IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2017

CORAM

THE HONOURABLE MR. JUSTICE **N. KIRUBAKARAN**

CMA.No.1424 of 2017
and
CMP.No.7556 of 2017

The Manager,
National Insurance Company,
66, Greams Road,
Chennai – 6. ..Appellant

Vs.

1. Tmt. Geetha Rani
2. Minor Arvind
3. Minor Arjun

(Minor respondents 2 and 3 represented through their mother and next friend and natural guardian Tmt. Geetha Rani, the 1st respondent.)

4. Tmt. Devagi Gopal
5. Thiru. Gopal
6. Rajesh Naick ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 11.10.2013 passed in M.C.O.P. No. 537 of 2007 by the Motor Accidents Claims Tribunal (I Additional District Court), Tiruvallur.

For Appellant :: Mr.S. Vadivel

For Respondents :: Mr.G. Ravikumar for R1 to R5

J U D G M E N T

It is very unfortunate that even after the loss of breadwinner of the family, in a motor vehicle accident, which occurred on 17.06.2007, the claimants/the dependants are unable to get or enjoy the fruits of the award, eventhough the award itself was passed much later in the year 2013. The Motor Accident Claims have to be settled at the earliest, since the untimely death of the breadwinner or the Head of the Family causes immense loss, untold hardship and mental agony to the members of the family. The minor children have lost their father's love and guidance through out their life and the vacuum created by his death, could not be filled up by anyone else. In such circumstance, the Insurance Companies which are discharging public functions have to be very sensitive and settle the claims, humanely and magnanimously, as per the Motor Vehicles Act, 1988, the provisions of which are benevolent in nature.

2. Coming to the facts of the case, in the accident, which occurred on 17.06.2007, the first respondent's husband, namely, Gopikrishnan, aged about 38 years, holding a Doctorate in Medicine, a Child Specialist, who was working as an Assistant Professor in Government Stanley Hospital in the Department of Paediatrics, drawing a monthly salary of Rs.29,977/-, died, when the two-wheeler driven by him was dashed by a lorry bearing Registration No. MP 04 HE 0284, belonging to the 6th respondent and insured with the appellant, driven in a rash and negligent manner, from behind. Therefore, the claim petition was filed seeking compensation to the tune of Rs.60,00,000/-.

3. On contest, the Tribunal, based on Ex.P1 FIR and the evidence of PW2, eyewitness and in the absence of any contra evidence on the side of the appellant, rightly concluded that the accident occurred because of the rash and negligent driving

of the driver of the lorry and passed an award on 11.10.2013 to the tune of Rs.56,33,285/- (Rupees Fifty Six Lakhs Thirty Three Thousand Two Hundred and Eighty Five) to be paid by the appellant Insurance Company. The said award is being challenged before this Court by the Insurance Company after more than three years.

4. Heard, Mr.S.Vadivel, learned Counsel appearing for the appellant and Mr.G.Ravikumar, learned counsel appearing for claimants/respondents 1 to 5.

5. Since, the Insurance Company is assailing the award of the Tribunal only on the question of quantum, as already stated, the Tribunal had rightly fixed the negligence, on the part of the driver of the lorry, insured with the appellant.

6. The income of the deceased was proved by Ex.P12, Salary Certificate issued by the Government authorities and the monthly income was proved to be Rs.29,977/-. 10% was deducted towards "Income Tax" from the annual salary of the deceased. As per the judgments of the Honourable Apex Court in ***Smt.Sarala Verma and Others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298*** and ***Rajesh and others Vs. Rajbir Singh and others reported in 2013 (2) TNMAC 55 (SC),*** 50% has to be added towards "Future Prospects" provided the age of the deceased is between 30 and 40years and accordingly, the Tribunal has rightly added 50% towards "Future Prospects". Since the size of the family of the deceased is five, one-fourth deduction was rightly made by the Tribunal towards "Personal Expenses" of the deceased and as per the age of the deceased, namely, 38 years, which is proved by Ex-P4, post-mortem

certificate, the appropriate multiplier to be applied, as per *Sarla Verma's* case is 15 and it was rightly applied by the Tribunal. As per the calculation made by the Tribunal, the "Loss of Income" is determined as hereunder:

