down by the Hon'ble Supreme Court in National Insurance Company Vs. Pranay Sethi and others, if the age of the person is about 60 years, no future prospects need to be added with the income. As regards the selection of the multiplier and the deduction for personal living expenses,

the law laid down by the Hon'ble Supreme Court in Smt. Sarala Verma & Other Vs Delhi Transport Corporation & Another, reported in 2009 (2) TN MAC 1 (SC) has to be followed. “For the age group of persons between 61 – 65 year, the relevant multiplier adopted is 7”.

11. The learned counsel appearing for the Insurance company would vehemently contend that as the children of the deceased Sala were married and they were not depending upon the income of the deceased mother, and henceforth, they are not entitled for compensation. Here, Section 166 and Manjuri Bera case are referred as under:

> *To have a proper understanding, it is relevant to go through the Section 166 of Motor Vehicles Act, 1988. The said Section is extracted hereunder:-*
>
> *“166. Application for compensation – (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made – (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of*

the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[Provided further that where a person accepts compensation under Section 164 in accordance with the procedure provided under Section 149, his claims petition before the Claims Tribunal shall lapse.]

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides,

and shall be in such form and contain such particulars as may be prescribed:

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [Section 159] as an application for compensation under this Act.

(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not."

9. The 1st proviso deals about the legal representatives. It is interesting to note that it is prior to the amendment in 1970, application was to be made by all the legal representatives. By the amendment, the application can be made by all or any of the legal representatives.

It has to be taken note of such application is on behalf of and for the benefit of all the legal representatives of the deceased. It has to be noted that the legal representatives who have not joined as a claimants, they shall be impleaded as respondents to the application. Therefore, the legislature does not distinguish whether they were dependent or not dependent of the deceased. Hypothetically speaking where mother may maintain her major son for some reasons. In Section 166 of the Motor Vehicles Act, all the representatives of the deceased if they have not joined in the application for compensation, they shall be impleaded as the respondents.

*2. With regard to this aspect, it is relevant to refer to the decision of the Hon'ble Supreme Court in **Manjuri Bera v. The Oriental Insurance Company Ltd.,** and Others reported in **MANU/SC/1978/2007,** wherein the ratio decidendi in the case is that "even if there is no loss of dependency, the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140."*

12. Therefore the arguments of the learned counsel appearing for the appellant, to the fact that the respondents got married and are living elsewhere and not depending upon the income of the mother, do not hold water. As per the law laid down by the Hon'ble Supreme Court in Smt. Sarala Verma & Other Vs Delhi Transport Corporation & Another, cited supra, deductions for personal and living expenses, if the family members are 2 to 3, 1/3rd has to be deducted. As per the legal heirs certificate Ex.P.16, all the respondents are the legal heirs of the deceased Sala. Therefore all the children of the deceased Sala are entitled for compensation. The loss of dependency is re-worked and tabulated as follows:

Age of the deceased - 63 years

Notional income fixed - Rs.8,500/- p.m

Deduction for personal expenses(1/3rd)

= 1/3 x 8,500 = Rs.2,833/-

= Rs.8,500 – Rs.2,833

= Rs.5667/-

Annual income = Rs.5667 x 12

= Rs.68,004/-

Multiplier adopted - 7

= Rs.68,004 x 7

Loss of Dependency = Rs.4,76,028/-.

13. The Tribunal has granted a sum of Rs.75,000/- for loss of love and affection and Rs.15,000/- each for loss of estate and for funeral expenses and Rs. 1,20,000/- for loss of parental consortium. In all other aspects, the amount granted by the Tribunal appears to be reasonable one and need not to be interfered with. The compensation awarded is re-worked and deducted as follows:

S.No.	***Heads***	***Tribunal***	***High Court***	Award confirmed or enhanced or granted
1.	For loss of dependency	Rs.8,71,200/-	Rs.4,76,028/-	Reduced
2	For loss of love and affection	Rs.75,000/-	Rs.75,000/-	Confirmed
3.	For loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	For funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	For parental consortium	Rs.1,20,000/-	Rs.1,20,000/-	Confirmed
	Total	Rs.10,96,200/-	Rs.7,01,028/-	**Reduced by**

S.No.	Heads	Tribunal	High Court	Award confirmed or enhanced or granted
				Rs.3,95,172/-

A rounded off to Rs.7,01,000/-

14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal at **Rs.10,96,200/-** is hereby reduced to **Rs.7,01,000/-.**

(iii) The Appellant / Insurance Company is directed to deposit the modified compensation amount i.e., **Rs.7,01,000 /-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP. No. 287 of 2015 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge, Tirupattur within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the respondents / claimants are at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact. Consequently, the connected Miscellaneous Petition is closed.

11.12.2023

Index : Yes/No
Speaking / Non-speaking order
drl

To:

1. The Motor Accident Claims Tribunal,
   The Special Subordinate Judge, Tirupattur.

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

R.KALAIMATHI, J.,

drl

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