IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/6/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Mr.JUSTICE G.R.SWAMINATHAN

Civil Miscellaneous Appeal No.1932 of 2016
and
Cross Objection No.103 of 2015

Royal Sundaram Alliance Insurance
Company Limited
Registered Office, 21 Patullos Road
Chennai 600 002. ..Appellant/2nd Respondent
2nd respondent in cross
objection

Vs

1. Mrs.H.Anusha

2. H. Mridula (Minor)
rep. By her mother and natural friend
Mrs. Anusha

3. Mrs.R.Nirmala

4. Mr.M.Ramesh Babu ..Respondents 1 to 4/Petitioners
1 to 4/ Cross Objectors

5. G. Mahalakshmi ..5th Respondent/5th Respondent/
1st Respondent in Cross objection

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 and cross objection under order 41 Rules 22 CPC, against the Judgment and Decree dated 13/3/2015, made in M.C.O.P.No.7420 of 2013 on the file of the Motor Accident Claims Tribunal, (II Judge, Court of Small Causes), Chennai.

For Appellant in CMA and
Respondent in Cross Objection : Mr.M.Krishnamoorthy

For Respondents 1to4 in CMA
and for Cross Objectors : Mr.S.Sathish

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

In the accident, which occurred, on 21/11/2013, a 28 year old man, stated to have worked as a Sales Manager, in Indus International Company, died.

2. Legal representatives, wife, aged about 23 years, minor daughter, aged about 1 year, parents aged about 54 and 53 years respectively, joined together filed M.C.O.P.No.7420 of 2013, on the file of the Motor Accidents Claims Tribunal, Chennai, claiming compensation of Rs.1,20,00,000/- under various heads.

3. Royal Sundaram Alliance Insurance Company Limited, Chennai, disputed the negligence attributed to the driver of the vehicle, bearing Registration No.TN73B-2669 and insured with them and consequently liability. Without prejudice to the above, Insurance Company also disputed the age, avocation, income and quantum of compensation claimed under various heads.

4. On adjudication, the claims Tribunal held that the driver of the TIPPER Multi Axle Goods Vehicle AL Taurus 2518T (Ashok Leyland), bearing Registration No.TN73B-2669, was negligent in causing the accident.

5. Supporting the avocation and income, respondent No.1/wife of the deceased adduced evidence. P.W.3 Proprietor of Indus International, let in supportive evidence, stating that prior to death, the deceased worked as Sales Manager for five years and earned Rs.30,000/- p.m. He has also deposed that a sum of Rs.30,000/- was paid as bonus. Supporting the oral evidence, respondents have marked Ex.P.7 salary certificate, Ex.P.8 Bank Account statement, Ex.P.10 PAN card, Exs.P.15 to P.17 I.T.return for the annual year 2012 - 2013, 2013 - 2014 and 2014 - 2015, respectively, along with statement of total income and tax paid counterfoils and Exs.P.18 to 20 Form 16, for the assessment years 2012 - 2013, 2013 - 2014 and 2014 - 2015 respectively, Ex.P.21 Registration certificate of Indus International and Ex.P.22 Certificate of IEC Code for Indus International.

6. Upon perusal of the entries made in the above said documents and more particularly, income tax statement and bank statement, the Tribunal has fixed the monthly income of the deceased as Rs.30,000/-. At the time of accident, the deceased was aged 28 years. Following the decision of the Hon'ble Supreme Court, in Rajesh and Others Vs. Rajbir Singh and Others,

reported in 2013 (2) TN MAC - 55 (SC), Tribunal added 50% of the salary, under the head loss of future prospects.

7. For the purpose of computing the loss of contribution to the family, the Tribunal has taken Rs.45,000/-, as income. Thereafter, applied 17 multiplier, and after deducting 1/3 towards the personal and living expenses, computed the loss of contribution, as Rs.57,12,000/- (Rs.28,000/- x 12 x 17). That apart, the Tribunal awarded Rs.1 lakh under the head loss of consortium, Rs.25,000/- for funeral expenses, Rs.2,00,000/- under the head loss of love and affection to the minor daughter, aged about 1 year and Rs.50,000/- to the mother of the deceased. The Tribunal has also awarded a sum of Rs.1 lakh under the head loss of estate. Altogether, the Tribunal has awarded Rs.61,87,000/- with interest at the rate of 7.5% p.a., from the date of claim till deposit.

