BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.08.2023

Delivered on : 01.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.109 of 2020

M/s.United India Insurance Company Limited,
Through its Branch Manager,
2nd Floor, Xavier Building, ACC Complex,
P.W.D.Road, Nagercoil,
Kanyakumari District. : Appellant/2nd Respondent

Vs.

1.Muthu

2.Subbulakshmi : Respondents/Claimants

3.Sahaya Anto Livin : Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the fair and decreetal order dated 25.09.2019 made in M.C.O.P.No.116 of 2017 on the file of the Motor Accident Claims Tribunal (Principal Additional Sub Court), Nagercoil.

For Appellant : Mr.B.Rajesh Saravanan

For Respondents : Mr.G.Aravinthan, for R1 & R2.
: No Appearance, for R3.

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.116 of 2017, dated 25.09.2019 on the file of the Motor Accident Claims Tribunal (Principal Additional Sub Court), Nagercoil.

2. The appellant/insurer, who was made liable to pay compensation of Rs.45,87,000/- with interest at 7.5% per annum to the respondents 1 and 2/claimants for the death of their son Sivasankar, consequent to an accident occurred on 22.03.2016, challenged the quantum of compensation awarded at by the Tribunal.

3. The learned counsel for the appellant would submit that the Tribunal without any acceptable evidence has fixed the notional income of the deceased at Rs.15,000/-, which is on higher side; that the Tribunal has committed an error by adding 40% of the income as future prospects

to the deceased college student; that the Tribunal has failed to consider the medical bills in proper manner and also failed to consider the deductions in the medical bills and that the amount awarded under other heads are also excessive.

4. The only point that arises for consideration is as to whether the quantum of compensation awarded by the Tribunal is just and proper and is in accordance with law ?

5. It is the specific case of the claimants that the deceased Sivasankar was aged 19 years at the time of accident; that he was studying final year B.E. Mechanical Engineering; that he had a strong ambition either to serve in Army or a Police Officer and that since he was doing final year, he had every chance to get the job and thereby he can earn Rs.50,000/- per month.

6. The defence of the appellant/insurer is that the deceased was a non earning person and he has no income and as such, the income of the deceased as per second schedule of Motor Vehicles Act can be taken as Rs.15,000/- per month.

7. As rightly pointed out by the learned counsel for the respondents, the factum that the deceased was doing final year in Mechanical Engineering, has not been disputed by the appellant/insurer. Though the claimants have alleged that the deceased was aged 19 years in the claim petition, the Tribunal taking note of Ex.P.5/death certificate and the mark sheet under Ex.P.12, has rightly fixed the age of the deceased as 20 years at the time of accident.

8. The Tribunal, taking note of the judgment of this Court in **K.Bannarisamy and another Vs. Anbalagan and others** reported in ***CDJ 2018 MHC 4795,*** wherein two decisions of the Hon'ble Division Bench of this Court in ***Royal Sundaram Alliance Insurance Company Limited Vs. Chinthamani and two others*** in C.M.A.Nos.2655 and 2844 of 2015, dated 24.04.2018 and ***Royal Sundaram Alliance Insurance Company Limited Vs. S.Lakshmi and two others*** reported in ***2016(1) TNMAC 490***), were considered, has fixed the notional income of the deceased at Rs.15,000/-.

9. The learned counsel for the respondents 1 and 2/claimants have relied on another judgment of the Hon'ble Division Bench of this Court in ***Royal Sundaram Alliance Insurance Company Limited Vs. Raja*** in C.M.A.Nos.2123 and 2124 of 2016, dated 19.09.2018, wherein the Division Bench of this Court taking note of the fact that the deceased after completing the Diploma Course in Engineering and was also pursuing his Bachelor of Engineering degree at the time of the accident, has fixed the monthly income of the deceased at Rs.15,000/-. Hence, the decision of the Tribunal in fixing the monthly income at Rs.15,000/- cannot be found fault with.

10. As per the decision of Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, the Tribunal has rightly added 40% of the income towards future prospects and after such addition, the monthly income would come to Rs.21,000/-. Since the deceased was a bachelor at that time, the Tribunal has rightly deducted 50% of the income towards personal and living expenses of the deceased and after such deduction, income would come to Rs.10,500/- and the appropriate multiplier would

be '18'. Hence, the loss of dependency would be Rs.10,500 x 12 x 18 = Rs.22,68,000/-.

11. The Tribunal has also rightly awarded a sum of Rs.15,000/- for funeral expenses ; Rs.15,000/- for loss of estate under the conventional heads and Rs.80,000/- for loss of filial consortium to the claimants/parents.

12. The learned counsel for the appellant would submit that the Tribunal has not properly considered the medical bills and failed to consider the deductions in the medical bills. But the Tribunal has elaborately considered the medical bills and in the light of the objections raised by the appellant/insurer, has granted Rs.24,50,333/- towards medical expenses.

13. The appellant/insurer has not raised any specific objections with regard to the medical bills and granting of amount towards medical expenses.

14. Considering the above, the total compensation awarded at +Rs.48,28,333/- is very much reasonable and the same cannot said to be excessive. The Tribunal by deducting 5% of the amount for not wearing the helmet at the time of accident, has granted compensation of Rs. 45,87,000/- and as such the same cannot be found fault with. The appellant/insurer has not raised any other ground to impugn the award. Consequently, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

15. In the result, the Civil Miscellaneous Appeal is dismissed and order impugned award dated 25.09.2019 made in M.C.O.P.No.116 of 2017 on the file of the Motor Accident Claims Tribunal (Principal Additional Sub Court), Nagercoil, is confirmed. The appellant/Insurer is directed to deposit the award amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the claimants are permitted to withdraw the award amount, less amount already withdrawn,

if any, by filing a necessary application before the Tribunal. The parties are directed to bear their own costs.

01.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accident Claims Tribunal
(Principal Additional Sub Court), Nagercoil.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.109 of 2020

01.09.2023