BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.770 of 2014 and
M.P(MD)No.1 of 2015

M/s.National Insurance Company Limited,
74-A, Paramathi Road,
Namakkal Town,
Namakkal District. ... Appellant/2nd Respondent

Vs.

1. B.Chellapraba
2. Minor Hashitha
(Minor 2nd respondent is represented by her mother and natural guardian 1st respondent herein) ... Respondents 1&2/Petitioners

3. V.Ramasamy ... 3rd Respondent/1st Respondent
4. Palanisamy ... 4th Respondent/3rd Respondent
5. P.Kannagi ... 5th Respondent/4th Respondent

(3rd Respondent set exparte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of M.V. Act, to set aside the order and decree, dated 30.09.2009 passed in M.A.C.O.P.No.712 of 2005 on the file of the Motor Accidents Claims Tribunal, District Court, Karur.

For Appellant : Mr.Srinivasa Raghavan
For R1 & 2 : Mr.Bindran
For R4 & R5 : Mr.K.Balasubramani

JUDGMENT

[Judgment of the Court was made by K.KALYANASUNDARAM,J]

Challenging the award passed by the Motor Accident Claims Tribunal (District Court), Karur, dated 30.09.2009 made in M.C.O.P.No.712 of 2005, the Insurance Company has preferred this appeal.

2.Brief facts of the case are that on 27.07.2004 at about 11.45 a.m., the deceased Ramesh was riding his Motorcycle bearing Registration No.TN-28-L-2920 near Padaiya Nallur Petrol Bunk opposite to Andhra to Chennai road. At that time, a lorry bearing Registration No.TN-28-L-2405 came in a rash and negligent manner and dashed against the motorcycle. In the accident, the deceased was ran over and died on the spot. The legal heirs of the deceased filed MCOP No.712 of 2005 claiming compensation of Rs.1 Crore alleging that the driver of the lorry was responsible for the accident.

3.Resisting the claim petition, the Insurance Company filed a counter disputing the manner of the accident, age and income of the deceased.

4.To fortify the case of the claimants, the first claimant examined herself as P.W.1 and also examined two other witnesses as P.Ws.2 & 3 and marked Exs.P1 to Ex.P33. On the side of the Insurance Company, one Kannagi was examined as R.W.1, but no document was produced.

5.The tribunal, after considering the oral and documentary evidence, came to the conclusion that the driver of the lorry was responsible for the accident and awarded compensation of Rs.48,00,000/- along with interest @ 7.5% p.a.

6.Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant would submit that the award passed by the Tribunal is exorbitant and excessive.

7.The learned counsel for the respondents contended that the deceased died at the age of 34 years and the Tribunal based on the evidence, has awarded compensation and hence, no interference is warranted.

8.Heard the rival submissions and perused the materials available on record.

9.The nature of accident and the negligent aspect are not in dispute and the present appeal is restricted only to the quantum of compensation and therefore, there is no necessity to go into the other aspects.

10.The wife of the deceased, who has given evidence as P.W.1 has stated that her husband was 34 years at the time of accident and after he completed B.Sc.(Agri.), he was running a lorry service and he was a contractor to supply water to the Chennai Metro Water Corporation. It is further stated that the deceased was also running a business in the name of "Sakthi Traders" and also owned 80 acres of land and to establish the same, she produced Exs.P11 to P21.

11.The income tax returns of the deceased for the year 1999-2000, 2001-2002, 2003-2004, 2004-2005 were marked as Exs.P23 to Ex.P27, which reveal that the income is shown as Rs.10,130/- in the year 1999-2000 and it was gradually increasing and in the year 2003-2004, he was earning Rs.4,31,900/-. The Tribunal, taking into considering of the above aspects, fixed the income as Rs.5,00,000/-

per annum and after deducting 1/4th therefrom for his personal expenses, taken Rs.3,75,000/- as contribution for his family.

12.On perusal of income tax returns, it is seen that in the year 2000, the income of the deceased was shown as Rs.10,130/-, in 2001 at Rs.23,270/- and in 2002 at Rs40,570/- and in 2003 at Rs.60,100/- and after the accident, the income of the deceased was shown as Rs.4,31,900/-. It is true that the income of the deceased was gradually increasing, but the tribunal based on the income returns of the deceased after he died in the accident, arrived at Rs.5,00,000/- per annum. Taking into the above aspects, we are of the considered opinion that the income of the deceased could be fixed at Rs.10,000/- per month. The legal-heirs certificate Ex.P7, the driving licence of the decease Ex.P8 and the College Transfer certificate Ex.P9 would show that the deceased died at the age of 35. As per the decision of the Hon'ble Apex Court in the case of **Sarla Verma**, addition of 50% is to be made towards future prospects. Hence, the income of the deceased would be Rs.15,000/- and after deducting ¼ towards his personal expenses, the loss of income works out to Rs.21,60,000/- (Rs.15,000 x 12x 16 x ¾).

13.The tribunal has awarded Rs.10,000/- for funeral expenses, Rs.20,000/- for the first claimant towards loss of love and affection and Rs.20,000/- to the second claimant for loss of love and affection, and Rs.15,000/- to the respondents 3 and 4 for loss of love and affection. We are of the considered view that the amount awarded under the above heads are very low and they have to be enhanced. The award of the tribunal is modified as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income (Rs.15,000/- x 12 x 16 x 3/4)	47,00,000	21,60,000	reduced
2.	For Funeral expenses	10,000	25,000	enhanced
3.	For Loss of consortium	----	1,00,000	awarded
4.	For Loss of Love and affection	70,000	1,00,000	enhanced
5.	For Transportation	-	15,000	awarded
6.	For loss of estate	-	15,000	awarded
	Total	Rs.47,80,000 rounded off to Rs.48,00,000	Rs.24,15,000	By reducing a sum of Rs.23,85,000

14.In the result, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.48,00,000/- is reduced to Rs.24,15,000/-. The interest awarded by the tribunal is maintained. The first claimant is entitled for Rs.6,15,000/- and the second claimant is entitled for Rs.12,00,000/- and the parents of the deceased/respondents 4 & 5 are entitled for Rs.3,00,000/- each. The appellant-Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.712 of 2005 on the file of the Motor Accidents Claims Tribunal (District Judge), Karur, within a period of **eight weeks** from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares as stated above.

15.It is represented that the minor second claimant has now attained majority and Birth Certificate of the second claimant is also produced to that effect. Hence, the 2nd claimant is declared as major and she is permitted to withdraw her share. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The District Judge,
Motor Accidents Claims Tribunal, Karur.

Copy To:-

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 82603
+ 1 CC TO Mr.M.BINDRAN, ADVOCATE IN SR No. 82608
+ 1 CC TO Mr.K.BALASUBRAMANI, ADVOCATE IN SR No. 82136

AM
SDS/GT/SAR-4 : 02/01/2018 : 4P/6C

C.M.A(MD)No.770 of 2014 and
M.P(MD)No.1 of 2015
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