8. Being aggrieved by the quantum of compensation of Rs.61,87,000/-, with interest at the rate of 7.5% p.a., Royal Sundaram Alliance Insurance Company Limited, Chennai has preferred the instant appeal, contending inter alia that in the absence of any proof, Tribunal has committed an error in fixing the monthly income as Rs.30,000/-, and contended that addition of 50% under the head future prospects is also erroneous. Added further, Mr.M.Krishnamoorthy, learned counsel for the Insurance Company submitted that the Tribunal, ought to have deducted more amount towards income tax, instead of deducting a sum of Rs.2,000/-.

9. Inviting the attention of this Court that the Tribunal, ought to have added the actual bonus, received by the deceased while fixing the monthly income and thereafter, to have added 50% of the same under the head future prospects, Mr.S.Sathish, learned counsel for the respondents submitted that Cross Objection No.103 of 2015 has been filed. He further contended that when the number of dependants are 4, the Tribunal, ought to have deducted ¼, towards the personal and living expenses of the deceased and accordingly, computed the loss of contribution to the family.

10. Opposing enhancement sought for by the respondents, Mr.M.Krishnamoorthy, learned counsel for the Insurance Company, submitted that though father/respondent No.4 is one of the legal representatives entitled to make a claim for compensation, under Section 166 of the Motor Vehicles Act, in terms of the judgment of the Hon'ble Supreme Court in Sarla Verma and Others Vs. Delhi Transport Corporation and Another {2009 (2) TN MAC 1 (SC), deduction towards personal and living expenses of the deceased, has to be made only after taking note of the dependancy of the claimants. It is also his contention that in the absence of

evidence, to substantiate that father of the deceased was a dependant, on the income of the deceased, at the time of accident, deduction of 1/3 towards the personal and living expenses, for the purpose of computing the loss of contribution, done by the Tribunal, is just and reasonable. Mr.M.Krishnamoorthy, learned counsel for the Insurance Company also opposed the addition of bonus, for the purpose of computing the loss of contribution to the family.

11. Heard the learned counsel for the parties and perused the materials available on record.

12. We have perused the documents/Exs.P.7, P.8, P.10, Exs.P.15 to 22. Though Ex.P.7 salary certificate, does not reflect bonus, entries made in Ex.P.8 Bank accounts statement, categorically reflect periodical monthly salary of Rs.30,000/- from Indus International. A sum of Rs.30,000/- remitted by Indus International, in addition to the monthly salary of Rs.30,000/-, supports the contention of the learned counsel for the respondents/legal representatives that the deceased was paid annual bonus.

13. In National Insurance Company Limited Vs. Indira Srivastava and Others reported in {2008 (2) SCC 763, the Hon'ble Supreme Court, at paragraph No.11, held as follows:-

> "There are three basic features in the aforementioned statement which require our consideration:
>
> (i). reimbursement of rent would be equivalent to HRA
> (ii). Bonus is payable as a part of salary; and
> (iii). Contribution to the provident fund."

14. In the light of the above decision, bonus amount of Rs.30,000/-, should be included while determining the monthly income. On the contention of the Insurance Company that the Tribunal ought to have deducted more income towards income tax instead of deducting Rs.2,000/-, we propose to apply the standard procedure under the provisions of Income Tax.

Monthly salary	...	Rs. 30,000
Annual Income (30,000 x 12)	...	Rs.3,60,000
Add: Bonus		30,000
Gross Annual Income	...	Rs.3,90,000
Future prospects 50%	...	Rs.1,95,000
Total Income		Rs.5,85,000
Exemption under Section 80 C, 80 CC.		Rs.1,00,000
		Rs.4,85,000

Upto Rs.2,00,000 - Nil	
From 2,00,001/- to Rs.5,00,000 - 10%	= Rs.28,500
From 5,00,001/- to Rs.1,00,000/- - 20%	
above Rs.10,00,000/- - 30%	
	Rs.28,500
Edu cess 3%	855
	Rs.29,355

Annual Gross Income	...	Rs.5,85,000.00
Less: Tax		Rs. 29,355.00
		Rs.5,55,645.00

15. On the rival contentions, as regards the percentage of deduction, whether it should be 1/3 or ¼, during the course of hearing, Mr.S.Sathish, learned counsel for the respondents/legal representatives, fairly submitted that as on today, the fourth respondent, father is engaged.

