IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.690 OF 2022

P.Subbulakshmi ... Appellant / Petitioner

Vs.

1.M/s.Parveen Travels Pvt. Ltd.,
No.115/6, Santha Vellore Village,
S.V.Chathram, Sriperumbudur Taluk,
Kancheepuram – 602 105.

2.M/s.United India Insurance Co. Ltd.,
No.13, Andiappa Gramani Street,
Royapuram,
Chennai – 600 013.

S.Vijaya (Died)
(Amended as per order in M.P.No.1680 of 2019
dated 15.07.2019 as the third respondent died) ... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.11.2019 made in M.A.C.T.O.P.No.3310 of 2015 before the Motor Accident Claims Tribunal Judge, Chennai (Chief Judge, Court of Small Causes, Chennai.)

For Appellant	:	Mr.M.Murali
For Respondent-1	:	Served – No appearance
For Respondent-2	:	Mr.V.Dakshana Moorthy

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Aggrieved by the quantum of compensation awarded at Rs.19,95,000/- for the death of one S.Maheshkumar, his wife / claimant is on appeal.

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

3.The claimant sought for a compensation of Rs.60,00,000/- (Rupees Sixty Lakhs Only) for the death of her husband contending that the accident occurred due to the rash and negligent driving of the Bus belonging to the first respondent, insured with the second respondent bearing Registration No.TN21-AT-1495. Contending that the deceased was aged 31 years and was drawing a monthly salary of Rs.27,000/-, the claimant sought for a compensation of Rs.60,00,000/- for having lost her husband.

4.The claim was resisted by the second respondent–Insurance Company contending that the accident did not occur in the manner suggested and the deceased was not wearing Helmet at the time of the accident. It was contended that the deceased has contributed to the accident by his own reckless driving. It was claimed that the deceased overtook another two wheeler and while doing so, collided against a third two wheeler and fell on the left side back wheel of the Bus. Therefore, the deceased himself was totally responsible. The income claimed was termed as 'excessive', the age of the deceased was denied and the claimant was put to strict proof of the same. The mother of the deceased was impleaded as third respondent and she died pending claim petition.

5.At trial, before the Tribunal, the claimant was examined as P.W.1 and one Muthukumar, Senior Executive of the employer of the claimant was examined as P.W.2 and one Rajesh, an eye witness was examined as P.W.3. Ex-P.1 to EX-P.16 were marked. Ex-P.15 and Ex-P.16 are the copies of Bank Statements which shows that the salary was credited to the account of the deceased. Ex-P.1 and Ex-P.2 are FIR and Charge Sheet respectively. On the side of the respondents, one Mr.Sampath was examined as R.W.1 and the rough sketch was marked as Ex-R.1. The judgment in the criminal case in C.C.No.878 of 2016 dated 21.02.2018 on the file of the IV Metropolitan Magistrate Court, Saidapet, Chennai was marked as Ex-R.2.

6.On consideration of the evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the first respondent's Bus. The Tribunal took into account the fact that the FIR and final report were filed against the Driver of the Bus. The Tribunal while deciding on the quantum of compensation fixed the monthly income at Rs.20,000/- as against documentary evidence that was available to show that the claimant was drawing a salary of not less than Rs.25,000/- between April 2014 and October 2014. The Tribunal took into the account the fact that the claimant was working in a Private Concern and the job was not permanent in nature. It also deducted 50% personal expenses on the ground that he is survived only by his wife. The mother of the claimant had died during the pendency of the claim petition. Thus, the Tribunal arrived at the total loss of dependency at Rs.19,20,000/. The Tribunal did not take into account future prospects also while arriving at the loss of dependency. The Tribunal awarded Rs.15,000/- towards funeral expenses; Rs.20,000/- towards loss of love and affection and Rs.40,000/- towards loss of consortium. Thus, the total award worked out to Rs.19,95,000/-. Aggrieved, the claimant/wife of the deceased is on appeal.

