IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.12.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

C.M.A. NO. 1012 OF 2016
AND
C.M.P. NO. 20738 OF 2016

The New India Assurance Co. Ltd.
Division Office 141700
Charishma Centre II Floor
19th Road, Chembur, Mumbai. .. Appellant

- Vs -

1. Theerthammal
2. Poongodi
3. Minor Sathiya
4. Minor Sala
5. Minor Sivasankari
6. Minor Devendran
7. Muniammal .. Respondents

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act against the judgment and decree dated 30.07.2014 passed by the Motor Accident Claims Tribunal (Spl. District Judge), Dharmapuri, made in MCOP No.33 of 2014.

For Appellant : Mr. J.Chandran

For Respondents : Mr. Amar D.Pandya
for Mr.M.Selvam

JUDGMENT
(DELIVERED BY S.VIMALA, J.)

This appeal has been filed by the insurance company challenging the quantum of compensation awarded in respect of the death of the deceased, Lakshmanan.

2. The deceased, Lakshmanan, aged about 36 years, working as a lorry cleaner, alleged to be earning a sum of Rs.10,000/= per month, apart from batta, died in the accident that happened on 18.03.2011. The legal representatives of the deceased filed a

claim petition claiming a sum of Rs.49,70,000/=, but however restricted their claim to Rs.25,00,000/=.

3. The Tribunal, considering the oral and documentary evidence, quantified the compensation at Rs.24,70,000/=, the break-up of which is as hereunder :-

Loss of Income	-	Rs.21,60,000/-
Loss of Consortium	-	Rs. 1,00,000/-
Loss of Love & Affection	-	Rs. 1,75,000/-
Transportation	-	Rs. 10,000/-
Funeral Expenses	-	Rs. 25,000/-
Total	-	Rs.24,70,000/-

Challenging the said award as excessive and disproportionate, the insurance company has preferred the present appeal.

4. Learned counsel appearing for the appellant/insurance company contended that the monthly income fixed at Rs.10,000/= per month and awarding 50% towards future prospective increase in income is unwarranted and is on the higher side, there being no documentary evidence produced by the claimants. Relying upon Syed Sadiq's case, it is contended that for persons working in unorganised sector, income at Rs.6,500/= would be the appropriate amount and as per the decision of the Constitution Bench of the Supreme Court in Pranay Sethi's case, future prospective increase in income at 40% alone should be added and compensation needs to be quantified.

5. This Court gave its anxious consideration to the arguments advanced on behalf of the parties and also perused the materials available on record and the decisions relied on by the learned counsel for the appellant.

6. Even at the outset, it can be safely said that there is no serious objection by the claimants with regard to the legally permissible reduction of compensation under various heads. In fact, in the peculiar facts and circumstances of the case, learned counsel for the claimants concede that they are willing to abide by the compensation that is to be awarded by this Court. On the basis of the above stand taken by the learned counsel for the parties, this Court proceeds to appreciate the contentions raised with regard to the quantum of compensation awarded.

7. On the The contention that future prospective increase in income at 40% alone needs to be fixed for persons in the age group of 35 to 40 years as per the decision of the Constitution Bench in Pranay Sethi's case is well founded. Similarly, the

deceased having been working in the unorganised sector, fixation of income at Rs.10,000/= per month is on the higher side. Reliance placed on Syed Sadiq's case by the learned counsel for the appellant is justified and this Court feels that the income fixed at Rs.10,000/= per month is on the higher side. Accordingly, this Court fixes the monthly income of the deceased at Rs.6,500/= per month.

7. Accordingly, fixing the income of the deceased at Rs.6,500/= per month and applying future prospective increase in income at 40%, deducting 1/5th towards personal expenses of the deceased and adopting a multiplier of 18, the total compensation payable to the claimants under the head loss of income is quantified at Rs.15,72,480/= (Rs.6,500 X 40% X 12 X 18).

8. Insofar as the compensation awarded under the other heads are concerned, in Pranay Sethi's case, the Constitution Bench has listed out the heads under which compensation is permissible and the compensation that is required to be awarded under the above heads.

9. Accordingly, applying the ratio laid down in Pranay Sethi's case, a sum of Rs.40,000/- is awarded under the head loss of consortium; a sum of Rs.15,000/= is awarded under the head funeral expenses and a sum of Rs.15,000/- is awarded under the head loss of estate.

10. In the result, this appeal is allowed in part, modifying the compensation awarded by the Tribunal from Rs.24,70,000/= to Rs.16,42,480/= with interest @ 7.5% per annum from the date of claim petition till date of deposit. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

11. The appellant/insurance company is directed to deposit the entire award amount as quantified by this Court above along with interest and costs to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the award amount as per apportionment to the bank account of the respective claimants through RTGS within two weeks thereafter. The compensation awarded to the share of the minor shall be kept in deposit as ordered by the Tribunal.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

GLN

To

Special District Judge
(Motor Accident Claims Tribunal)
Dharmapuri.

+1cc to Mr.M.Selvam, Advocate, S.R.No.91848

+1cc to Mr.J.Chandran, Advocate, S.R.No.92213

C.M.A. NO.1012 OF 2016

RRK(18/01/2018)