IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.Nos.1921 & 2747 of 2023
and
C.M.P.Nos.18589 & 16935 of 2023

CMA.No.1921 of 2023:

M/s.The National Insurance Company Limited,
'Murugesanaicker Complex',
I Floor, No.66, Greams Road,
Chennai 600 006.

...Appellant

Vs

1.Yogalakshmi
2.Minor S.Sachin
3.Minor S.Hurshit
[**Minors/respondents 2 and 3 are represented by mother/1st respondent]
4.M.Ravi
5.R.Manjula
6.K.Ganesan

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 17.03.2023 in

MCOP.No.5532 of 2019 by the Hon'ble Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

For Appellant : Mr.J.Micheal Visuvasam

For Respondent : Ms.Ramya V.Rao, for R1 to R5

CMA.No.2747 of 2023:

1.Yogalakshmi
2.Minor S.Sachin
3.Minor S.Hurshit
[**Minors/appellants 2 and 3 are represented by mother/1st appellant]
4.M.Ravi
5.R.Manjula

...Appellant

Vs

1.K.Ganesan
2.M/s.The National Insurance Company Limited,
'Murugesanaicker Complex',
I Floor, No.66, Greams Road,
Chennai 600 006.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation in MCOP.No.5532 of 2019 dated 17.03.2023 on the file of the Hon'ble Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

For Appellant : Ms.Ramya V.Rao

For Respondent : Mr.J.Micheal Visuvasam for R2

COMMON JUDGMENT

These civil miscellaneous appeals have been filed challenging the judgment and decree dated 17.03.2023 in MCOP.No.5532 of 2019.

2. The learned counsel for the claimant would submit that on 21.09.2019, while one R.Sathishkumar was driving a car bearing Registration No.TN-02-BK-8883from Chennai to Kollimalai, a Gas Tanker Lorry bearing Registration No.TN-88-A-9316 came in a rash and negligent manner and dashed against the said car, due to which the said R.Sathishkumar was died on the spot. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

S.No	***Heads***	***Compensation (Rs.)***
1	Loss of Income	75,96,696
2	Loss of Estate	15,000
3	Loss of Consortium	2,00,000
4	Funeral Expenses	15,000
	Total	78,26,696

3. She would further submit that at the time of accident, the deceased was aged about 32 years and earning a sum of Rs.41,000/- per month. To prove the same, the claimants had produced Ex.P8/Confirmation Letter of J.B.Chemicals and Pharmaceuticals Ltd., Ex.P9/Increment Letter 2017-18, Ex.P10/Resignation Acceptance, Ex.P11/Letter of Appointment of Macleods Pharmaceuticals Ltd., Ex.P12/Salary Slip for the months of May, June and August, 2019 and Ex.P13/Copy of Summary of Account as on 31.07.2019. Based on the Salary Slip of the deceased, the Tribunal had fixed a sum of Rs.37,682/- as income of the deceased after deducting a sum of Rs.3,318/-, which was contributed towards Provident Fund, Benevolent and MED PREM.

4. She would contend that since the amount deducted towards Provident Fund, Benevolent and MED PREM are contributed to the family members of the deceased, the Tribunal is not supposed to deduct the same. Hence, she requests this Court to re-determine the compensation awarded by the Tribunal towards loss of income. She would also submit that the compensation awarded by the Tribunal under the other heads are just and fair and hence, she requests this Court to confirm the same.

5. In reply, the learned counsel appearing for the Insurance Company would submit that in the present case, the deceased was initially working at J.B.Chemicals & Pharmaceuticals Limited as Area Manager. Thereafter, he resigned the job and to prove the same, the resignation letter was also marked before the Tribunal as Ex.P10. Hence, there is no doubt that after resignation, he worked at Macleods Pharmaceuticals Limited for a period of 6 months and during the probation period, he passed away due to the accident.

6. Further, he would submit that the deceased was passed away on 21.09.2019, however, on perusal of Ex.P13/ Copy of Summary of Account of the deceased, it appears that the salary was credited to the account of the deceased only up to August, 2019 and no salary was credited for the month of September, 2019. Hence, he would submit that the Insurance Company has to ascertain as to whether, the probation of the deceased was confirmed or not.

7. In reply, the learned counsel for the claimant would submit that the entire benefit of the deceased was handed over to the wife of the decased by

way of cash, due to which, the salary of the September, 2019, was not reflected in the Copy of Summary of Account of the deceased. Hence, she would request this Court to re-determine the income and award compensation.

8. Heard the learned counsel for the claimant and the Insurance Company and also perused the documents available on records.

