BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 25.11.2022

Delivered On : 02.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.742 of 2020

The Manager,
National Insurance Co. Ltd.,
D.No.63, Rasi Plaza,
West Pradharsanam Road,
Karur. .. Appellant /2nd Respondent

Vs.

1.Thilagavathi
2.Thirunavukarasu
3.Haribaskar ... Respondents 1 to 3 / Petitioners
4.M.Prabhu ... 4th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 11.03.2020, made in M.C.O.P.No.289 of 2018, on the file of the Motor Accident Claims Tribunal – District Judge, Karur.

For Appellant : Mr.A.S.Mathialagan

For Respondents : Mr.K.Suresh Kumar for R1 to R3

: No appearance for R4

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 11.03.2020, made in M.C.O.P.No.289 of 2018, on the file of the Motor Accident Claims Tribunal – District Judge, Karur. The appellant herein is the second respondent, the respondents 1 to 3 herein are the claimants and the fourth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition in M.C.O.P.No.289 of 2018, is as follows:

On 14.03.2018, at about 4.10 pm., when the deceased-Kamala was standing at Thirukkampuliyur bus stop on the extreme left side of the road, a Crane bearing Registration No.TN-45-AF-0582 was driven by its driver in a rash and negligent manner, hit against the deceased and ran over the deceased. As a result, she succumbed to the injuries. The deceased was aged about 62 years and was earning Rs.50,000/- towards pension and she was doing tailoring work and she contributed to the welfare of the claimants. The petitioners are her dependents and they claimed a sum of Rs.50,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.289 of 2018, is as follows:

The manner of accident narrated in the petition is wrong. The Crane was driven by its driver in a careful and cautious manner. It was the deceased, who suddenly crossed the road and she contributed to the accident. The age, profession and income of the deceased are denied. The claim is excessive.

4. 2 witnesses were examined and 8 documents were marked, on the side of the claimants. 1 witnesses was examined and 1 document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.17,24,156/- as compensation to be paid by the second respondent on behalf of the first respondent.

5. Against the award, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal mechanically fixed the liability on the appellant and the Tribunal failed to fix contributory negligence on the part of the deceased. The Tribunal wrongly understood that the family pension is a regular income, earned by the deceased. The Tribunal ought to have fixed the notional income to assess the compensation. The total compensation is excessive.

6. On the side of the appellant, it is stated that the Tribunal ought to have fixed contributory negligence on the part of the deceased. P.W.2 was examined as an eye witness, he has deposed that the driver of the Crane was rash and negligent. Copy of the F.I.R was marked as Ex.P1. M.V.I report was marked as Ex.P3. Copy of charge sheet was marked as Ex.P4. On the basis of the evidence of P.W.2 and on the basis of Ex.P1, P3 and P4, the Tribunal fixed the liability on the driver of the Crane, which is reasonable.

7. On the side of the appellant, it is stated that before the death of the deceased, her husband died and she was receiving family pension and that the family pension cannot be taken as a regular income of the deceased. Except the family pension, there was no other source of income for the deceased and that no document was filed to show that the deceased was working as a Tailor and that all the claimants are majors and they were not the

dependents of the deceased.

8. On the side of the appellant, it is stated that after the death of the deceased, there may not be a chance for the deceased, to claim the family pension and the same cannot be taken into consideration. A judgment of the Hon'ble Supreme Court reported in **2020-1-TNMAC-182 (SC) (National Insurance Co.Ltd., V. Birender and others),** is cited, wherein, it is stated as follows:-

> *"21. Be that as it may, the Tribunal, for excluding the amount received by the deceased as family pension due to demise of her husband, had noted in paragraph 26, as under:*
>
> > *"26. Learned counsel for the claimants further requested that about to family pension being drawn by the deceased also be calculated for the purpose of assessing the compensation. This contention and assertion of learned counsel for the claimants does not carry any conviction with the Tribunal because the deceased was getting family pension in her own right as the widow of the deceased and cannot be termed as her income for the purpose of computing the amount of compensation."*
>
> *The High Court, without reversing the said finding, proceeded to include the amount of Rs.7,000/ per month*

received by the deceased as pension amount after demise of her husband. We are in agreement with the view taken by the Tribunal and for the same reason, have to reverse the conclusion recorded by the High Court to include the said amount as loss of dependency. That could not have been taken into account, as the same was payable only to the deceased being widow and not her income as such for the purpose of computing the amount of compensation."

