THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2024

CORAM:

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

C.M.A.No. 1356 of 2021

1.Suvitha

2.Minor Poovarasan

3.Minor Kishore ...Appellants
(minor petitioners are represented by next friend guardian mother 1st appellant Suvitha)

Vs.

1.M/s.Century Road Transports Pvt. Limited,
Prop. Rajkumar Gupta,
783 - Building I Devel Dapode,
Tal Bhiwandi, Thane District, Bhiwandi,
Maharastra - 421302.

2.The New India Assurance Company Limited,
87, Mahatma Gandhi Road, Fort, Mumbai,
Maharastra - 400001.

3.M.Venkatachalam

4.M/s.National Insurance Co. Ltd.,
Divisional Office, 81-D North Car St.
Tiruchengode and Post,
Namakkal District. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 13.02.2020 passed in MCOP.No.1941 of 2017 on the file of the Motor Accidents Claims Tribunal / Special District Court, Salem.

For Appellant : Mr.S.Sankar

For Respondents : Mr.M.Krishnamoorthy for R2
R3 & R4 - Served - No Appearance
R1 - Incomplete address

JUDGMENT

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

The claimants namely, the wife and the children of one Ponnusamy, who died in a motor accident that occurred on 27.04.2017 are on appeal seeking enhancement of the quantum of compensation awarded by the Tribunal.

2.According to the claimants, the vehicle driven by the said Ponnusamy met with an accident where three vehicles were involved. On the evidence that was available, the Tribunal concluded that the driver of the lorry bearing Registration No.MH-04-HD-4019 was responsible for the accident. On the said finding, the Tribunal concluded that the 2nd respondent is liable to pay compensation as the Insurer of the lorry bearing Registration No.MH-04-HD-4019. The Insurance Company has also accepted the same. Hence, we do not propose to dwell on the aspect of negligence.

3. On the question of quantum of compensation, the Tribunal has taken the monthly income of the deceased at Rs.10,000/-. It concluded that he was aged about 41 years on the basis of the postmortem report. The Tribunal therefore, adopted 25% addition for future prospects and applied the multiplier of 14. After deducting 1/3rd towards personal expenses, the Tribunal fixed the loss of dependency at Rs.14,00,112/-. The Tribunal however, granted only Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses.

4. Mr.S.Sankar, learned counsel appearing for the claimants, who are on appeal, would contend that the Tribunal erred in fixing the monthly income of the deceased at Rs.10,000/- more so, when it was admitted that he was a driver of a lorry and the accident occurred in 2017. He would contend that the monthly income was much more and the income as evidenced by

Ex.P7 was Rs.15,000/- per month and no reason has been given by the Tribunal for rejecting Ex.P7. He would also fault the Tribunal for fixing the age of the deceased at 41, since his date of birth as shown in Ex.P11 is 15.05.1976. Therefore, his completed age on the date of the accident was only 40.

5.The learned counsel for the claimants would contend that if the age is taken as 40 then, there would be a difference in the percentage of future prospectus as well as the multiplier. The learned counsel would also fault the Tribunal for having granted only Rs.40,000/- towards loss of consortium. He would point out that as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***, each of the claimants would be entitled to Rs.40,000/- towards loss of consortium and loss of love and affection.

6. Contending contra, Mr.M.Krishnamoorthy, learned counsel appearing for the 2nd respondent Insurance Company would submit that adoption of Rs.10,000/- per month is justified particularly, when the claimants have not chosen to examine the author of Ex.P7, salary certificate. He would also point out that if the age is taken as 40, there would be a

difference in the percentage of future prospects is not correct. Drawing our attention to paragraph 59.4 of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi and Others***, the learned counsel would submit that addition of 25% is the norm where the age of the deceased was between 40 to 50 years. Admittedly, the deceased who was born on 15.05.1976 has completed 40 years of age on 14.05.2016. Therefore, the percentage of future prospects would only be 25 and not 30 as contended by the learned counsel for the claimants.

7. As regards the multiplier adopted by the Tribunal, the learned counsel would submit that as per Schedule II read with the judgment of the Hon'ble Supreme Court in ***Sarla Verma & Others Vs. Delhi Transport Corporation & Another*** reported in ***2009 (6) SCC 121***, the multiplier should have been 15 and not 14, since the deceased had not completed 41 years. We have considered the rival submissions.

8.We are inclined to accept the contention of the learned counsel for the appellant, in so far as the monthly income is concerned. The accident had occurred on 27.04.2017. Admittedly, the deceased was a driver of a lorry having a national permit. The salary that is paid to lorry drivers is always higher than the salary that is paid to the drivers of light motor vehicles. Even drivers of the light motor vehicles were paid more than Rs.15,000/- at the relevant point of time and salaries of even temporary employees was more than Rs.15,000/-.

9.We are unable to accept the quantum of income as fixed by the Tribunal at Rs.10,000/-. We therefore, increase the same to Rs.15,000/- per month. As far as the future prospects is concerned, in paragraph 59.4 of the judgment of the ***Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi and Others***, it has been held that an addition of 25% should be made when the deceased was between the age of 40 to 50 years. The deceased in the case on hand has completed 40 years on 14.05.2016 and therefore, the addition should be only 25% and not 30% as claimed by the learned counsel for the appellant.

10. As regards the multiplier, the judgment in ***Sarla Verma & Others Vs. Delhi Transport Corporation & Another*** would govern the issue. Therein, it is very clearly held that if the age of the deceased is between 36

to 40, the multiplier will be 15 and if the age is between 41 to 45, the multiplier is 14. As far as the question of fixation of multiplier, the Court has always taken the completed age and therefore, since the claimant had not completed 41, he would come within the age of 36 to 40 years. Therefore, the multiplier would be 15 and not 14. Thus, calculated the compensation for dependency would be Rs.15,000/- + Rs.3,750/- (25%) - Rs.6,250/- (1/3) = Rs.12,500/- x 12 x 15 = Rs.22,50,000/-. We have already concluded that the claimants would be entitled to Rs,1,20,000/- towards loss of consortium and loss of love and affection and Rs.15,000/- each towards loss of estate and funeral expenses. Thus, the total compensation works to Rs.24,00,000/-. The interest as granted by the Tribunal at 7.5% is confirmed.

11. The compensation awarded is apportioned as follows:-

i) the 1st claimant / wife of the deceased will be entitled to Rs.10,00,000/-.

ii) The claimants 2 & 3 / daughters would each be entitled to Rs.7,00,000/-.

12. The Insurance Company is granted eight weeks time to deposit the

enhanced compensation along with interest at 7.5% from the date of claim petition till date of payment. The major claimant is permitted to withdraw her share with proportionate interest. The share of the minor claimants shall be kept in a fixed deposit in a nationalized bank and shall be paid over to them on their attaining majority. It is made clear that the award is only against the 2nd respondent Insurance Company.

13. In view of the same, this Civil Miscellaneous Appeal is partly allowed. No costs.

(R.S.M., J.) **(R.S.V., J.)**
07.06.2024

kkn

Internet:Yes
Index: No
Speaking
Nuetral Citation : No

To:-

The Motor Accident Claims Tribunal,
Special District Court, Salem.

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

KKN

C.M.A.No.1356 of 2021

07.06.2024