BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.08.2024
CORAM:

THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD). No.178 of 2020
and
C.M.P.(MD).No.3063 of 2020

National Insurance Company Limited,
Represented through its Divisional Manager,
Door No.3, North Veli Street,
Madurai-625 001. ... Appellant/2nd Respondent

Vs.

1. N.Sathyadevi

2. Minor N.Naren Chenkutvan

3. Minor N.Anumitha

4. K.Krishnan

5. K.Lakshmi ... 1st to 5th Respondents/Petitioners

(Minors R2 & R3 are represented by their mother and natural guardian, the 1st Respondent)

6. A.Selvakumar ... 6th Respondent/1st Respondent

(R6 set exparte in Tribunal: Notice dispensed with)

Prayer : Civil Miscellaneous Petition filed under Section 173 of Motor Vehicle Act, praying to set aside the Judgment and Decree made in M.C.O.P.No.56 of 2014, dated 05.03.2019 on the file of the Motor Accidents Claims Tribunal, Special District Court for MCOP Cases, Madurai and allow the appeal with costs.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.P.Thiyagarajan for R1 to R5

JUDGMENT

[Order of the Court was made by **K.K.RAMAKRISHNAN,** J.]

The insurance company filed this appeal challenging the quantum granted in M.C.O.P.No.56 of 2014, dated 05.03.2019 on the file of the Motor Accidents Claims Tribunal, Special District Court for MCOP Cases, Madurai.

2.The deceased Nagachellappa met with an accident on 21.09.2013 at about 4.45 pm on the Tuticorin-Coimbatore main road. When the deceased's car was driven by his driver on the Tuticorin-Madurai highway road near the Kariyanendal Bridge, it against the said Kariyanendal Bridge and hence, the car capsized. In the result, the deceased died on the way to hospital. Hence, the FIR in Crime No.232 of 2013 was registered against the driver of the car for the offences under Sections 279, 337 and 304(A) of IPC and investigation was going on. Pending the same, the claimants/respondents of the deceased filed a claim petition before the Court below in M.C.O.P.No. 56 of 2014 claiming compensation of Rs.3,00,000,000/-. In the petition, it is stated that the deceased Nagachellappa was originally working in a company called Preethi Company and subsequently, he was running Sathya Trading Company and his business was flourishing. Subsequent to that even though the business was continued by the wife, namely first claimant, the same could not be managed by her. Thereby, incurred recurring loss. Therefore, she had to close the same. Hence, he seeks for the compensation of Rs.3 crores.

3.The Insurance company/appellant filed a counter and specifically disputed the accident and liability and also the compensation awarded by the Trial Court. During the course of the hearing, the insurance company mainly disputed the income of the deceased. Before the Court below, the insurance company specifically stated that the business was continued by the wife and hence, the compensation could not be calculated on the basis of the annual income stated in the income tax returns. Hence, he seeks for dismissal of the petition.

4.On the side of the claimants, P.W.1 to P.W.4 were examined and exhibited 21 documents as Ex.P.1 to Ex.P.21. On the side of the insurance company, they neither produced any documents nor examined any witnesses and C.O.1 to C.O.9 were marked.

5.In the said circumstances, the learned trial Judge, Motor Accidents Claims Tribunal, after considering the evidence adduced on the side of the claimants, fixed the yearly salary of the deceased as Rs.4,24,200/- and adopted the multiplier method and after applying the future prospects, granted the compensation of Rs.66,43,904/- and also made the apportionment that the first claimant wife of the deceased is entitled to Rs. 29,89,757/- and the minor children are also entitled to Rs.13,28,781/- and the parents of the deceased are entitled to Rs.3,32,195/- and Rs.6,64,390/-. Challenging the same, the insurance company filed the appeal before this Court.

6.The Insurance company only raised the question relating to the determination of the income of the deceased on the basis of the Income Tax Returns submitted by the deceased. According to the learned counsel for the Insurance Company/appellant that the Tribunal without any basis fixed the yearly income of the deceased as Rs.4,24,200/- and the same is not in accordance with law. According to the Insurance Company, the business was continued by the wife. Therefore, there was no loss. But, the Tribunal has taken the income and half yearly income tax return of the deceased and the continuation of the remaining period of the income of the company and fixed the deceased income as Rs.4,24,200/- and hence, there is a total error in the calculation of the amount. In the said circumstances, he seeks for the interference by this court. He also relied the judgment of the Hon'ble Division Bench of this Court in the case of ***National Insurance Co. Ltd.,***

Vs. K.Ramya and others reported in ***2017 (2) TN MAC 522 (DB)*** and in the case of ***National Insurance Company Limited Vs. Sujatha Rajalakshmi*** reported in ***2011 (1) TN MAC 34 (DB)***.

