BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.11.2023	Delivered on: 19.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.(MD).No.366 of 2015
and
M.P.(MD)No.1 of 2015

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
Rep. by its Branch Manager,
46, Whites Road,
Royapettai, Chennai-14. ... Appellant / 2nd Respondent

Vs.

1.V.Vimala Devi
2.Minor.Varsha
3.Ramadoss
(R2 rep. through her mother
and natural guardian R1) ... Respondents 1to 3 / Petitioners
4.K.Gangadurai ... 4th Respondent / 1st Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decretal order dated 13.08.2014 made in M.C.O.P.No.57 of 2013 on the file of the Motor Accident Claims Tribunal and Additional District Judge, Virudhunagar and to allow this Appeal.

For Appellant : Mr.M.Jerin Mathew

For Respondents : Mr.S.Venkatesh for R1 & R2

: R3- died

: No appearance for R4

JUDGMENT

P.B.BALAJI,J.

The above Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the award passed in M.C.O.P.No.57 of 2013 on the file of the Additional District and Sessions Judge/ Fast Track Court, Virudhunagar. Challenge to the award is on the grounds of negligence as well as quantum.

2. For the sake of convenience, the parties are referred to as per their rank before the Tribunal.

3. The claimants, viz., the respondents 1 to 3 herein has filed a claim petition before the Tribunal, seeking compensation for the death of one Vigneshwaran in a motor accident that occurred on 19.09.2012. It is the case of the claimants that the deceased - Vigneshwaran was travelling

along with his wife -the first respondent herein and in the accident, the husband died and the first respondent herein sustained injuries. In respect of the injuries sustained by the first respondent herein, she preferred a claim petition in M.C.O.P.No.14 of 2014. Both the cases were tried together and evidence was recorded in common and a common judgment was pronounced by the Tribunal. The Tribunal, insofar as the present M.C.O.P.No.57 of 2013 is concerned, proceeded to award a total compensation of Rs.45,15,000/-.

4. Aggrieved by the said award, the appellant has preferred the present appeal on the grounds that the Tribunal has erred in holding that the accident occurred only due to the negligence of the fourth respondent; the monthly income of the deceased was determined notionally in the absence of any income proof provided by the claimants; The Tribunal erred in awarding Rs.1,00,000/- towards loss of consortium and Rs. 1,00,000/- towards loss of love and affection to the respondents 1 to 3 respectively.

5. We have heard Mr.M.Jerin Mathew, learned counsel for the

appellant, Mr.S.Venkatesh, learned counsel for the respondents 1 and 2 / claimants 1 and 2. We have also perused the records.

6. Insofar as the question of liability is concerned, we questioned the counsel for the appellant with regard to the other M.C.O.P.No.14 of 2014, where an award came to be passed in common with the present M.C.O.P. No.57 of 2013. The learned counsel for the appellant would fairly submit that the award in M.C.O.P.No.14 of 2014 has become final and no appeal was preferred against the same. Therefore, the question of liability has been accepted by the appellant in respect of one of the matters which was taken up together and decided in common. Therefore, we confirm the findings of the Tribunal on the ground that the accident occurred only because of the rash and negligent driving of the offending vehicle, which was insured with the appellant herein.

7. The learned counsel for the appellant would however invite our attention to the lack of evidence on the part of the claimants to establish that the deceased was earning substantially, much less Rs. 50,000/- according to them and further the claimants did not produce any

documents to show that the business being run by the deceased and was earning him a sum of Rs.50,000/-.

8. The learned counsel for the appellant would also invite our attention to the Hon'ble Supreme Court's judgment in ***Pranay Sethi's*** case, and attack the amounts awarded under conventional heads.

9. Per contra, the learned counsel for the claimants would submit that the deceased was doing business under the name and style, Sri Balaji Engineering Works and in that connection, they have marked Ex.P6, P7 and P8 certificates issued by the Commercial Tax Department, besides also two PAN Cards (ie.Ex.P13 & Ex.P17), one the individual name of the deceased and the other in the name of the Company Firm that he was carrying on. A contractor certificate was marked as Ex.P16. The learned counsel for the respondents / claimants would also submit that the Tribunal has not provided for future prospectus of the deceased in terms of the ratio laid down by the Hon'ble Supreme Court and therefore, he prayed for enhancement of the award amount, though a even though a cross objection has not been filed.

10. We have paid our anxious consideration to the rival submissions advanced by the respective counsel. We have independently perused the pleadings, oral evidence as well as the documentary evidence produced before the Tribunal. We have also gone through the award of the Tribunal.

11. Admittedly the claimants have not been able to substantiate their claim before the Tribunal that the deceased was earning Rs.50,000/- per month. Exs.P6 to P9, P13, P16 and P17 only establish that the deceased was carrying on business and he was an income tax assessee, individually as well as a sole proprietor of the Firm. None of these exhibits evidence the amount that was being earned by the deceased as monthly income. The Tribunal has rightly held that there is no evidence on the side of the claimants to prove the income of the deceased. However, the Tribunal has taken the notional income of Rs.30,000/-, considering the exhibits marked by the claimants.

12. The burden to prove the income of the deceased is only on

the claimants. When the claimants have not been able to establish the same before the Tribunal, the Tribunal has to fix the notional income depending on the available oral and documentary evidence. The Tribunal has not given any reasons to substantiate as to why the notional income is to be taken as Rs.30,000/-.

13. The learned counsel for the claimants would rely on the judgment of the Hon'ble Supreme Court in ***Kandasami V. Lindabriyal*** in ***Civil Appeal No.3125 of 2023, dated 24.04.2023*** and state that the Hon'ble Supreme Court had fixed a notional income of Rs.25,000/- in the absence of proof of income on the side of the claimants, for an accident that occurred in the year 2008 and had also awarded 40% towards future prospects in the said case. He would further place strong reliance on the said decision of the Hon'ble Supreme Court and seeks for enhancement of the award.

