IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A. NO. 2814 OF 2017
CROSS OBJECTION NO. 84 OF 2017
AND
C.M.P. NO. 16103 OF 2017

C.M.A. NO. 2814 OF 2017

M/s.Reliance General Insurance Co. Ltd.
Heavipree, Unit No.1, III Floor
23, Spur Tank Road, Chetpet
Chennai 600 031. .. Appellant/2nd Respondent

- Vs -

1. R.Sumathi
2. Minor Divya Dharshini
rep. By mother & next friend
R.Sumathi ..1st & 2nd Respondent/Claimants

3. M/s. Jerusalem College of Engineering
Velacherry Main Road
Narayanapuram, Pallikaranai
Chennai 601 302.

4. R.Chellammal .. 3rd & 4th Respondents/1st & 3rd Respondent

CROSS OBJECTION NO. 84 OF 2017

1. R.Sumathi
2. Minor Divya Dharshini
rep. By mother & next friend
R.Sumathi .. Cross Objectors

- Vs -

1. M/s. Jerusalem College of Engineering
Velacherry Main Road
Narayanapuram, Pallikaranai
Chennai 601 302.

2. M/s. Reliance General Insurance Co. Ltd.
Heavipree, Unit No.1, III Floor
23, Spur Tank Road, Chetpet
Chennai 600 031.

3. R.Chellammal .. Respondents

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act against the judgment and decree dated 12.04.2017 passed by the Motor Accident Claims Tribunal (Special Sub Court No.2), Small Causes Court, Chennai, made in MCOP No.2846 of 2013.

Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the judgment and decree dated 12.04.2017 passed by the Motor Accident Claims Tribunal (Special Sub Court No.2), Small Causes Court, Chennai, made in MCOP No.2846 of 2013.

For Appellant : Mr. S.Arunkumar in CMA 2814/17
R2 in Cross. Obejction 84/2017.

For Respondents: Ms. Ramya V.Rao for Mr.A.N.Viswanatha Rao for RR-1 & 2 in CMA 2814/17/Petitioners in Cross. Objection 84/2017.
No Appearance for RR-3 & 4 in CMA 2814/17
R1 & R3 in Cross. Objection No 84/2017.

COMMON JUDGMENT
(DELIVERED BY S.VIMALA, J.)

While the appeal has been filed by the insurance company challenging the quantum of compensation awarded by the Tribunal as excessive, the cross objection has been filed by the claimants challenging the inadequate compensation awarded by the Tribunal.

2. The deceased, aged 33 years, stated to be self-employed owner-cum-driver, earning a sum of Rs.1,000/= per day (Rs.30,000/= per month) died in the accident that happened on 28.2.13. The legal heirs of the deceased, viz., the wife and minor daughter filed claim petition claiming compensation in a sum of Rs.25,00,000/=.

3. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.18,23,000/= under various heads, the break up of which is as hereunder :-

Loss of Pecuniary Benefits	-	Rs.12,48,000/-
Funeral Expenses	-	Rs. 25,000/-
Loss of Estate	-	Rs. 1,00,000/-

Loss of Expectation of Life	-	Rs. 50,000/-
Loss of Consortium	-	Rs. 1,00,000/-
Loss of Love & Affection	-	Rs. 3,00,000/-
Total	-	Rs.18,23,000/-

4. The quantum of compensation awarded by the Tribunal is under challenge by the appellant as well as by the claimants.

5. Learned counsel appearing for the appellant/insurance company submits that the award under the heads loss of love and affection, loss of estate and loss of expectation of life are exorbitant and it has to be fixed in accordance with the decision of the Constitution Bench in National Insurance Co. Ltd. - Vs - Pranay Sethi (2017 (13) SCALE 12).. It is the contention of the insurer that the nature of avocation of the deceased is not permanent and that there is no definite scope for increase in salary and the Tribunal ought not to have added 50% under the head future prospective increase in income.

