IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

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THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3470 of 2017

Royal Sundaram Alliance Insurance Co.Ltd.,
Represented by its Manager,
No.5, RJ Plaza, II Floor, Katpadi Main Road,
Virudampet, Vellore-632 006. ... Appellant

Versus

1.Rani

2.Valli

3.Lakshmi

4.Ramya

5.Manikandan

6.Minor Sakthivel
(Minor represented by the next friend
mother Rani, 1st respondent herein)

7.Syed Mustaq ... Respondents

Prayer: This Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.08.2017 made in MCOP No.4 of 2014 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Vaniyambadi.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.T.S.Baskaran

JUDGMENT

This Civil Miscellaneous Appeal is filed by the insurance company aggrieved by the award passed in MCOP.No.4 of 2014 dated 24.08.2017, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Vaniayambadi.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the claimant is as follows:

The deceased was aged about 15 years, working as a Mason and earned Rs.10,000/- per month. On 19.10.2013, at about 14.50 hours, the deceased was riding bicycle in Natrampalli Krishnagiri Road, while he reached near Kethandapatti Sugar Mills, at that time, a car bearing Reg.No.KA-03-AA-5035, belonging to first respondent, insured with second respondent came in the opposite direction in a rash and negligent manner in high speed and dashed against the bicycle. Due to the impact, deceased sustained grievous injuries, subsequently admitted in hospital and died in the hospital. A Criminal case was registered in the Natrampalli Police Station against the Driver of the car in Crime No.569 of 2013 under Sections 279, 337 of IPC. The first petitioner is the mother of the deceased, petitioners 2 to 4 are the sisters. Petitioners 5 and 6 are the brothers of the deceased. The deceased was the main earning member of the family and due to his death, claimants have filed the claim petition, claiming a sum of Rs.15,00,000/- as compensation.

4. The first respondent remained exparte and has not contested the claim petition. The second respondent filed the counter and contended that the deceased suddenly took U turn and entered into the road in a negligent manner, which resulted in causing of accident, hence the driver of the car is not responsible for the accident. The deceased was aged about 15 years and he was not earning member as claimed by the claimants, except for the mother of the deceased, all other claimants were not the dependents of the deceased and they were all elder to the deceased and the compensation claimed under various heads are also on higher side, hence prays to dismiss the claim petition.

5. Before the claims Tribunal, on the side of the claimants P.W.1 to P.W3 were examined and exhibits Exs.P.1 to P.10 were marked in support of their claim petition. On the side of the respondent, R.W.1 was examined and Exhibits Exs.R.1 to R.3 were marked in support of their contention.

6. In Point Nos.1 and 2, the Tribunal has held that rash and negligent driving of the driver of car was responsible for the accident for which the first and second respondents are liable to pay compensation. In Point No.3, the Tribunal has quantified the quantum of compensation and awarded a sum of Rs.9,09,400/- as compensation along with interest at the rate of 6% per annum from the date of filing of the claim petition till the date of deposit. Aggrieved over the award passed by the Tribunal, the Insurance Company has filed this Appeal challenging both quantum and also dependency as claimed by the claimants.

7. Learned counsel for the Insurance Company has submitted that claimants herein are six in number out of which, first petitioner alone eligible for compensation, and others are not dependents since they are all elder to the deceased person herein. The learned counsel further submitted that the applicable multiplier to the deceased herein is only 15 whereas

Tribunal has taken 18 as multiplier which is against the principle laid down by the of Hon'ble Apex Court in ***Reshma Kumari and ors v. Madan Mohan and Anr, (***2013) 9 SCC 65.

8. Learned counsel for the claimants would submit that on the side of the petitioners/claimants, mother of the deceased was examined and she has categorically given evidence to the effect that all the claimants are dependents of the income of the deceased and the deceased had supported the education of the sixth petitioner/claimant, who is a minor and his studies was discontinued due to the sudden death of the deceased. Based on the evidence placed on record, the Tribunal has rightly come to the conclusion that all the claimants are dependents and adopted proper multiplier as per the judgment of the Hon'ble Apex Court in ***Sarla Verma v Delhi Transport Corporation,*** 2010 (2) KLT 802(SC) as well as ***Reshma Kumari and ors v Madan Mohan and Anr, (***2013) 9 SCC 65 and prays to confirm the same.

9. I have considered the submissions made by both sides and perused the materials placed on record.

10. Before the Tribunal, the first petitioner who is the mother of the

deceased was examined as P.W.1 and she has deposed that the deceased was 15 years old and he was working as a Mason and he was earning Rs.9,000/- per month. Due to sudden demise, claimants 2 to 4 (sisters) have lost their love and affection of the deceased, and the sixth petitioner/claimant (Sakthivel) has lost not only love and affection, but also financial support for his education. If the deceased was alive, sixth claimant would have received financial support for his education and continued his education to reach the higher status in the society. This evidence regarding dependency, elicited from P.W.1 that claimants 2 to 4 are married and settled in some other places. Fifth claimant is also major and there is no evidence adduced regarding his avocation or dependency. There is clear evidence of dependency with respect to Sakthivel and the same was not denied by the Insurance Company in the cross examination.