6.1.According to the learned counsel appearing for the Insurance company after death of “Nagachellappa”, business in the name of Sathiya Trading had been continued by P.W.1 and hence, there was no loss of income. Therefore, he seeks to fix Rs.15,000/- as monthly income.

7.The learned counsel appearing for the respondents submitted that the claimants have not filed any Cross objection but the manner of the calculation of the income of the deceased by the Tribunal is very low. According to the respondents, the half yearly income of the deceased is around Rs.1,66,092/-. Applying the income for the entire year, it comes around Rs.5,16,000/-. In spite of non-filing of the cross objection, this Court is not barred to enhance the same. The learned counsel specifically stated that even in the absence of the cross objection, this Court has power to exercise under Order 41, Rule 33 to grant the suitable compensation. It is in the interest of justice as well as requirement of fair justice and also the provision of the motor legal action also clearly provided that the deceased income to be considered on the basis of the income tax returns.

8.The learned Counsel also relied the recent judgment of the Hon'ble Supreme Court in the case of ***K.Ramya and others Vs. National Insurance Co. Ltd.,*** reported in ***2023 (2) Supreme 182***. In the judgment, it is stated that the entire amount from the business income mentioned in the income tax to be taken into account and hence, the learned counsel for the respondents/claimants submitted that the official income is Rs.4,24,200/- and applying condition of 40% for future prospect, the same comes around Rs.5,93,880/- . Further, the trial Court after deducting 10% for income tax return of the income as Rs.59,388/- and after deducting one-fourth towards personal expenses as per Sarla Varma case, the net amount comes to Rs.4,00,869/- and applying the proper multiplier 16, the amount comes to Rs.64,13,904/-. In the said circumstances, he seeks for the enhancement of the compensation.

9.This Court considered the rival submission made on either side and also perused the record and also the precedents relied upon by both the parties.

10.Whether the learned Tribunal Judge correctly fixed the Annual Income of the Deceased as Rs.4,24,200/- on the basis of the Ex.P3 and Ex.P4?

11.The appellant insurance company has not disputed the negligence and liability. Therefore, this Court is not inclined to elaborate on this aspect. The learned trial Judge considering the evidence of the independent witness P.W.3 held that the driver of the insured vehicle was responsible for the accident. The learned trial Judge also considered that the FIR was registered against the driver of the insured vehicle and no contra evidence was adduced to prove the negligence on the part of the deceased. Further, there was no dispute relating to the existence of the valid insurance policy on the date of the accident. Therefore, this Court finds no reason to interfere with the finding of the learned trial Judge on negligence and liability.

12.It is also admitted that the deceased after resigning his job in the Preethi Kitchen Company started Sathya Trading Company, To prove the discontinuation of business, number of exhibits were marked. In the exhibit P-17, the cancellation of the provisional ID of the tax was in the name of the company Sathya Agency was closed and GST was cancelled. The rental agreement entered with the landlord to run the business also was cancelled. Finally, the provisional registration number also was cancelled by submitting the application.

13.From the records, it is clear that the deceased had initially worked as manager of Preethi Kitchen appliances. With the said experience, he had resigned the job in the year 2013 and started the business "Sathiya Trading", at 42, G4, Krishna Complex, Nehru Street, Ram Nagar, Coimbatore. To prove the same, he produced the rental receipt and also all the tax numbers ie., VAT number and other certificates, like sale tax certificates. After his demise, his wife continued the business. for some time and the business was going down hill leading to recurring loss and hence, she had to close the business after three years. Even in the said three years, she was unable to meet out the expenditure for their family. She has stated in evidence that during the lifetime period of her husband, the business was flourishing and he did the business in profitably with his expertise in the said field. After his demise, even though she continued business for further period of two years, she was unable to continue business because of loss. Therefore, she closed the business in the year 2017-2018 by cancelling commercial Tax Certificate sale Tax Certificate and closed her income Tax. She has not only deposed about the closure of the business, she substantiated the same by producing the above said relevant documents. Her evidence is cogent and corroborated with testimony of her Auditor P.W.3. P.W.3/Auditor clearly deposed about the filing of Income Tax Returns upto the closing of the "Sathiya Trading". He also was subjected to incisive cross examination, but, nothing was elicited to disbelieve his evidence. Hence, the learned counsel for insurance company's submission that the business was continued and there was no loss of income from the Sathiya Trading could not be accepted and deserves to be rejected.