9. In the present case, there is no dispute with regard to the occurrence of accident and fixation of negligence. The only issue involved in these appeals is with regard to the quantum of compensation.

10. On perusal of Ex.P11/Letter of Appointment of Macleods Pharmaceuticals Ltd., Ex.P12/Salary Slip for the months of May, June and August, 2019 and Ex.P13/Copy of Summary of Account as on 31.07.2019, it is clear that the deceased was earning a sum of Rs.41,000/- per month. From the said amount, the Tribunal had deducted a sum of Rs.3,318/-, which was contributed towards Provident Fund, Benevolent and MED PREM and thus, fixed the income of the deceased as a sum of Rs.37,682/- per month for

awarding compensation. However, this Court is of the view that the deduction made by the Tribunal is not just and reasonable, since the amount contributed towards Provident Fund, Benevolent and MED PREM are not only for the benefit of the deceased, but also for the benefit of family members of the deceased. In such case, the Tribunal should have deducted only the amount contributed towards Transportation allowance and Income Tax since it is not for the benefit of family members. However, the Tribunal had failed to do so. Therefore, this Court is inclined to deduct a sum of Rs.1,600/- towards Transportation allowance and a sum of Rs.300/- towards KIT allowance from the original income of the deceased.

11. Further, it appears that a sum of Rs.1,200/- was paid to the deceased as Medical Allowances. Normally, the Medical Allowance will be paid for the benefit of the family members. In such case, since there were 6 members, including deceased, this Court assumes that a sum of Rs.200/- will be contributed for the benefit of each family members of the deceased. Hence, only a sum of Rs.200/-, which is contributed for the benefit of deceased, has to be deducted from the income of the deceased towards the Medical allowances.

Therefore, the income of the deceased will be calculated as follows:

Rs.41,000/- (total income) – Rs.1,600/- (transportation allowances) – Rs.300/- (KIT allowance) – Rs.200/- (medical allowances) = Rs.38,900/- per month

Annual Income would be :

Rs.38,900/- * 12 (months) = Rs.4,66,800/- per annum

12. Accordingly, by adding 40% towards future prospects, it would be a sum of Rs.6,53,520/- per annum. (Rs.4,66,800/- + Rs.1,86,720/-)

13. Out of the said amount, a sum of Rs.43,150/- has to be deducted towards income tax. Hence, the net salary would be a sum of Rs.6,10,370/-. Thus, by applying multiplier '16' and by deducting 1/4 towards personal expenses of the deceased, the loss of income would be calculated as follows:

Rs.6,10,370/- (net income) * 16 (multiplier) * 3/4 (deduction towards personal expenses) = Rs.73,24,440/-

14. With regard to the all the other heads, since the compensation awarded by the Tribunal appears to be just and fair, the same stands confirmed.

15. Accordingly, the compensation awarded by the Tribunal is modified as follows:

S.No.	Heads	Compensation awarded by Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
1	Loss of Income	75,96,696	73,24,440
2	Loss of Estate	15,000	15,000
3	Loss of Consortium	2,00,000	2,00,000
4	Funeral Expenses	15,000	15,000
	Total	78,26,696	75,54,440

16. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.75,54,440/-. Accordingly, the award amount stands reduced from a sum of Rs.78,26,696/- to Rs.75,54,440/-. In all other aspects, the award of the Tribunal stands confirmed. As far as the apportionment determined by the Tribunal with regard to the shares of minor claimants 2 and 3 stands confirmed. Hence, it is also made clear that the compensation will be awarded to the claimants in the following proportions:

i) Wife of the deceased/1st claimant – Rs.26,54,440/-

ii) Children of the deceased/claimants 2 and 3 – Rs.20,00,000/- each.

iii) Father of the deceased/4th claimant – Rs.4,50,000/-

iv) Mother of the deceased/5th claimant – Rs.4,50,000/-

17. In the result, these Civil Miscellaneous Appeals are partly allowed and the Insurance Company is directed to deposit only a sum of Rs.75,54,440/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.5532 of 2019 on the file of the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai. Upon such deposit, the shares of the minor claimants 2 and 3 are directed to be deposited in any one of the Nationalised Bank till they attain majority and the 1st claimant being the mother of the minor is permitted to withdraw the accrued interest once in three months for the welfare of the minor. Further, the Tribunal is directed to transfer the shares of the other claimants to their respective bank accounts, as per the proportion determined by this Court, by way of RTGS, within a period of three weeks from the date of deposit and receipt of the Bank details obtained from the claimants. No costs. Consequently, connected miscellaneous petitions are also closed.

22.03.2024

Index: Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
nsa

KRISHNAN RAMASAMY,J.

nsa

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