IN THE HIGH COURT OF JUDICATURE AT MADRAS

22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2099 of 2019

and

C.M.P.No.7995 of 2019

Shriram General Insurance Co. Ltd.,
E-8, RIICO Industrial Area, Sitapura,
Jaipur, Rajasthan,
PIN-302 002. ... Appellant

Vs.

1.Amsaveni
2.Chellappan
3.K.Raji

… Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 24.10.2017 made in M.C.O.P.No.266 of 2014, on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tiruvannamalai.

For Appellant : Mr.S.Dhakshnamoorthy

For R1 : M/s.B.Jawas

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the quantum awarded in M.C.O.P.No.266 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tiruvannamalai.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal. The case in brief is as follows.

3. The claimants are the parents of the deceased minor namely Ramya who had died in a road accident on 28.02.2014. The said Ramya was seven years old and a school student at the time of accident. On 28.02.2014, at about 17.20 hours, when the deceased minor was walking on the road at Kilravanthavadi Village near one Victor's house, she was hit by the Eicher van bearing Registration No.TN-39-M-9828, which came from East to West towards Tiruvannamalai in a rash and negligent manner. Due to which, the said Ramya sustained fatal injuries and died on the spot. Therefore, a

criminal case as against the driver of the van in Cr.No.47 of 2014 under Section 279, 304(A) IPC was registered on the file of the Sub Inspector of Police, Thandarampattu Police Station. The parents of the deceased minor have claimed Rs.10,00,000/- as compensation with interest before the tribunal, wherein the first respondent / third respondent herein filed the counter and contended that the minor Ramya who was playing in the mud road, without noticing the vehicle suddenly crossed the road, which resulted in the said occurrence. He admitted that the driver of the vehicle was having a valid license and duly insured. The counter of the second respondent / Insurance Company stated that at the time of occurrence, the van was used without permit and fitness certificate. Hence, there is a violation of policy condition. Thereby, the Insurance Company is not liable to pay the compensation.

4. The tribunal after considering the evidence, holding that the driver of the van is responsible for the accident and the Eicher van was used without fitness certificate and permit at the time of accident and that there is a violation of policy condition from the part of the first respondent has occasionally fixed the monthly income of the deceased minor at Rs.5,000/-

per month and after deducting $1/3^{rd}$ of her monthly income for her personal expenses, fixed the monthly income as Rs.3,333/- and adopted multiplier of 18, awarded Rs.7,19,928/- rounded of to Rs.7,20,000/- as compensation for the pecuniary loss of the petitioners. In addition, the tribunal awarded Rs.1,25,000/- towards loss of love and affection and a sum of Rs.10,000/- towards the loss of estate and a sum of Rs.25,000/- towards funeral expenses, totalling to a sum of Rs.8,80,000/- was awarded to the petitioners. The award of the Tribunal under the various heads are as follows:

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of Income	7,20,000/-
2.	Loss of love and affection of the petitioners	1,25,000/-
3.	Loss of estate	10,000/-
4.	Funeral expenses	25,000/-
	Total	**Rs.8,80,000/-**

Aggrieved over the quantum awarded, the Insurance company has filed this appeal.

5. Mr.B.Jawas, the learned counsel for the Insurance company submitted that the multiplier of 18 adopted by the tribunal is against the settled principal and the applicable multiplier is 15 that has to be adopted. He also submitted that the monthly income is notionally fixed on the higher side and sought revision of the same. As per the judgement of the Constitution Bench of the Hon'ble Supreme Court in **National Insurance Co. Ltd vs. Pranay Sethi**, reported in **(2017) 16 SCC 680**, the loss of parental consortium is to be awarded Rs.40,000/- each, whereas in the case on hand, higher quantum was awarded under the head of loss of love and affection.

6. The learned counsel further relied on **Sarla Verma (smt.) & Ors. vs. Delhi Transport Corporation & Another**, reported in **(2009) 6 SCC 121**, wherein the Hon'ble Apex Court held that the multiplier for the deceased minor up to the age of 18 years is 15, whereas in the present case, the tribunal has taken multiplier of 18. Since, the deceased minor is only seven years old, the permissible multiplier that has to be fixed is 15. Hence, he prays to allow this petition.

7. I have considered the submissions made by both sides and perused the records.

8. Admittedly, in this case the deceased is minor aged about seven years. The Hon'ble Supreme Court in ***Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto & Ors.,*** reported in 2022 LiveLaw (SC) 841 has considered the case of deceased child who was aged about 12 years died in the year 2003 and granted Rs.30,000/- per annum as notional income by following the judgement of the Hon'ble Apex Court in ***Kishan Gopal & Anr. vs. Lala & Ors,*** reported in 2013 AIR SCW 5037 ***and Kurvan Ansari @ Kurvan Ali & another vs. Shyam Kishore Murmu and another*** reported in (2022) 1 SCC 317 and by adopting multiplier 15 awarded a sum of Rs.4,50,000/- under the head loss of Dependancy. Rs.50,000/- was also awarded in conventional heads and totally awarded Rs.1,00,000/- to the claimants therein. In this case, the accident was occurred on 28.02.2014. Considering the date of accident, this Court is of the opinion that the notional income of Rs.40,000/- per annum would be appropriate for the deceased herein and appropriate multiplier to be adopted is 15 as per ***Sarla***

Verma (Smt.) & Ors. v. Delhi Transport Corporation & Another, reported in (2009) 6 SCC 121. Accordingly, Rs.6,00,000/- is awarded under the head Loss of Dependancy and Rs.50,000/- is awarded under the conventional heads. Accordingly, the award passed by the Tribunal is modified since the same is on the higher side.

S.No	Description	Amount awarded by this Court (Rs)
1.	Loss of Dependancy	6,00,000/-
2.	Other conventional Head	50,000/-
	Total	**Rs.6,50,000/-**

10. In fine, claimants would be entitled to an compensation of Rs.6,50,000/-. The Insurance company is directed to deposit a sum of Rs.6,50,000/-along with interest at the rate of 7.5% per annum, from the date of accident till the date of payment, less any amount, if already paid. On such deposit, the claimants would be entitled to withdraw the said amount by making appropriate application before the Claims Tribunal. The apportionment of compensation made by the Tribunal is confirmed

11. Accordingly, this Civil Miscellaneous Appeal filed by the insurace company is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. Motor Accident Claims Tribunal (Special Sub Court),
   Tiruvannamalai

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

K.RAJASEKAR,J.

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Pre delivery Judgment made in
C.M.A.No.2099 of 2019
and C.M.P.No.7995 of 2019

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