7.We have heard Mr.M.Murali, learned counsel appearing for the appellant and Mr.V.Dakshana Moorthy, learned counsel appearing for the second respondent–Insurance Company.

8.The first respondent though served is not appearing either in person or through counsel duly instructed.

9.Since the Insurance Company has accepted the Award, we do not propose to delve into the question of negligence. The only question that is to be decided is the quantum of compensation.

10.The claimant has produced Ex-P.13 to Ex-P.16 to prove the income of the deceased. Ex-P.13 and Ex-P.14 are the salary slips which are supported by the evidence of P.W.2 – Mr.Muthukumar, a Senior Executive of the employer of the deceased. Ex-P.15 and Ex-P.16 are the Bank Statements for the period from 01.04.2014 to 31.10.2014. Even assuming that there is a possibility of the salary certificate reflecting a higher amount than the actual salary, since the employer is a Private Concern, we can safely go by the Bank Statements, namely Ex-P.15 and Ex-P.16.

11.A perusal of Ex-P.16, the Bank Statement from April 2014 to October 2014 demonstrate that the deceased was drawing above Rs.25,000/- per month. There is a minor difference in the salary drawn month on month. Therefore, we deem it fit to adopt Rs.25,000/- as monthly income. Since the deceased was working in a Private Concern, he cannot be deemed to be a permanent employee. He would come within para 59.4 of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited -Vs- Pranay Sethi and others reported in 2017 (6) SCC 680*** where the Hon’ble Supreme Court has fixed the quantum of future prospects to be added. We have to therefore add 40% towards future prospects. The monthly income to be taken would be Rs.35,000/-.

12.We will have to decide the appropriate deduction for personal expenses of the deceased since we are not in agreement with the deduction of 50% adopted by the Tribunal. In ***Sarla Verma v. Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121*** the Hon'ble Supreme Court has dealt with the appropriate deductions to be made. Paragraph 30 of the said judgment reads as follows:

> *"30.Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."*

13.Admittedly, the deceased had two dependents at the time of accident, namely the mother and the wife. Therefore, the number of family members was 3. Hence, the deduction would be 1/3 and not 1/2. The death of mother subsequent to the accident will not have the effect of reducing the number of family members. Therefore, we adopt a deduction of 1/3. If 1/3 is deducted from Rs.35,000/-, the monthly dependency comes to Rs.23,334/-. If multiplier 16 is applied, the total loss of dependency would be Rs.23,334/- X 12 X 16 = Rs.44,80,128/-. To this, we will have to add conventional damages which would be Rs.40,000/- towards loss of Consortium and Rs.15,000/- each for funeral expenses and loss of estate. The Tribunal has awarded Rs.20,000/- towards loss of love and affection apart from Rs.40,000/- towards loss of Consortium. This amounts to duplication and therefore, a sum of Rs.20,000/- awarded towards loss of love and affection is set aside. The Tribunal has not awarded any amount under the head 'loss of estate' and hence, Rs.15,000/- is awarded towards loss of estate. **Thus, the total compensation would be at Rs.45,50,128/-. We round it off to Rs.45,50,000/- (Rupees Forty Five Lakhs Fifty Thousand Only).**

14.The claimant would be entitled to interest at 7.5% per annum on the modified compensation from the date of petition till the date of payment. The insurance company will have twelve (12) weeks time to deposit the compensation as modified above, less the amount if any already deposited. On such deposit, the claimant will be entitled to withdraw the entire amount.

15.It is seen that the claimant was exempted from paying Court Fee for 50% of the enhanced compensation which she claimed as Rs.40,00,000/-. Now that we have awarded Rs.45,50,000/-, the claimant will pay the balance Court Fee for Rs.25,55,000/-.

16.In fine, the Civil Miscellaneous Appeal is allowed. The parties will bear their own costs.

[R.S.M., J.] **[R.S.V., J.]**

05.07.2024

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Neutral Citation : No
Speaking Order
TK

To

The Motor Accident Claims Tribunal Judge
(Chief Judge, Court of Small Causes, Chennai)
Chennai.

R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

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