14.Now the remaining question is how the loss of income is to be determined? During the course of the hearing, P.W.4/Auditor of the Sathiya Trading produced Ex.C.2 to Ex.C.7. The accident took place on 21.09.2013. In March, 2013, the deceased started the business in the name of "Sathiya Trading". Prior to that, he was working in Preethi Kitchen Appliances. With the said experience, he started the business and continued the business till his death. In Ex.C.2, his Annual income was mentioned as Rs.2,91,000/-. In Ex.C.4, the income Tax Return of the first claimant filed after the death of the deceased, the income was mentioned as Rs.1,66,092/- as income from business and profession. The said period was covered from 21.09.2013 to 31.03.2014 ie., after the date of the accident. During the course of the hearing before the Trial Court, the claimant submitted that the deceased started the business in the month of March, 2013 and he died on 21.09.2013. in between this period, his income was shown as Rs.2,58,108/- ie., for the period of six months. On the basis of the same, the claimants requested to determine annual income of the deceased as Rs.5,16,000/- (Rs.2,58,000X2). The same was rejected by the learned Trial Judge stating that the "Sathiya Trading Corporation" deals with the business of the house hold articles and the business would not be steady during all season and the same might fluctuate But, the learned Trial Judge calculated the income of the deceased by adding six months income of the deceased Rs.2,58,108/- and the remaining six months income of the Sathiya Trading as submitted in the Income Tax Returns under Ex.P.4 for the amount of Rs.1,66,092/-. The same comes around Rs.4,24,200/-. The same was questioned by the Insurance Company counsel by submitting that the business was continued by the claimant/P.W.1 and therefore, notional income alone can be taken. The said submission of the counsel for the Insurance company cannot be accepted for the reason that the said business was closed by P.W.1/claimant. She also proved the said closure of the business as discussed earlier. Therefore, due to the death of the deceased within the six months from the commencement of the business, the wife/P.W.1 was unable to continue the same. Hence, the method adopted by the learned trial Judge to calculate the income of the deceased by adding his Annual income for the period of six months ie., from the commencement of the Sathiya Trading till his death and the remaining income from the Sathiya Trading for the remaining financial year is in the considered opinion of this Court is correct and probable one. Even otherwise, the other argument of the learned counsel for the insurance company ie., to take the average of the income tax return of all the previous years is accepted, the same amount would come. If the argument of the learned counsel for the claimant that on the basis of the Hon'ble Supreme Court judgment reported in ***2022 14 scale 407*** is taken, the amount might increase to large extent. Therefore, this Court concurs with the determination of the Annual income of the deceased as Rs. 4,24,200/- on the basis of Ex.P.3 and Ex.P.4. As per the “Pranay Sethi case”, since the deceased was aged about 34 years on the date of the accident, 40% Future prospects is added and the same comes around Rs.1,69,680/-. Hence, total monthly income is arrived as Rs.5,93,880/-. The learned trial Judge calculated 10% of income Tax amount as Rs. 59,388/- The learned trial Judge deducting the said 10% amount from Rs. 5,93,800/-, calculated it as Rs.5,34,492/-. The learned trial Judge after deducting ¼ th for his personal expenditure and applied the 16 multiplier computed it around Rs.64,13,904/-. The Hon'ble Supreme Court repeatedly has held that the calculation of the income of the deceased is only on the basis of some guess work. While applying some guess work, it is neither on the abnormal higher side or abnormal lower side. Some pragmatic approach to be applied. The said principle was followed by the learned trial Judge and hence, this Court finds no abnormality in computing the income. The learned trial Judge correctly awarded the Rs.40,000/- for the consortium to the wife/P.W.1 and Rs.40,000/- to each remaining claimants for love and affection, Rs.15,000/- funeral expenses and Rs.15,000/- for transportation. Hence, this Court finds no ground to interfere with the above determination of the compensation and the same was in accordance with law as laid down by the Hon'ble Supreme Court. The precedents relied by the learned counsel for the insurance company is not applicable to the present case for the reason that the claimants in this case established that the business was closed on account of the recurring loss after demise of the deceased. This Court also is unable to accept the argument of the claimants to re-dertmine the Annual income of the deceased by taking the income of the deceased as Rs.5,16,216/- on the basis of the judgment of the Hon'ble Supreme Court reported in ***2022 14 Scale 407*** for the reason that the method adopted by the learned Tribunal judge is correct and probable one.

15.Accordingly, this Civil Miscellaneous Appeal is dismissed by confirming the award amount granted by the Motor Accidents Claims Tribunal, Special District Court for MCOP Cases, Madurai, in M.C.O.P.No.

56 of 2014, dated 05.03.2019. No costs. Consequently, the connected Civil Miscellaneous petition is closed.

[V.B.S.J] **[K.K.R.K.J.]**
01.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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<u>To</u>

1. The Learned Special District Judge for MCOP Cases,
   Motor Accidents Claims Tribunal, Madurai.

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

V.BHAVANI SUBBAROYAN, J.
AND
K.K.RAMAKRISHNAN, J.

vsg

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