

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1121 of 2018
and
CMP.No.9190 of 2018

The Oriental Insurance Co. Ltd.,
MTPCO : HUB, No.115, Prakasam Road,
2nd Floor, Broadway, Parrys,
Chennai - 108. ... Appellant

Vs.

1.V.Sarasu
2.V.Bhuvaneswari
3.V.Praveen Kumar (Minor)
4.V.Prem Kumar (Minor)
5.V.Pradeep Kumar (Minor)
(Minor Petitioners 3 to 5 are represented
by their mother V.Sarasu (the 1st
petitioner herein) as natural guardian
and next friend)

6.L.Chellamal
(represented by N.F./ Guardian mother
Rathna & 1st respondent)

7.K.Thalapathy .. Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.422 of 2012 dated 10.08.2017 on the file of the learned III Additional District Judge (Motor Accident Claims Tribunal), Poonamallee, Tiruvallur District.

For Appellant : Mr.J.Chandran

For Respondents: Mr.P.Natarajan (for R1 to R6)

No Appearance (for R7)

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant/insurance company, challenging the Judgment and decree dated 10.08.2017, passed in M.C.O.P.No.422 of 2012, on the file of Motor Accidents Claims Tribunal, Poonamallee, III Additional District Court, Tiruvallur at Poonamallee.

2.The Tribunal, on consideration of oral and documentary evidence placed before it, quantified the compensation in a sum of Rs.18,16,000/- the breakups of which is hereunder:

i. Loss of dependency income fixed by Tribunal as	
Rs.9000 - $1/5^{\text{th}}$ = Rs.1,800	
Rs.9,000 - 1,800 = Rs.7,200	
Rs.7,200 x 12 x 15 = Rs.12,96,000	- Rs.12,96,000/-
ii. Loss of love and affection	Rs. 4,25,000/-
iii. Loss of consortium	Rs. 50,000/-
iv. Loss of Estate	Rs. 10,000/-
v. Transport charges	Rs. 10,000/-
vi. Funeral expenses	Rs. 25,000/-

Total	Rs.18,16,000/-

3.Challenging the compensation award as over and above and not proportionate, the insurance company have preferred the present appeal.

4.The main contention raised by the Learned counsel for appellant/insurance company is that Tribunal have erred in fixing the monthly income of the deceased as Rs.9,000/- per month without any oral or documentary evidence, and awarded amount of Rs.12,96,000/- towards loss of dependency, further the Tribunal also erred in awarding Rs.4,25,000/- under the head of love and affection, which is against the findings of Hon'ble Apex Court in National Insurance Company Ltd., Vs. Praney Sethy, which was reported in 2017 (2) TN MAC 609 (SC) and the award under other heads by the Tribunal also not correct, hence the appeal filed only on the ground of quantum of compensation. Though the Learned counsel for appellant raised various grounds including negligence, liability and quantum, he restricted his arguments towards other grounds.

5.The Learned counsel for respondents 1 to 6 also fairly admitted that the award awarded under the head of loss of love and affection is not correct and is liable to be excluded, further the counsel for respondents 1 to 6 submitted that though the income fixed by the Tribunal @ Rs.9,000/- per month for the accident took place in the year 2008, the learned counsel for respondents 1 to 6 fairly accepted to modify the notional income

from Rs.9,000/- to Rs.7,500/- and submitted that no future prospects was added towards the income of the deceased hence as per the settled principles of law the respondents 1 to 6 are entitled for 40% future prospects, further it is also accepted by the counsel for respondents 1 to 6 to modify the award amount on the other heads as per the Judgment passed by Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Pranay Sethy, reported in 2017 (2) TN MAC 609 (SC).

6.I heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.P.Natarajan, learned counsel appearing for respondents 1 to 6 and perused the materials available on record. No representation on behalf of the 7th respondent.

7.It is evident from the evidence available on record that the deceased was aged about 38 years, at the time of accident and he was a mason. The accident was happened in the year of 2008. There is no dispute with regard to the age and occupation of the deceased, only objection was notional income fixed by the Tribunal was not proper and excessive. Moreover it is also admitted fact that no future prospects was added in the income of the deceased. Further the other aspects of deduction and multiplier are correct and are need not be disturbed. Therefore, it would be safe to accept the contention of the counsel for respondents 1 to 6 for reduction of income from Rs.9,000/- to Rs.7,500/- further it cannot be objected by the appellant insurance company for adding future prospects in the income, hence the income of deceased is hereby modified as Rs.7,500/- and 40% is added towards future prospects, the calculation of loss of dependency is $(7,500 \times 40/100 = \text{Rs.}3,000/-, \text{Rs.}7,500 + \text{Rs.}3,000 = \text{Rs.}10,500/-, \text{Rs.}10,500 - 1/5^{\text{th}} = \text{Rs.}2,100/-, \text{Rs.}10,500 - \text{Rs.}2,100 = \text{Rs.}8,400/- \times 12 \times 15 = \text{Rs.}15,12,000/-)$.

