IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 1988 of 2015
&
C.M.P. No. 15850 of 2016

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Branch Office, No. 8/H1,
Mangalam Building,
4 Roads, Salem 636 009. .. Appellant/Respondent 2

Vs.

1. Manickam
2. Nagamma
3. M. Sivakami
4. M. Priya
5. M. Deepa .. Respondents 1 to 5/Petitioners
6. M. Vijayakumar .. 6th Respondents/Respondent 1

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 30.04.2015, made in M.C.O.P. No. 489 of 2013 on the file of Motor Accidents Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri.

For Appellant :: Mr.S.Manohar

For Respondents :: Mr.K. Prasanna for
Mr.Mukund R. Pandiyan

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of a sum of Rs. 12,08,000/- as compensation for the death of one Soundararajan, son of respondents 1 and 2 and brother of respondents 3 to 5, aged about 23 years, in the accident, which occurred on 25.07.2012, when a lorry belonging to the 6th respondent and insured with the appellant, bearing Registration No. KA-01/C 2271, driven in a rash and negligent manner, collided with a car and thereafter, dashed on the deceased, who was walking on the left side of Hosur Krishnagiri NH road near Kakkanpuram U turn, resulting in his death instantaneously.

2. The Tribunal, on the basis of pleadings and evidence, found that it was the lorry, which was driven rashly and negligently and fixed the negligence on the part of the driver of the lorry and awarded the aforesaid amount as compensation.

3. Heard Mr.S. Manohar, learned counsel for the appellant and Mr.K. Prasanna, learned counsel representing Mr.Mukund R. Pandiyan, learned counsel for respondents 1 to 5. The 6th respondent was set ex parte before the Tribunal.

4. The Tribunal, based on the evidence of P.W.2- an eye-witness to the occurrence and also the filing of FIR against the driver of the lorry, rightly found that the accident had ocurrred only due to the rash and negligent driving of the lorry. Moreover, there is no contra evidence on the side of the Insurance Company to belie the same. Therefore, the finding rendered by the Tribunal, with regard to the negligence aspect, cannot be disturbed.

5. Though the victim was alleged to be working as a part-time employee in Income Tax Department, besides doing milk business, earning Rs.9000/- per month, there was no positive proof to substantiate the same. However, the Tribunal considered the wages paid to a mason or an agricultural coolie, during the relevant point of time and determined the monthly income of the deceased at Rs.9000/-. But, in the considered opinion of this Court, in the absence of any supporting material placed before the Tribunal, with regard to the income of the deceased, fixing Rs.9000/- as the monthly income, appears to be on the higher side and therefore, this Court reduces the monthly income of the deceased, fixed by the Tribunal, at Rs.9000/- to Rs.8000/-.

6. Mr.K. Prasanna, learned counsel appearing for the claimants, while seeking enhancement of the compensation awarded by the Tribunal, by relying upon latest judgments, would submit that though the deceased was aged about 23 years, at the time of accident, "Future Prospects" of the deceased was not taken into consideration by the Tribunal.

7. The aforesaid contention of the learned counsel for the claimants appears to be appealing. Therefore, in the light of the judgments of the Honourable Apex Court rendered in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 and Santosh Devi V. National Insurance Company Ltd. and others reported in 2012 6 SCC 421, 50% is added towards "Future Prospects" and the total monthly income, in that event, would be,

Total Monthly Income	::	Rs.8,000/- + 50% (Rs.8,000/-)
	::	Rs.12,000/-

Since the deceased was a bachelor, 50% was rightly deducted by the Tribunal towards "Personal Expenses" and applying the said deduction, "Monthly Contribution to the Family" comes to,

Monthly Contribution to the Family	::	Rs.12000/- (-) 50% (Rs.12000/-)
	::	Rs.12000/- (-) Rs.6000/-
	::	Rs. 6000/-
Annual Contribution	::	Rs. 6000/- x 12

Based on Ex-P2, postmortem certificate, the Tribunal rightly took the age of the deceased as 26 years and adopted multiplier 17 as per Sarla Verma case and therefore, applying the said multiplier, "Loss of Dependency" is calculated as hereunder:

Loss of Dependency	::	Rs.6000 x 12 x 17
	::	Rs.12,24,000/-

8. As far as the amounts awarded under other heads are concerned, namely, Rs.1,00,000/- each to the parents of the deceased towards "Loss of Love and Affection", for having lost their only son, Rs.20,000/- awarded to each of the siblings of the deceased, namely, respondents 3 to 5, for having lost their only brother, Rs.10,000/- awarded towards "Transportation Expenses" and Rs.20,000/- towards "Funeral Expenses" are all reasonable and are hereby confirmed. As no amount was awarded towards "Loss of Estate", a sum of Rs.10,000/- is awarded under the said head. The total compensation payable to the claimants, is as hereunder:

Loss of Dependency	::	Rs.12,24,000/-
Towards "Loss of Love and Affection" to respondents 1 and 2	::	Rs. 2,00,000/-
Towards "Loss of Love and Affection" to respondents 3 to 5	::	Rs. 60,000/-
Transportation Expenses	::	Rs. 10,000/-
Funeral Expenses	::	Rs. 10,000/-
Loss of Estate	::	Rs. 10,000/-
Total Compensation	::	Rs.15,24,000/-
	::	(Rounded off to) Rs.15,25,000/-

In all, a sum of Rs.15,25,000/- is payable to claimants/respondents 1 to 5 as compensation together with interest @ 7.5% per annum.

9. Though the appeal has been filed by the Insurance Company, this Court, on re-appreciating the evidence on record, applying the latest law and invoking Order XLI Rule 33 CPC and Section 151 CPC and in the light of the judgment of the Honourable Apex Court rendered in Nagappa V. Gurudayal Singh reported in 2004 (2) TN MAC 398 (SC), has enhanced the compensation payable to the claimants, in an endeavour to award just and reasonable compensation. Besides, the provisions of Motor Vehicles Act are beneficial in nature, which aim at consoling, comforting and compensating the victims of road accidents and therefore, even in the appeal filed by the Insurance Company, in the absence of any appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation amount, which has also been recognised by the Honourable Apex Court. Furthermore, an appeal is a continuation of the original proceedings and this Court is bound to re-appreciate the pleadings and evidence on record and award just compensation as contemplated under the Act. Hence, in an endeavour to do complete justice, the award of the Tribunal to the tune of Rs.12,08,000/- is enhanced to Rs.15,25,000/-.

10. The appellant Insurance Company has already deposited the entire award amount, as awarded by the Tribunal, together with interest and costs, as per order of this Court dated 07.09.2015 in M.P.No. 1 of 2015. The balance amount, as per the enhanced award passed by this Court, shall be deposited by the appellant, with interest and costs, before the Tribunal, 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 entire compensation amount, through RTGS, to the claimants, as per the apportionment of the Tribunal, within a period of two weeks thereafter. The claimants shall pay additional court-fee for the enhanced compensation, if any.

11. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed and the compensation awarded by the Tribunal is enhanced from Rs. 12,08,000/- to Rs.15,25,000/- with interest @ 7.5% per annum. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nv

To

The MACT (Special Dist. Court
for Motor Accident Cases),
Krishnagiri.

+1cc to Mr.S.Manohar, Advocate, S.R.No.21805
+1cc to Mr.Mukund R. Pandiyan, Advocate, S.R.No.22467

C.M.A. No. 1988 of 2015

NMI(CO)
CS/03/07/17