Monthly Income	::	Rs.29,977/-
Annual Income	::	Rs.29,977/- x 12
	::	**Rs.3,59,724/-**

Deduct 10% towards "Income Tax"

	::	Rs.3,59,724/- (-) 10% (Rs.3,59,724/-)
	::	Rs.3,23,751/-

Add: 50% towards "Future Prospects"

	::	Rs.3,23,751/- (+) 50% (Rs.3,23,751/-)
	::	Rs.3,23,751/- (+) Rs.1,61,875.50p
	::	Rs.4,85,626.50p

Deduct one-fourth towards "Personal Expenses"

	::	Rs.4,85,626.50p (-) ¼ (Rs.4,85,626.50p)
Annual Contribution of the deceased to his family	::	Rs. 3,64,219/-

Applying Multiplier 15, "Loss of Income" is,

	::	Rs.3,64,219 x 15
	::	**Rs.54,63,285/-.**

7. The sum of Rs. 25,000/- awarded to the 1st respondent/wife towards "Loss of Consortium" is very meagre. Losing one's husband itself is a very painful situation and that too, the first respondent lost her husband at the age of 33 years and therefore, a

sum of Rs.1,25,000/- is awarded following the judgment of the Honourable Apex Court rendered in **Rajesh and others V. Rajbir Singh and others** reported in ***2013 (2) TN MAC 55 (SC).*** Similarly, the minor children/respondents 2 and 3, who lost their father were admittedly 7years and 3 years, at the time of accident and therefore, the amount of Rs.1,20,000/- awarded towards "Loss of Love and Affection" is enhanced to Rs.2,20,000/-. Similarly, the fourth and fifth respondents, who lost their son are entitled to Rs.50,000/- together. The sum of Rs.25,000/- awarded towards "Funeral Expenses" including "Transport Expenses" is confirmed.

8. However, no amount was awarded towards "Loss of Estate" and therefore, a sum of Rs.1,00,000/- is awarded. The total compensation amount payable to the claimants comes to Rs.59,83,285/- which is rounded of to Rs.60,00,000/-. The rate of interest awarded by the Tribunal at 9% per annum is reduced to 7.5% per annum.

9. Since the award amount has been enhanced, the claimants shall pay additional court-fee within a period of two weeks from the date of receipt of a copy of this order. Out of the total compensation amount, the 1st respondent/wife would be entitled to 35%; the minor children/respondents 2 and 3 would be each entitled to 25% and the parents of the deceased/respondents 4 and 5 would be entitled to 15% together.

10. In the appeal preferred by the Insurance Company as against the award of Rs.56,33,285/-, this Court, by re-appreciating the evidence on record and applying the correct law, as on date, has suo-motu, enhanced the compensation to Rs.59,83,285/-

rounded off to Rs.60,00,000/-, even in the absence of appeal/cross-appeal, by invoking under Order LXI Rule 33 CPC, Section 151 C.P.C. and Article 227 of the Constitution of India, in an attempt to do complete justice.

11. The appellant is directed to deposit the entire amount, as per the modified award passed by this Court, after deducting the amount already deposited, if any, along with interest and costs, before the Tribunal, within six weeks from the date of receipt of a copy of this Order. On such deposit being made, the Tribunal is directed to transfer the respective shares of respondents 1, 4 and 5, as per the apportionment made by this Court, to their Bank account, after getting the required details, through RTGS, within one week thereafter. The respective shares of the minors/respondents 2 and 3 shall be deposited in interest bearing Fixed Deposit in anyone of the Nationalised Banks, till they attain majority. The 1st respondent would be entitled to withdraw interest accruing on such deposit, once in three months.

12. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal to the tune of Rs.56,33,285/- is enhanced to 59,83,285/- rounded off to Rs.60 lakhs with interest @ 7.5% per annum. No costs. Connected C.M.P. is closed.

27.04.2017

sai/kak

(Note to Office: Issue order copy by **next week)**

To

The Motor Accidents Claims Tribunal

(I Additional District Court), Tiruvallur.

<u>N. KIRUBAKARAN,J.</u>

sai/kak

C.M.A. No. 1424 of 2017

27.04.2017