IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

CORAM:

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

C.M.A.No.749 of 2017
M.P.No.4084 of 2017

The National Insurance Co. Ltd.,
751, Anna Salai,
Chennai 600 002. ... Appellant

vs.

1. Rosi
2. Kora George ... Respondents

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree, dated 12.12.2016 made in M.C.O.P.No.197 of 2014, on the file of the Motor Accidents Claims Tribunal (2nd Additional District Judge), Ponnamallee.

For Appellant : Mr.S.Vadivel

J U D G M E N T

(Judgement of this Court was made by Justice **S.MANIKUMAR**)

In the accident, which occurred on 17.10.2013, son of the first respondent/claimant, aged 23 years, died. Mother of the deceased claimed compensation of Rs.15,00,000/-. The appellant-Insurance Company, disputed the manner of accident, negligence on the part of the rider of the motorcycle, insured with them and consequently, liability to pay compensation claimed under different heads. Before the Tribunal, the first respondent/claimant examined herself as PW.1. PW.2 is an eye-witness to the accident. Exs.P1 to P8 have been marked on the side of the respondent/claimant. On behalf of the appellant-Transport Corporation, no oral or documentary evidence has been adduced. The Tribunal, on evaluation of pleadings and evidence, held that the rider of the motorcycle, owned by the 2nd respondent and insured with the appellant-Insurance Company, was responsible for the accident and awarded Rs.15,00,000/- with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation and costs.

2. It is the case of the legal representative of the deceased that at the time of accident, he was studying in Master of Business Administration and to prove the educational qualification, the respondent/claimant has marked Exs.P5 and P8 - Transfer and Degree Certificates, pertaining to Bachelor of Business Administration. By observing that since the deceased had completed Bachelor of Business Administration, he would have had a good fortune, the Claims Tribunal determined his monthly income as Rs.8,500/-. As he was a bachelor, the Tribunal deducted 50% towards his personal and living expenses, which works out to Rs.4,250/- [Rs.8,500 - Rs.4,250 (50% of the monthly income)]. Based on the entry in Ex.P5 - Transfer Certificate and following the decision of the Hon'ble Apex Court in **M.Mansoor v. United India Insurance Co. Ltd.,** reported in **2013 (2) TNMAC 481 (SC),** the Tribunal fixed his age as 23 years. Thereafter, by applying '17' multiplier, computed the loss of contribution to the family as Rs.8,67,000/- (Rs.4,500 x 12 x 18). In addition to the above, the Tribunal has awarded Rs.50,000/- under the head, loss of love and affection, Rs.15,000/- for funeral expenses, Rs.10,000/- for transportation, Rs.2,000/- towards damages to clothes and articles and Rs.5,78,200/- for the medical

expenses incurred in the hospital. Altogether, awarded a sum of Rs.15,22,200/-. Since the claim itself, is for Rs.15,00,000/-, the Claims Tribunal has awarded only Rs.15,00,000/-, with interest, at the rate of 7.5% from the date of claim, till realization.

3. Though on appeal, the appellant-Insurance Company has contended that the Tribunal has erred in fixing the monthly income of the deceased as Rs.8,500/- for the purpose of computing the loss of contribution to the family of the deceased and consequently, awarded a higher compensation, warranting reduction, this Court is not inclined to accept the said contention, for the reason that persons, who have qualified in business administration, have better employment opportunities and career development.

4. In **Sri Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Ltd.,** reported in **2011 (2) TNMAC 190 (SC),** wherein, a sum of Rs.4,500/- was claimed as monthly wages for the deceased, stated to be a labourer. The claims tribunal took Rs.3,000/- as the monthly income, for the purpose of computing the loss of

contribution to the family. However, when the matter was taken on appeal, the Hon'ble Supreme Court having regard to the wages of a labourer, during the relevant period (1994 - between Rs.100 to Rs.150/- per day) found fault with the tribunal, for reducing the claim from Rs.4,500/- to Rs.3,000/- and determined the income at Rs.4,500/-.

5. In **United India Insurance Company Ltd. v. V.Giriprasath** reported in reported in **2013 (2) TN MAC 146,** the accident occurred on 27.01.2011, in which, a 23 year old student of M.Sc. (Computer Science), engineering student sustained injuries and suffered disablement, fixed by the Tribunal at 45%. Though the Insurance Company contended that the injured was only a student and, therefore, notional income as per Second Schedule ought to have been fixed, rejecting the same, one of us (Hon'ble Mr.Justice S.Manikumar), taking note of the educational qualifications of the injured therein and the opportunities of career development, in the field of Computer, fixed the monthly income as Rs.10,000/-.

6. In **Syed Sadiq etc. Vs. Division Manager, United India**

Insurance Company Limited reported in **2014 (1) TN MAC 459**, the Hon'ble Apex Court determined a sum of Rs.6,500/- as monthly income for a vegetable vendor, who sustained injury in the accident occurred on 14.02.2008.

7. In **Mekala v. Malathi,** reported in **2014 (2) TN MAC 6 (SC),** though the deceased was a XI Standard student, the Hon'ble Apex Court fixed her monthly income, as Rs.11,000/-, and added 50% of the same, under the head "future prospects".

8. We cannot compare an ordinary labourer with that of a post graduate in Business Administration. While estimating the pecuniary loss, Courts/Tribunals have a duty to consider the likelihood of employment opportunities of the deceased in the near future, as well as the prospects, in such employment.

9. In the instant case, the accident has occurred on 17.10.2013. After completion of Bachelor of Business Administration, the deceased was doing his Post-Graduation in Business Administration. Therefore,

taking note of the decisions, stated supra, the value of education, and having regard to the cost of living, inflation, consumer price index and such other economic factors, we are not inclined to interfere with the determination of the monthly income of the deceased as Rs.8,500/-, for the purpose of computing loss of contribution to the family.

10. In the case on hand, there is no addition of 50% of the income, towards future prospects, in terms of the principles laid down by the Hon'ble Apex Court in **Rajesh v. Rajbir Singh** reported in **2013 (9) SCC 54.** As the deceased was a bachelor, aged 23 years, application of '17' multiplier, is not in terms of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (5) LW 561.** '18' is the appropriate multiplier, for the age group between 21 and 25 years.

11. In **Rajesh v. Rajbir Singh** reported in **2013 (2) TNMAC 55,** the Hon'ble Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards loss of love and affection. However, in the case on hand, the Claims Tribunal has awarded only

Rs.50,000/- for towards loss of love and affection to a parent, which is less. The overall quantum of compensation awarded to a parent, cannot be said to be on the higher side, warranting interference.

12. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, with proportionate accrued interest and costs less the amount already deposited to the credit of M.C.O.P.No.197 of 2014, on the file of the Motor Accidents Claims Tribunal (2nd Additional District Judge), Ponnamallee, within a period of four weeks, from the date of receipt of copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the same, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (M.G.R., J.)
27.02.2017

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To

The Motor Accidents Claims Tribunal,
(2nd Additional District Judge), Ponnamallee.

S.MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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