IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.256 of 2017
and
CMP.Nos.1704 and 8979 of 2017

The Divisional Manager,
The National Insurance Company Limited,
Officers Line, Vellore ... Appellant/2nd Respondent

vs.

1. N.Ananthi
2. N.Supriya
3. Balaji ... Respondents/Petitioners & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set-aside the Decree and Judgment dated 30.10.2015 in M.C.O.P.No.439 of 2011, passed by the Motor Accidents Claims Tribunal, (I Additional District and Sessions Court), Vellore.

For Appellant : Mr.N.B.Surekha

For Respondents 1 & 2 : Mr.C.Prabhakaran

J U D G M E N T
[Order of the Court was made by M.GOVINDARAJ, J.]

Challenging the award of compensation passed in MCOP No.439 of 2011 dated 30.10.2015, on the file of MACT [I Additional District and Sessions Court], Vellore, M/s.National Insurance Company Limited, has preferred this appeal, on the grounds of liability and quantum.

2. The accident is said to have taken place on 07.04.2011 at about 10.00PM. The deceased was working in BHEL and was returning home in his two-wheeler, bearing Regn.No.TN25-V-9094, along with his friend and while nearing Thirupakuttai Sugar Mill Quarters on Vellore to Katpadi Road, the offending vehicle viz., Hero Honda Passion bearing Regn.No.TN73-A-6807, driven in a rash and negligent manner and without following traffic rules, dashed against the two-wheeler, bearing

Regn.No.TN25-V-9094. Both the motorcyclist and pillion rider were injured and the motorcyclist died due to the injuries suffered by him at CMC Hospital, Vellore. A case in Cr.No.75 of 2011 for offence under Sections 279, 338 and 304-A IPC was registered against the motorcyclist of the offending vehicle at Thiruvalam Police Station. Based on the death of the motorcyclist, the legal representatives have filed a claim for a sum of Rs.80,00,000/-.

3. The appellant insurance company has filed the counter before the tribunal, denying the negligence and liability. Based on the materials available before the tribunal, the tribunal proceeded to try the claim on the issues of negligence and quantum of compensation.

4. Before the tribunal, in order to prove the claim, the claimants have examined three witnesses, PWs.1 to 3 and marked Exs.P1 to P7. On the side of the Insurance company, Motor Vehicles Inspector was examined as RW1, and Motor Vehicle Inspector's Report was marked as Ex.R1. It is the contention of the appellant-insurance company that the Motor Vehicle Inspector's Report, which is marked as Exs.P4 & R1, indicates that the driving licence was not produced. Therefore, when the motorcyclist of the offending vehicle was not holding the driving licence, the liability should not be fixed entirely on the insurance company. But, on perusing the pleadings and the documents marked before the tribunal and also the evidence of the witnesses, we find that the Insurance company has not proved that the motorcyclist was not having the driving licence. Mere indication in the MVI's report that the Driving licence was not produced will not go to prove that the driver/rider of the motorcyclist was not having the driving licence. Burden lies on the insurance company to show that the motorcyclist was not having the driving licence by adducing evidence by summoning any one of the representatives of the Regional Transport Office of the area concerned and should have elicited the fact that the motorcyclist was not having the driving licence. In fact, the insurance company has summoned RW1, Motor Vehicles Inspector from the Regional Transport Office. But the evidence of RW1, does not clearly elicit the fact that the motorcyclist was not having the driving licence. In the absence of any evidence in support of the grounds by the insurance company, it cannot be held that the motorcyclist was not having the driving licence and the insurance company was not liable to pay compensation. On the other hand, the cogent evidence of PW1, wife of the deceased and PW2, the eye witness and also Ex.P1, copy of FIR, and Ex.P6, Insurance Policy, would go to prove that the accident had happened due to the rash and negligent riding of the offending vehicle and he is covered by the insurance given by the appellant Insurance company. Therefore, the appellant insurance company is liable to pay the compensation and finding of the tribunal on this aspect does not require any intervention.

5. In so far as the quantum of compensation is concerned, the tribunal has taken the monthly salary of the deceased at Rs.37,639/-, based on the salary certificate issued vide Ex.P5 and the certificate issued by the BHEL vide Ex.P7. According to the documentary evidence, it is seen that the deceased was working as Senior Assistant Gr-II, at the time of the accident and drawing the total emoluments of Rs.37,639/-. His income was substantiated by the evidence of Sr.Manager of BHEL, PW3. Even though the claimants have contended that the deceased was earning around Rs.60,000/-, the documentary evidence and the oral evidence of the employer goes to show that he was drawing a sum of Rs.37,639/- per month. The tribunal has also rightly fixed the monthly income at Rs.37,639/-.

6. The tribunal following the judgment of Sarla Verma and Others Vs. Delhi Transport Corporation, reported in 2009 (2) TNMAC (1) SC, has given 30% towards future prospects. After deducting 1/3 towards personal and living expenses, the tribunal has arrived at the annual income. The deceased was aged 48 years, at the time of accident, therefore, the tribunal has applied multiplier '13'. Accordingly, the loss of contribution to the family is calculated. However, the tribunal has grossly reduced 20% towards income tax without applying the income tax deduction as per the Income Tax Act.

7. On the grounds of loss of consortium and loss of love and affection, the tribunal has awarded a sum of Rs.1,00,000/- each to the mother and daughter under both the heads. Thus, a sum of Rs.4,00,000/- is awarded to both the claimants under the heads of loss of consortium and loss of love and affection. A sum of Rs.2,00,000/- is awarded towards loss of estate and Rs.1,50,000/- towards pain and suffering, Rs.20,000/- towards damages to clothes and articles, Rs.31,600/- towards mental shock and agony. After awarding compensation for other heads, the tribunal has awarded a total sum of Rs.50,17,400/-.

