IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.331 of 2015
and M.P.No.1 of 2015

The Branch Manager
M/s. United India Insurance Co., Ltd.,
Branch Office at D.No.397-1,
A.K.M.Tower 1st Floor,
Junction Main Road,
Salem - 636 004. .... Appellant / 2nd Respondent

Vs.

1. R.Jothi
2. R.Sathiya Bharathi (Minor)
3. R.Dhaarani (Minor)

... Respondents 1 to 3 / Petitioners 1 to 3

(Respondents 2 & 3 minors rep.by mother & Next Friend 1st respondent)

4. N.Manivannan ... Respondent No.4 / 1st Respondent
(4th respondent ex-parte in Lower court)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree, dated 17.02.2012 made in M.C.O.P.No.1039 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Court & Special Court for EC Act Cases), Salem.

For Appellant : Ms.Harini
for M/s. M.B.Gopalan Associates

For Respondents : Mr.N.Manokaran for R1 to R3
R4- Exparte before lower Court.

JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal is directed against the award passed by the Motor Accident Claims Tribunal (Additional District Court & Special Court for EC Act Cases) Salem, dated 17.02.2012 in M.C.O.P.No.1039 of 2009 awarding compensation of Rs.61,61,316/- with 7.5% interest from the date of petition to the claimants.

2. The Insurance company is the appellant. As per the averments in the petition, the respondents 1 to 3 / claimants are the wife and children of the deceased V.S.Ravichandran. On 01.01.2009 at about 3.15 p.m when the deceased was riding his motor cycle bearing Regn. No.TN 27 J 1804 with one S.Loganathan as his pillion rider towards Thiyagaraja Polytechnic, Salem near Kaliyamman Koil, the motor bike bearing Regn. No.30 E 9371 owned by the fourth respondent / first respondent and insured with the appellant / second respondent was driven by its rider from opposite direction in a rash and negligent manner and hit against the motor cycle driver by the deceased. He and the pillion rider were thrown out and the deceased hit with a nearby wall and sustained injuries. He succumbed to the injuries in the hospital. The deceased was aged 45 years and employed as Assistant Engineer at National Water Development Agency at the time of accident. He was earning Rs.34,529/- p.m. The respondents 1 to 3 / claimants are his dependants. Therefore the claimants claim Rs.1,00,00,000/- under various heads as compensation.

3. The appellant in its counter averred that the claimants are not entitled to any compensation and denied the manner of accident, age, avocation and income of the deceased. The accident took place due to the negligence of the deceased.

4. On the side of the claimants, three witnesses were examined and 26 Exhibits marked. On the side of the appellant / first respondent one witness was examined. The Tribunal after analysing both the oral and documentary evidence awarded compensation to the claimants as aforesaid.

5. The learned counsel appearing for the appellant argued that the deceased was substantially responsible for the accident; that the percentage of future prospects fixed by the Tribunal is excessive and that proper deduction of income tax has not been made.

6. The First Information Report and Rough sketch as to the accident are marked as Ex.P.1 and Ex.P.26. The pillion rider of the bike bearing Regn. No. TN 27 J 1804 in which the deceased was the rider has been examined as P.W.2. He has clearly deposed that the deceased rode the bike on the left side of the road and the bike coming from the opposite direction was driver by its driver rashly and negligently and hit against them.

7. This Court perused the rough sketch, Ex.P.26. It is clear that when the deceased was going from west to east, the accident occurred on the extreme northern side, i.e., left side of the road to the deceased. R.W.1 also admits that the deceased was thrown out and he hit with the wall on the left side (north) of the road. From the above evidence of P.W.2, R.W.1 and rough sketch, it is very clear that the bike coming from opposite direction came on the wrong side and hit against the deceased bike. Thus the accident occurred only due to the

rash and negligent driving of the motor bike owned by the fourth respondent / first respondent. There is no dispute that the vehicle was insured with the appellant / second respondent at the time of accident.

8. There is no dispute that the deceased died due to the injury sustained by him in the accident. The post mortem certificate is marked as Ex.P.2. The deceased is a B.E. Graduate and he has been working as Assistant Engineer at National Water Development Agency. He was also earning Rs.36,049/- p.m. The B.E. Certificate, Working Certificate and pay slip are marked as Ex.P.12, Ex.P.19 and Ex.P.24.