9. On the side of the respondents-claimants, it is stated that the compensation should be just compensation and it should compensate the claimants for possible loss, due to sudden and untimely death of the deceased, as a result of an accident and the income of the deceased is to be taken into consideration for fixing the compensation and if the deceased was alive, there was a possibility of the claimants to receive whatever the deceased was receiving. Though LR's of the deceased are not entitled to receive family pension, they are entitled to receive what the deceased might have received, if she was alive. A judgment of the Hon'ble Supreme Court reported in ***2020-1-TNMAC-182 (SC) (National Insurance Company V. Birender and others)*** is cited, wherein, it is stated as follows:-

17. ... the Court clearly noted that the amount towards family pension cannot be deducted from the claim *amount for determination of a just compensation under the Act. Further, the High Court has erroneously assumed that the family of the deceased would be entitled for family pension amount immediately after the death of the deceased employee.*

10. On the side of the appellant, it is stated that the claimants are not the dependents of the deceased. All the claimants are major and 50% of the income ought to have been deducted for the own expenses of the deceased.

11. On the side of the respondents-claimants, it is stated that though the claimants, as the LR's of the deceased are entitled to claim compensation. A judgment of the Hon'ble Supreme Court reported in ***2016-2-TNMAC -721 (SC) (Reliance General Insurance Co. Ltd. Shashi Sharma and others)*** is cited, wherein, it is stated as follows:-

> *“20. Rule 5 broadly deals with two aspects. Firstly, to compensate the dependents of the deceased Government employee by granting ex-gratia financial assistance on compassionate grounds for the loss of pay and other allowances for a specified period. The second part of Rule 5*

is to compensate the dependents of the deceased Government employee by way of allowances and concessions - of retaining occupation of the Government residence on specified terms, of family pension and other allowance. As regards the second part, it deals with income from other source which any way is receivable by the dependants of the deceased Government employee. That cannot be deducted from the claim amount, for determination of a just compensation under the Act of 1988."

12. It is true that the LR's are not entitled to claim family pension, but, this is not a case for grant of family pension. This case is for claiming compensation in a motor accident case, wherein, this Court has to give just compensation, on the basis of what would be the monetary benefit, if the deceased is still alive. Hence, it is decided that the family pension received by the deceased is to be taken as the income of the deceased. Considering the citations produced on the side of the respondents - claimants, it is decided that the claimants, as the LR's of the deceased, are entitled to claim compensation.

13. As long as the deceased was alive, she might have spent a portion of the income for her own expenses. Considering the fact that the claimants are majors, the Tribunal has deducted 50% of the income of the

deceased towards her own expenses, which is reasonable.

14. The family pension calculation sheet was marked as Ex.P6. Statement of account of the deceased was marked as Ex.P7. Pension particulars was marked as Ex.P8. The deceased was receiving a sum of Rs.37,719/- pm towards family pension, there is no proof regarding the income from the Tailoring work. After deducting 50% (Rs.18,860/-), towards the own income of the deceased, the Tribunal calculated the monthly income as Rs.18,859/-, which is reasonable. The age of the deceased at the time of accident was 62 years, hence, multiplier '7' is applicable. By applying multiplier '7', the Tribunal calculated the loss of income as Rs.15,84,156/- (Rs.18,899/- X 12 X 7), which is reasonable.

15. The Tribunal awarded Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, Rs.10,000/- towards transport expenses, Rs.1,00,000/- towards loss of love and affection. Considering the dictum of the Hon'ble Supreme Court in ***Pranay Sethi***'s case, it is decided that the claimants are entitled to Rs.70,000/- towards conventional charges.

16. The total compensation is calculated as follows:-

Loss of income	:	Rs. 15,84,156/-
Conventional charges	**:**	**Rs. 70,000/-**
		....
Total compensation	:	Rs. 16,54,156/-
		....

18. The first claimant-daughter of the deceased is entitled to Rs.6,54,156/- with proportionate interest and costs, the second and third claimants - sons of the deceased are entitled to Rs.5,00,000/- each with proportionate interest and costs,

19. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.17,24,156/- to Rs. 16,54,156/-.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs. 16,54,156/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount deposited, if any, shall be refunded to the appellant.**

(iii) On such deposit being made by the appellant / Insurance Company, the respondents 1 to 3 / claimants are permitted to withdraw their share amount as apportioned by this Court with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any.

02.02.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Ls

R. THARANI, J.

Ls

To

1.The District Judge,
Motor Accident Claims Tribunal,
Karur.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.742 of 2020

02.02.2023