8. The learned counsel for the appellant-insurance company would contend that the tribunal has awarded a sum of Rs.1,00,000/- each to the daughter and wife towards loss of consortium as well as towards loss of love and affection. According to the learned counsel, the award of compensation should have been Rs.1,00,000/- to the wife towards loss of consortium and Rs.1,00,000/- to the daughter towards loss of love and affection and the tribunal has erroneously ordered excess amount. We do consider that the payment under this head is excessive.

9. That apart, the award of Rs.2,00,000/- towards loss of estate, Rs.1,50,000/- towards pain and suffering and Rs.31,600/- towards mental shock and agony, is erroneous and the tribunal has erred in awarding such excessive sums under these heads.

10. We have considered the submissions of the parties.

11. As discussed above, tribunal has rightly arrived at Rs.37,639/- as monthly income and applied 30% towards future prospects and also applied '13' multiplier as per the judgment of the Hon'ble Supreme Court in Sarla Varma's case [cited supra]. On this aspect, the finding of the tribunal does not require any interference. But the reduction of income tax shall be according to the Income Tax Act and Rules. The tribunal has erroneously applied income tax at the rate of 20% on the monthly income. Therefore, by following the correct procedure for deduction of income tax, loss of contribution to the family is reworked as hereunder.

Monthly Income	: Rs.37,639/-
ADD : 30% future prospects	: Rs.11,292/-
Total	: Rs.48,931/-
Annual Income (Rs.48,931/- x 12)	: Rs.5,87,172/-
Income Tax Calculation:	
Annual Income	: Rs.5,87,172/-
Less Income Tax deduction u/s 80C, 80CCC, 80CCD	: Rs.1,00,000/-
Taxable Income	: Rs.4,87,172/-
Rounded off	: Rs.4,87,170/-
Income Tax Slab :	
Upto Rs.1,80,000/-	: Nil
Rs.1,80,001/- to Rs.5,00,000/- @ 10%	: Rs.30,717/-
Edu. Cess @ 3%	: Rs. 922/-
Total Tax	: Rs.31,639/-
Total Annual Income LESS Tax [Rs.5,87,172/- (-) Rs.31,639/-]	: Rs.5,55,531/-
Less 1/3rd towards Personal and living expenses	: Rs.1,85,177/-
Total loss of Income	: Rs.3,70,354/-
Loss of contribution to the family by applying multiplier '13'	: Rs.48,14,602/-

Award amount under the head loss of contribution to the family after reworking comes to Rs.48,14,602/- as against Rs.41,80,800/-, awarded by the tribunal.

12. Though, the learned counsel for the appellant-Insurance Company sought for reduction under the head loss of contribution to the family, we do not consider it fit to reduce the amount any further and hence, Rs.41,80,800/-, awarded by the tribunal is sustained.

13. The award under the heads loss of consortium and loss of love and affection to the wife and daughter is excessive

and therefore, we award Rs.1,00,000/- towards loss of consortium to the wife and Rs.1,00,000/- towards loss of love and affection to the daughter. Loss of estate is reduced by Rs.1,75,000/- and Rs.25,000/- alone is awarded under this head. It is a fatal case and therefore, the award under the head pain and suffering, does not arise. Therefore, the award granted under this head is disallowed. Likewise, the award under the head mental shock and agony is also disallowed and the award towards damages to cloth and articles is reduced by Rs.15,000/- and we award a sum of Rs.5,000/- under the said head. The tribunal has awarded Rs.25,000/- towards funeral expenses and Rs.10,000/- towards transportation to hospital, which are just and reasonable. Thus, the award of compensation under these heads are not interfered with.

14. Now after reducing and disallowing the compensation as discussed above, the total compensation reworked is as hereunder.

Loss of contribution to the family	:	Rs.41,80,800/-
Loss of consortium	:	Rs. 1,00,000/-
Loss of love and affection	:	Rs. 1,00,000/-
Loss of estate	:	Rs. 25,000/-
Funeral expenses	:	Rs. 25,000/-
Transportation	:	Rs. 10,000/-
Damages to clothes and articles	:	Rs. 5,000/-
Total	:	Rs.44,45,800/-

15. Amount awarded by the tribunal Rs.50,17,400/-. After reworking, a sum of Rs.5,71,600/- is reduced from the total compensation. Thus, the claimants are entitled to total compensation of Rs.44,45,800/- and the same is apportioned as hereunder.

Wife / 1st respondent	:	Rs.29,45,800/-
Daughter / 2nd respondent	:	Rs.15,00,000/-
Total	:	Rs.44,45,800/-

16. The learned counsel for the appellant-Insurance company would submit that the insurance company deposited the entire amount with proportionate interest and costs. In view of the reduction now made, the insurance company is entitled to withdraw the excess deposit made by them.

17. The respondents/claimants are entitled to withdraw the compensation by filing appropriate application before the tribunal. In the result, the Civil Miscellaneous Appeal is partly allowed and no order as to costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
[I Additional District and Sessions Judge],
Vellore.

+1cc to Mr.C.Prabhakaran, Advocate SR.No.43411
+1cc to Mr.N.B.Surekha, Advocate SR.No.43232(17/08/2017)

C.M.A.No.256 of 2017
and CMP.Nos.1704 and 8979 of 2017

MSM(CO)
GN(26/07/2017)