9. The date of accident is 01.01.2009. The date of Birth of the deceased is 15.04.1963 as could be seen from Ex.P.15 and Ex.P.23. Therefore the age of the deceased at the time of accident is 45 years 9 months.

10. The learned counsel appearing for the appellant mainly contended that the tax component has not been deducted and future prospects has been fixed at higher rate.

11. The Constitutional Bench of the Hon'ble Supreme Court in National Insurance Company Ltd., v. Pranay Sethi and Ors., by Judgment, dated 31.10.2017 in SLP (Civil) No.25590 of 2014 etc., batch, set right the controversy over Sarla Verma's case (2009) 6 SCC 121 and held as follows :

> "61...
> ...
> (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In the case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
> ...
> (vii) The age of the deceased should be the basis for applying the multiplier.
> (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

12. The annual income of the deceased as per the last drawn pay comes to Rs.4,32,588/-. As per the above said judgment, 30% has to be added as future prospects, which comes

to Rs.1,29,776 (Rs.4,32,588 x 30/100). Therefore the total annual income comes to Rs.5,62,364/- (Rs.4,32,588 + Rs.1,29,776), which is the taxable income. In this the general deduction of Rs.2,50,000/- and a sum of Rs.1,50,000/- towards Section 80 (c) of Income Tax Act has to be deducted, which comes to Rs.1,62,364/-. Now income tax at the rate of 10% has to be deducted, which comes to Rs.16,236/-. Thereafter it comes to Rs.5,46,128/-. Towards his personal expenses 1/3rd is to be deducted, which comes to Rs.1,82,042/- and therefore the contribution of the deceased to his family would be at Rs.3,64,086 (Rs.5,46,128-Rs.1,82,042). Therefore, the annual income would come to Rs.3,64,086/-. Multiplier is to be taken as per the table given in Sarala Verma's case, (2009) 6 SCC 121. Considering the age of the deceased being 45+ at the time of accident, multiplier is fixed at 13. Therefore, the loss of income to the family is arrived at Rs.47,33,118/- (Rs.3,64086 x 13), which is rounded off to Rs.47,33,200/-.

13. As per the latest dictum of the Constitutional Bench (cited supra), the first respondent / first claimant is entitled to Rs.40,000/- towards loss of consortium. Towards loss of estate and loss of funeral expenses, Rs.15,000/- each is awarded. Towards loss of love and affection for the claimants / respondents 2 and 3, Rs.50,000/- is awarded. Therefore, the claimants / respondents 1 to 3 are entitled to get compensation under various heads as follows :

| | | |
|---|---|---|
| For the loss of income | : Rs. | 47,33,200.00 |
| For loss of estate | : Rs. | 15,000.00 |
| For loss of consortium | : Rs. | 40,000.00 |
| For funeral expenses | : Rs. | 15,000.00 |
| For loss of love and affection | :Rs. | 50,000.00 |
| Total | Rs. | 48,53,200.00 |

Hence, the claimants / respondents 1 to 3 are entitled to get compensation Rs.48,53,200/- (Rupees Forty Eight Lakhs Fifty Three Thousand Two Hundred only) with interest at 7.5% from the date of petition till the date of realisation, excluding the default period if any. The first respondent / first claimant is entitled to a sum of Rs.18,53,200/- with proportionate interest and Respondents 2 and 3 / claimants 2 and 3 are entitled to a sum of Rs.15,00,000/- each with proportionate interest.

14. In the result, the Civil Miscellaneous Appeal is partly allowed without costs. The award passed in M.C.O.P.No.1039 of 2009 by the Motor Accident Claims Tribunal (Additional District Court & Special Court for EC Act Cases), Salem is modified as follows :

The respondents 1 to 3 / claimants are entitled to get compensation of Rs.48,53,200/- with interest at 7.5% from the date of petition till the date of realisation. The appellant is directed to deposit the aforesaid amount less the amount already deposited within a period of four weeks from the date of receipt of a copy of this order. The respondents 1 to 3 / claimants are entitled to get quantum of amount as set out in penultimate paragraph.

Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(Additional District Court &
Special Court for EC Act Cases),
Salem.

Copy to:The Section Officer,
VR Section,
High Court, Madras (2 copies)

+1cc to Mr.M.B.Gopalan, Advocate Sr.No.86124
+1cc to Mr.N.Manokaran, Advocate Sr.No.85332

Judgment in
C.M.A.No.331 of 2015

SSI(CO)
sm:28.12.2017