14. In the said judgment the Hon'ble Supreme Court, we find that the educational qualifications of the deceased and his age being 28 years were taken note of by the Hon'ble Supreme Court and being an Engineering Graduate and the employment opportunities that would have

been available to him during that point of time, fixed the notional income as Rs.25,000/-. The facts of the present case are that the deceased is said to have been doing business and there is no reference to any educational qualification of the deceased. Moreover, he was aged about 30 years at the time of accident. Thus, we are unable to apply the ratio of the Hon'ble Supreme Court to the facts of the present case.

15. However, considering that the age of the deceased and the factum of his doing business and being duly assessed to income tax, we deem it fit to fix the notional income at Rs.20,000/- p.m. The future prospectus to be awarded to the deceased is 40% (Rs.8,000/-), considering that the deceased was aged about 30 years.

16. Insofar as the award of Rs.1,00,000/- towards loss of love and affection and Rs.1,00,000/- towards loss of consortium, the same is excessive and the same is reduced to Rs.40,000/- to each of the claimants. The Tribunal has awarded Rs.10,000/- towards transport expenses and the same is set aside and Rs.5,000/- towards funeral expenses and the same is enhanced to Rs.15,000/-. The claimants are entitled to Rs.15,000/- towards loss of estate. We have applied the ratio of the Hon'ble Supreme Court in

Pranay Sethi's case to the facts of the present case. The funeral expenses, loss of consortium and loss of love and affection should be enhanced once in every three years at 10%. Since the above judgment is of the year 2017, from 2017- 2020 , 10% should be enhanced, ie. from Rs.40,000/- to Rs. 44,000/- towards loss of consortium, from Rs.15,000/- to Rs.16,500/- each towards funeral expenses as well as loss of estate and from 2020- 2023, another 10% should be enhanced ie. Rs.44,000/- to Rs.48,400/- towards loss of consortium, from Rs.16,500/- to Rs.18,150/- each towards funeral expenses as well as loss of estate.

17. Though the claimants have not preferred any appeal, in view of the ratio laid down by the Hon'ble Supreme Court in ***Nagappa V. Gurudhayal Singh*** reported in ***2003-2-SCC-274***, even in an appeal filed by the Insurance Company, the award can be enhanced. Therefore, we have no difficulty in modifying the award including, providing for compensation under the head of future prospects, though no cross objection has been preferred by the claimants. The Tribunal has deducted 1/3 towards the personal expenses of the deceased and applied multiplier '17', which do not require interference. After deducting 1/3rd (Rs.9,333/-),

the monthly income is at Rs.18,667/- (Rs.28,000/- (-) Rs.9,333/-) and the same is rounded off to Rs.18,665/-.

Loss of income : Rs.18,665/- X 12 X 17 = Rs.38,07,660/-

18. In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	**Rs. 40,80,000 /-**	**Rs. 38,07,660/-**	**Reduced**
2.Loss of love & affection to claimants 2&3 & Loss of consortium to first claimant	**Rs. 3,00,000/- Each Rs. 1,00,000/-**	**Rs.1,45,200/- (Rs. 48,400/- X3)**	**Reduced**
3.Funeral expenses	**Rs. 5,000/-**	**Rs. 18,150/-**	**Enhanced**
4.Loss of estate	**----**	**Rs. 18,150/-**	**Awarded**
5.Transport expenses	**Rs. 10,000/-**	**.....**	**Set aside**
Total Compensation	**Rs. 45,15,000 /-**	**Rs. 39,89,160/-**	**Reduced**

19. In fine, the Civil Miscellaneous Appeal stands partly allowed and the award, dated 13.08.2014 made in M.C.O.P.No.57 of 2013 on the file of the Motor Accident Claims Tribunal and Additional District Judge,

Virudhunagar, is hereby modified and the compensation is reduced from **Rs.45,15,100/-** to **Rs.39,89,160/-**. The first claimant, who is the wife of the deceased is entitled to Rs.15,00,000/- with proportionate interest and costs and the second claimant, who is the daughter of the deceased is entitled to Rs.15,00,000/-, with proportionate interest costs and the third claimant, who is the father of the deceased is entitled to Rs.9,89,160/-, with proportionate interest costs.

20. The appellant / Insurance Company is directed to deposit the modified award amount of **Rs.39,89,160/-** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. Excess amount, already paid if any, shall be refunded to the appellant / Insurance Company.

21. However, we have found from the notice sent from this Court to the father of the deceased, third claimant, the same was returned with the endorsement that he is dead. However, the parties to the above Civil

Miscellaneous Appeal have not brought it to our notice. The Tribunal, therefore, may call upon the claimants to prove the same factum and if it is true that the third claimant - father of the deceased is no more, then the entire compensation shall be paid to the remaining claimants 1 and 2 equally.

22. On such deposit being made, the first respondent herein/ major claimants are permitted to withdraw their respective award amounts, along with interest and costs as apportioned by this Court, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. The share of the minor claimant - Varsha is ordered to be deposited in any one of the Nationalised Banks, till she attains majority. The accrued interest of the minor shall be withdrawn by the mother/natural guardian, namely, the first respondent herein once in three months directly from the bank. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed

(T.K.R.J.) & (P.B.B.J)
19.12.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
Ls

To

1.The Motor Accident Claims Tribunal and
Additional District Judge, Virudhunagar.

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

RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

judgment in
C.M.A.(MD).No.366 of 2015

19.12.2023