11. In ***Sarla Verma v Delhi Transport Corporation,*** *cited* supra, in paragraph 15, the Hon'ble Apex Court has observed as hereunder:

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to*

spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

As observed by the Hon'ble Apex Court, in this Court, brothers, sisters of deceased herein has to prove that they are dependents of the deceased. Whereas the evidence available shows that except Sakthivel, all others are workers, married and living separately. In the said circumstances, this Court is of the view that claimants 2 to 5, are not dependents of the deceased, however, the first claimant and the sixth claimant are the dependents of the deceased.

12. The Tribunal has notionally fixed the income as Rs.4,000/- per month. The accident has occurred in the year 2013 and considering the age of the deceased, this Court is of the opinion that fixing of Rs.4,000/- per month as notional income would be proper, however, considering the fact that two persons are dependents of the deceased and deceased was bachelor at the time of the accident, 50% is to be taken as personal expenses and the same has to be deducted. Tribunal has also not granted any amount under the head future prospects. As per judgment of the Hon'ble Apex Court in ***National Insurance Company Limited v. Pranay Sethi & Ors,*** (2017) 16 SCC 680 Future prospects applicable to the deceased is 40% and accordingly 40% is granted towards Future Prospets. It is further contented by the learned counsel for the Insurance Company that the Tribunal has taken 18 as multiplier, the proper multiplier applicable to this case would be 15.

13. The Hon'ble Apex Court in ***Reshma Kumari and ors v Madan Mohan and Anr,*** *(*2013) 9 SCC 65, has held that the applicable multiplier for the deceased aged upto 15 years is 15 and in the case of deceased aged above 15 years, the applicable multiplier would be 18. The relevant paragraph of the judgment is as follows:

> *"**43** In what we have discussed above, we sum up our conclusions as follows:*
>
> ***43.1** In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in Sarla Verma read with para 42 of that judgment.*
>
> ***43.2** In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma should be followed.*
>
> ***43.3** As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act."*

14. In the case on hand, the deceased was aged above 15 years at the time of accident as recorded in Ex.P2 and the multiplier applicable to case is 18 and accordingly, multiplier 18 is adopted. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified as Rs.6,04,800/- (Rs.5,600/- (Rs.4,000/- + 40% of Rs.4,000/-) X 12 X 18 X 1/2= Rs.6,04,800/-). Further Rs.40,000/- is granted to the first claimant towards Parental consortium and Rs.40,000/- is granted to the minor sixth claimant. As far as other aspects are concerned, the order of the Tribunal is confirmed. Hence, the award of the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	7,34,400/-	6,04,800/-	Reduced
2.	Loss of consortium to claimants Nos.1 to 6	1,00,000/-	80,000/-	Modified
3.	Loss of Estate	50,000/-	15,000/-	Reduced
4.	Funeral Expenses	25,000/-	15,000/-	Reduced
	Total	**Rs.9,09,400/-**	**Rs.7,14,800/-**	**Reduced by Rs.1,94,600/-**

15. It is also contended by the learned counsel for the Insurance company that they have adduced all evidence to show that driver of the offending vehicle was not having valid driving license at the time of accident. They have examined Assistant Manager of the Insurance Company and marked driving license of the driver of offending vehicle as Ex.R2. The driving license of the driver of the offending vehicle was expired on 21.06.2013 and the same was renewed on 25.06.2014 i.e., after the lapse of one year from the date of expiry, which would go to show that at the time of accident, the driver of the offending vehicle was not having valid driving license. But this aspect was not considered by the Tribunal and no finding was rendered by the Tribunal. In this case, as per the policy condition, injured is a third party and as per law laid down in ***National Insurance Company Limited* Vs. *Swaran Singh*** reported in **2004 (3) SCC 297**, if the injured is third party, the Insurance Company is liable to pay the compensation and have to recover the same from the owner of the vehicle by directly filing execution petition. Accordingly, pay and recover is ordered.

16. In the result:

(i) The Civil Miscellaneous Appeal is partly allowed by reducing the compensation awarded by the Tribunal to Rs.7,14,800/- from Rs.9,09,400/-.

(ii) The Insurance Company is directed to pay the above said compensation amount together with interest at the rate of 7.5% per annum from the date of receipt of copy of this order, till the date of deposit within a period of four weeks from the date of receipt of copy of this order, less the amount, if any, deposited and thereafter recover the same from the owner of the vehicle. On such deposit being made, the claimants shall be entitled to withdraw the same by making appropriate application before the Tribunal.

(iii) The apportionment of the compensation shall be at the ratio of 80% to the 1st claimant/the mother and 20% to the 6th claimant/brother.

(iv) There shall be no order as to costs.

Index : Yes/No **03.08.2023**
Speaking Order:Yes/No
Neutral Citation: Yes/No
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To

1.The Motor Accidents Claims Tribunal,
Subordinate Judge, Vaniyambadi.

2.The Section Officer,
VR Section, Madras High Court.

K.RAJASEKAR, J.

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C.M.A.No.3470 of 2017

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