8.Insofar as compensation awarded under the head of love and affection is totally set aside as per the Judgment of Hon'ble Apex Court in National Insurance Co. Ltd. Vs. Pranay Sethy reported in 2017 (2) TN MAC 609 (SC).

9.Insofar as compensation awarded under the heads of loss of consortium, loss of estate, transport charges and funeral expenses are also modified as per the Judgment of Hon'ble Apex Court as stated supra.

10.The award of Tribunal is modified under the following Heads:

i. Loss of dependency

$\text{Rs.}7500 \times 40/100 = \text{Rs.}3,000/-$
 $\text{Rs.}7,500 + 3,000 = \text{Rs.}10,500/-$
 $\text{Rs.}10,500 - 1/5^{\text{th}} = \text{Rs.}2,100/-$
 $\text{Rs.}10,500 - 2,100 = \text{Rs.}8,400/-$

	Rs.8,400 x 12 x 15 =Rs.15,12,000/-	-	Rs.15,12,000/-
ii. Loss of consortium to			
1 st respondent herein			Rs. 40,000/-
iii. Loss of Estate			Rs. 15,000/-
iv. Funeral expenses			Rs. 15,000/-

	Total		Rs.15,82,000/-

10. In the result, this appeal is allowed in part reducing the compensation award from Rs.18,16,000/- to Rs.15,82,000/-. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

11. The appellant/insurance company is directed to deposit the modified the award of compensation i.e. Rs.15,82,000/- together with interest @ 7.5% per annum from the date of numbering of claim petition and costs, less the amount, if any, already deposited, to the credit of the claim petition, within period of six weeks from the date of receipt of copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount as per the ratio fixed by the Tribunal directly to the bank account of the claimants through RTGS within a period of two weeks thereafter, the tribunal is also directed to invest the share amount of minor claimants in any Nationalized Bank till they attain majority and the 1st claimant/mother and guardian of minor claimants is permitted to withdraw the accruing interest on deposit once in three months.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

vs

To

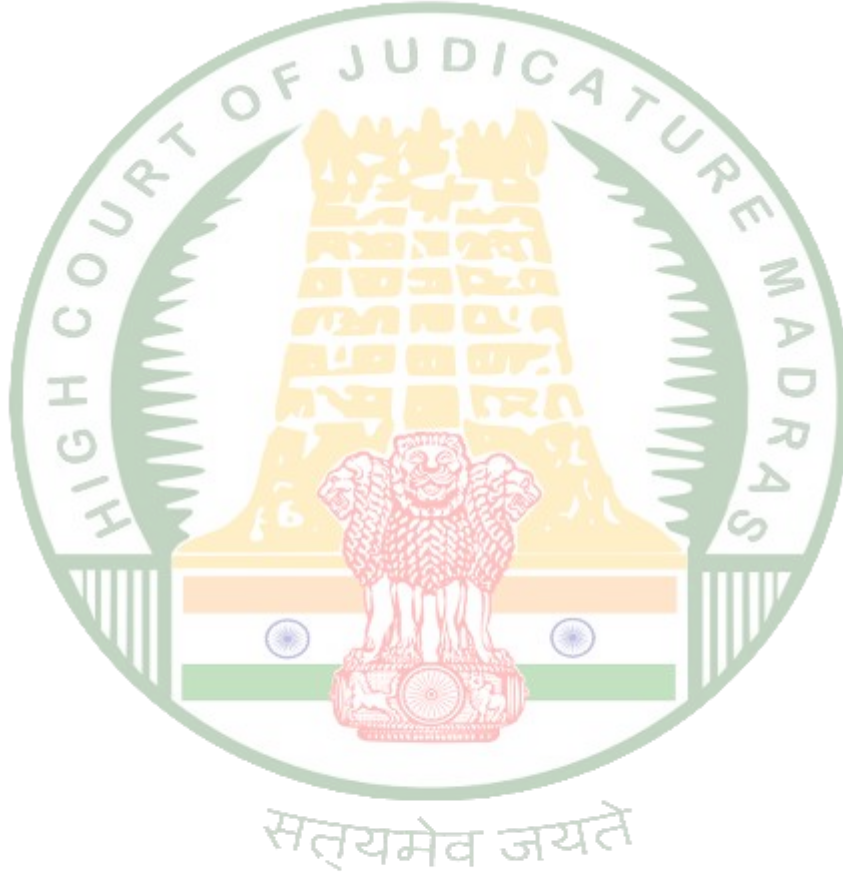
1. The III Additional District Judge
(Motor Accident Claims Tribunal),
Poonamallee, Tiruvallur District.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+lcc to Mr.P.Natarajan, Advocate SR.No.62476

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and
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EV (CO)
GMY (05/03/2019)



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