6. Per contra, learned counsel appearing for the claimants/cross objectors contend that the deceased was earning a sum of Rs.1,000/- per day and he being a self-employed person, earning potential is on the higher side and this aspect has been taken into consideration by the Tribunal for awarding 50% increase in future prospective income. However, in view of the ratio laid down by the Sujpreme Court in Pranay Sethi's case (supra), learned counsel submits that the future prospective increase in income may be considered at 40%. It is further contended that considering the age of the deceased, the Tribunal has awarded amounts under various heads which also does not call for any interference.

7. This Court gave its anxious consideration to the arguments advanced by the learned counsel appearing on either side and also perused the oral and documentary evidence and the judgment passed by the Tribunal.

8. A careful perusal of the documents available on record as also the order passed by the Tribunal, the fact remains that the deceased was working in an unorganised sector, though as a self-employed person. It has been categorically laid down by the Supreme Court in a catena of decisions, which has been reiterated by the Constitution Bench in Pranay Sethi's case that where the deceased is working in unorganised sector, the future prospective increase in income must be 40%. In such a backdrop, the contention of the learned counsel for the insurance company that there is no definite scope of increase in income in future cannot be accepted. Any person, either employed or self-employed, would definitely be earning a higher

income as the years roll on. In such view of the matter, this Court is of the considered view that the deceased would definitely have earned a higher income in future, had he been alive.

9. No documentary evidence is available on record to show the monthly income of the deceased. However, considering the fact that the deceased is a self-employed person, being the owner-cum-driver, the monthly income of the deceased could safely be fixed at Rs.9,500/= and awarding 40% increase towards future prospective increase in income, the monthly income of the deceased would be Rs.13,300/= (Rs.9500/- + Rs.3800/-). Deducting 1/3rd towards the personal expenses of the deceased, the monthly contribution of the deceased to the family would be Rs.8867/=. Adopting the multiplier of 16, the pecuniary loss to the family is fixed at Rs.17,02,400/= (Rs.8867 X 12 X 16).

10. Insofar as the compensation awarded under the head loss of love and affection and Loss of Expectation of life at Rs.3,00,000/= and Rs.50,000/= respectively are concerned, the same are impermissible as per the ratio laid down in Pranay Sethi's case. It is not argued whether it is omission or refusal to award compensation. Accordingly, the said compensation awarded by the Tribunal are disallowed.

11. Insofar as the compensation awarded under the head loss of consortium is concerned, as per the ratio laid down in Pranay Sethi's case, the permissible compensation under the said head is only Rs.40,000/-. Accordingly, the compensation awarded under the said head is modified and a sum of Rs.40,000/- is awarded as compensation. Likewise, the compensation awarded under the head funeral expenses and loss of estate are also modified and a sum of Rs.15,000/= is awarded under each head as compensation.

12. The compensation awarded by the Tribunal at Rs.18,23,000/= is modified and a sum of Rs.17,72,400/- is awarded as compensation under the following heads :-

Loss of Pecuniary Benefits	-	Rs.17,02,400/-
Funeral Expenses	-	Rs. 15,000/-
Loss of Estate	-	Rs. 15,000/-
Loss of Consortium	-	Rs. 40,000/-
Total	-	Rs.17,72,400/-

12. In the result, the civil miscellaneous appeal is allowed in part in the terms ordered above and the cross objection is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

13. The appellant/insurance company is directed to deposit the modified award amount as quantified by this Court above along with interest at 7.5% p.a., from the date of claim petition till date of deposit, less the amount, if any, already deposited, 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 amount as per the ratio of apportionment as ordered by the Tribunal to the bank account of the major claimants through RTGS within a period of two weeks thereafter. Insofar as the share of the minor claimant is concerned, the same shall be dealt with in the manner as ordered by the Tribunal.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

GLN

To
1. The Judge
(Special Sub Court No.2)Motor Accident Claims Tribunal
Small Causes Court,
Chennai.

2. The Section officer
VR Section, High Court, Madras (2 copies)

+1 Cc to Mr.S. Arunkamal, Advocate sr 91607.

C.M.A. NO.2814 OF 2017
AND
CROSS OBJ. NO. 84 OF 2017

TM(CO)
SP(22/02/2018)