16. Placing on record the above said submission, we are not inclined to delve into the rival contention.

17. Taking note of the submission made by the learned counsel appearing for the legal representatives, 1/3 deduction towards personal and living expenses is sustained. After deducting the same, loss of contribution to the family works out to Rs.62,97,310/- (5,55,645 x 2/3 x 17). Tribunal has failed

to award a just and reasonable compensation to the father, who lost the love and affection of his son, a sum of Rs.50,000/- would be reasonable. Tribunal has also not awarded any compensation for transportation and damages to clothes, accordingly, awarded Rs.10,000/- and Rs.2,000/-, respectively.

18. Altogether, the legal representatives of the deceased/cross objectors, in Cross Objection No.103 of 2015, are entitled to compensation of Rs.68,09,310/- (Rupees Sixty Eight lakhs Nine thousand Three hundred and Ten only), with interest, at the rate of 7.5% p.a., from the date of claim, till deposit, as hereunder:-

Loss of contribution to the family	...	Rs.62,97,310
Loss of consortium	...	Rs. 1,00,000
Loss of love and affection to the minor daughter	...	Rs. 2,00,000
Loss of love and affection to the mother	...	Rs. 50,000
Loss of Estate	...	Rs. 1,00,000
Loss of love and affection for the father	...	Rs. 50,000
Transportation	...	Rs. 10,000
Damages to clothes	...	Rs. 2,000
		Rs.68,09,310

Compensation awarded by the Tribunal is	...	Rs.61,87,000
Compensation now determined by this Court, on appeal	...	Rs.68,09,310
		Rs. 6,22,310

19. Mr.S.Krishnamoorthy, learned counsel for the Insurance Company/ appellant in C.M.A.No.1932 of 2015, submitted that a sum of Rs.52,26,474/-, has already been deposited, to the credit of M.C.O.P.No.7420 of 2013, on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

20. On going through the material on record, we find that at the time of the accident, widow was aged 23 years and the minor son was one year and 8 months old. Having regard to the interest of the minor, there could even be a possibility of remarriage. Paramount welfare of the child is important. Therefore, we propose to apportion the compensation, to the claimants, as hereunder:-

Wife of the deceased	...	Rs.25,00,000
Minor Child	...	Rs.28,09,310
Father of the deceased	...	Rs. 7,50,000
Mother of the deceased	...	Rs. 7,50,000

21. Royal Sundaram Alliance Insurance Company Limited, Chennai, is directed to deposit the balance amount, less the statutory deposit, to the credit of M.C.O.p.No.7420 of 2013, on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai, within a period of four weeks, from the date of receipt of a copy of this order.

22. The share of the minor/second respondent, shall be deposited in any one of the Nationalised Banks, in fixed deposit, under the reinvestment scheme, initially for a period of three years. The interest accruing on the share of the minor, shall be paid to the 1st respondent/mother of the minor, once in three months, till she attains majority. On such deposit being made, respondents 1, 3 and 4/claimants are permitted, to withdraw the award amount, as apportioned by this Court, by making necessary applications.

23. In the result, Civil Miscellaneous Appeal No.1932 of 2015, filed by Royal Sundaram Alliance Insurance Company Limited, Chennai, is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. Cross Objection No. 103 of 2015, filed by the legal representatives/claimants, is partly allowed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Judge, The Motor Accident Claims Tribunal,
   (II Judge, Court of Small Causes), Chennai.
2. The Section Officer, VR Section, High Court, Madras.

\+ 1 cc to Mr. M. Krishnamoorthy, Advocate Sr.45519
\+ 3 ccs to Mr. S. Sathish, Advocate Sr.45477

C.M.A. No.1932 of 2015
a n d
Cross Objection No.103 of 2015

VGI(CO)
EU 21.08.17