BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.890 of 2016
and
C.M.P(MD)No.8175 of 2016

M/s.Reliance General Insurance Company Limited,
Represented by its Branch Manager,
Madurai Branch,
First Floor, Sri Meenakshi Plaza,
No.55, 80 Feet Road,
Anna Nager, Madurai-20. : Appellant/2nd Respondent

Vs.

1. Mrs.Josphin Nirmala
2. Minor. Anbu Joshuva
3. Minor Renita Rose Amal
4. Ms.L.Fathima Rose
(The minor Respondents are Represented through their Mother, next friend & guardian the First respondent herein)
: Respondents 1 to 4/ Claimanats
5. Mr.M.Gurusamy
6. Mr.A.Harikrishnan : Respondents 5 &6 / Respondents 1 and 3

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of M.V. Act, against the award and decree dated 7th July 2015 passed in M.C.O.P.No.1071 of 2010 on the file of the Motor Accident Claims Tribunal/III Additional District and Sessions Judge, Madurai.

For Appellant	:	Mr.V.Sakthivel
For R1 to R3	:	Mrs.N.Juliet Latha
For R4 to R6	:	No appearance

JUDGMENT

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

Aggrieved over the award passed by the Motor Accidents Claims

Tribunal/III Additional District and Sessions Judge, Madurai in M.C.O.P.No.1071 of 2010, dated 07.07.2015, the Insurance Company has preferred this appeal.

2.The case of the claimants is that on 05.10.2009 at about 1.30 p.m., when the husband of the first claimant Jesudoss was riding a Hero Honda Splendor Motorcycle bearing Registration No.TN-58-K-9268 along with one Sakthikumar as pillion rider from Cholavandan to Vadipatti, a Mini bus bearing Registration No.TN-21-X-8946 came from opposite direction in a high speed, hit against the Motorcycle. In the impact, both the rider and pillion rider were thrown away and sustained head injuries and died on the spot. On information, the Inspector of Police, Cholavandan Police Station registered a case in Cr.No.357 of 2009 against the driver of the bus under Section 304(A) of IPC.

3.It is the further case of the claimants that the deceased died at the age of 36 years and he was earning Rs.83,000/- per month through his business and they lost their only bread winner of the family. Hence, they are claimaing compensation of Rs.90,00,000/-.

4.The claim petition was opposed by the Insurance Company contending that the accident occurred only due to the negligence of the deceased, who was coming in a rash and negligent manner. The age, income and the dependency alleged by the claimants were denied in the counter statement.

5.The Tribunal on appreciation of oral and doucumentary evidence adduced by the parties, held that the accident occurred only due to the negligence of the driver of the bus and awarded compensation of Rs.34,82,000/- with interest at 7.5% p.a. Against the award, the present appeal has been filed.

6.Mr.V.Sakthivel, learned counsel for the appellant would submit that the award of the Tribunal is excessive as per the recent judgement of the Supreme Court in **Pranay Sethi**.

7.Per contra, the learned counsel for the claimants contended that the business in the name of Voice Care Technology was run by the deceased and the father of the first claimant, but infact, the deceased was the proprietor of the concern and his father-in-law was made as partner for some other purposes and therefore, the income of the deceased should have been fixed at Rs.30,000/- per month. According to the learned counsel for the claimants, the award is very low and it is to be enhanced.

8. Perusal of the evidence of P.W.1, reveals that the wife of the deceased in her evidence has admitted that the business was run by her deceased husband and her father as partners. The deceased was filing income tax returns and all the documents were

available with his Auditor. But the Income Tax returns of the deceased was not produced before the Tribunal. P.W.3 Assistant Manager of Tata Telecom Service has deposed that the Voice Care Technology was having business deal with the Tata Telecom Service from 2008 to 2010 and Ex.P15 is the statement of account.

9. R.W.1 the Assistant Commissioner of Income Tax Circule, Madurai has deposed that for the PAN No.AAGFV68441, the Voice Care Technology income tax returns were not filed from the year 2008.

10.The Tribunal based on the evidence of P.W.3 and Ex.P15 has arrived the income of the Firm at Rs.30,000/- per month. Since two partners have equal share, held that the deceased was earning Rs.15,000/- per month. By adding 50% towards future prospects by following the decision in ***Rajesh and others Vs. Rajbir Singh and others reported in 2013 ACJ 1403,*** the income was arrived at Rs.22,500/-, after deducting 1/4th and by applying multiplier '16' the Tribunal has awarded a sum of Rs.32,40,000/- towards loss of dependency. In addition, Rs.1,00,000/- for loss of consortium, Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- for funeral expenses, Rs.2,000/- for transportation, Rs.5,000/- for damage to the articles was awarded by the Tribunal.

11.After considering the evidence, we are of the opinion that the income of Rs.15,000/- fixed by the Tribunal can be accepted. As per the decision in ***Pranoy Sethi*** 40% is added towards future prospects and the income is worked out at Rs.21,000/-. After deducting 1/3rd towards personal expenses, the loss of contribution to the family per month would be Rs.14,000/-. The deceased died at the age of 36 years and by following the decision in ***Sarla Verma***, applying multiplier '15', this Court awards to Rs.**25,20,000/-** (14,000 x 12 x 15) for loss of dependency. In addition, Rs.**40,000/-** is awarded towards consortium; Rs.**15,000/-** towards loss of estate; Rs.**15,000/-** towards funeral expenses; Rs.**1,00,000/-** for loss of love and affection and Rs.**10,000/-** is awarded towards transportation. In total, the claimants are entitled to Rs.**27,00,000/-** with interest at 7.5% P.A.,

12.In the result, this Civil Miscellaneous Appeal is partly allowed and the award is reduced to **Rs.27,00,000**/- from Rs.**34,82,000/-**. Out of the award amount, the first claimant is entitled to Rs.10,00,000/- (Rupees Ten lakhs Only) with interest and the claimants 2 & 3 are entitled to Rs.6,00,000/- each (Rs.12,00,000) and the fourth claimant is entitled to Rs.5,00,000/- (Rupees Five Lakhs Only) with interest. The major claimants are permitted to withdraw their share with proportionate accrued interest. Insofar as the minor claimants are concerned, the Tribunal is directed to deposit their share of Rs.12,00,000/- in any one of the Nationalised Bank, in fixed deposit, initially for a period of three years renewable thereafter, till they attain majority. The first claimant/mother, being the guardian of minor claimants, is permitted to withdraw the accrued interest, once in three months directly from the Bank and utilize the same for the welfare of the minor children. No costs. Consequently, connected miscellaneous petition is also closed.

13.The learned counsel appearing for the appellant Insurance Company submitted that entire award amount has already been deposited. Excess amount if any, shall be returned to the appellant/Insurance Company.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The III Additional District And Sessions Judge,
   The Motor Accident Claims Tribunal,
   III Additional District and Sessions Court,
   Madurai.

3. The Record Keeper,
   V.R. Section,(2 Copies)
   Madurai Bench of Madras High Court,
   Madurai.

+1cc to Mr.V.Sakthivel, Advocate Sr.No.92276
+1cc to Mrs.N.Juliet Latha, Advocate Sr.No.92288
am
MK/SB/SAR 3/26.06.2018/4P/6C

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