IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
1THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.1197 of 2018
and
CMP.No.9815 of 2018

The Branch Manager,
National Insurance Company Ltd.,
63, Rasi Plaza, West Pradhachinam Salai,
Karur Dist. ... Appellant

Vs

1.Mahalingam

2.Alamelu

3.Karthikeyan

(Third respondent herein was set exparte.
Hence, notice against him in this appeal
may be dispensed with) ... Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree dated 28th February 2017 made in MCOP.No.69 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District Judge, (FAC), Ariyalur.

For Appellant : Mr.K.Padmanabhan

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company against the award of Rs.15,21,000/- for the death of one Mahesh, aged about 19 years, working as building roof worker, allegedly earning about Rs.18,000/- per month, in the accident, which occurred on 18.06.2014, when he was hit by a lorry belonging to the 3rd respondent, insured with the appellant/insurance company, while walking on the left side of the road. Therefore, the claim petition.

2.The Tribunal found that the accident occurred because of the rash and negligent driving by the driver of the lorry and awarded a sum of Rs.15,21,000/-. The said award is being challenged before this Court.

3.Heard, Mr.K.Padmanabhan, learned counsel appearing for the appellant. He would submit that the deceased was a 19 year old boy and there is no proof regarding his income and avocation and therefore, Rs.8,000/- taken by the Tribunal is on the higher side. Further, he would submit that Rs.4,000/- has been added towards future prospects, which has to be reduced to 40% and also harped upon awarding of Rs.2,00,000/- towards loss of love and affection to the parents.

4.This Court considered the arguments of Mr.K.Padmanabhan, learned counsel for the appellant and gone through the records very meticulously.

5.The only question that has been raised is with regard to the quantum and not with regard to the negligence. Therefore, the question of going into negligence does not arise.

5.PW1, one Mr.Mahalingam, who is the father of the deceased, categorically stated in the claim petition as well as in the oral evidence that the deceased was working as building roof worker and earning about Rs.18,000/- per month. However, the Tribunal fixed a sum of Rs.8,000/- per month relying upon the judgment in Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Vs. R.Kalavathi and others reported in 2015 (1) TNMAC 612 (Hyd). The said determination made by the Tribunal, according to Mr.K.Padmanabhan is on the higher side.

6.The Honourable Supreme Court in the judgment delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008, whereas this accident occurred in the year 2014 and by that time, much water had flown under the bridge and because of inflation and other local factors, everything got increased. Therefore, this Court determines the monthly income at Rs.9,000/-, which is in consonance with Syed Sadiq's case. It is categorically stated by PW1 that his son was working as building roof worker. During the year of accident, it is impossible to get a servant maid for less than Rs.9,000/-. Therefore, Rs.8,000/- is not on higher side and appropriate amount is Rs.9,000/- per month.

7.As rightly pointed out by Mr.K.Padmanabhan, learned counsel for the appellant, 50% was added by the Tribunal towards future prospects. At that time, the judgment of the Honourable Supreme Court was not available to the Tribunal and therefore, the Tribunal added 50%. In that event, as per law, as on date, this Court adds only 40% towards future prospects. After adding 40%, the income would be at Rs.12,600/- (Rs.9,000/- + 40% of Rs.9,000/-).

8.Since the deceased was a bachelor, 50% has to be deducted towards personal expenses, which was rightly done by the Tribunal. After deducting 50% towards personal expenses, the loss of monthly contribution would be at Rs.6,300/-.

9.Mr.K.Padmanabhan, learned counsel for the appellant would submit that the Tribunal wrongly adopted multiplier of "18", which cannot be accepted. Since, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) for the age of 19 years, the appropriate multiplier is "18". The Tribunal rightly applied "18" multiplier and therefore, loss of income would be at Rs.13,60,800/- (Rs.6,300/- x 12 x 18).

10.Love and affection:

The Tribunal has awarded of Rs.2,00,000/- towards loss of love and affection. The same is confirmed

11.Funeral Expenses:

A sum of Rs.25,000/- was awarded by the Tribunal towards funeral expenses. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the same is reduced to Rs.15,000/-.

12.Loss of estate:

No amount was awarded towards loss of estate. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), this Court awards a sum of Rs.15,000/- towards loss of estate.

13.Transportation charges:

Even though no amount was awarded towards transportation charges, this Court awards a sum of Rs.10,000/- towards transportation charges.

Head	Amount (Rs.)
Loss of Income	1360800
Loss of love and affection	200000
Funeral expenses	15000
Loss of estate	15000
Transportation charges	10000
	1600800

14.Hence the compensation awarded to the claimant comes to Rs.16,00,800/-, rounded off to Rs.16,01,000/-. Out of the modified award amount the claimants are entitled to get equal share.

15.As rightly pointed out by the learned counsel for the appellant, the interest fixed by the Tribunal at 9% per annum is reduced to 7.5% per annum. Though the Insurance company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.15,21,000/- is enhanced to Rs.16,01,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

16.The insurance company is directed to deposit the entire award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of the claimants with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon.

17.Since even without notice to the claimants the enhancement has been made in favour of the claimants in the appeal filed by the insurance company at the time of admission itself, there is no occasion for the claimants to note the enhancement. Therefore, copy of order is directed to be sent to the claimants free of cost. The claimants are directed to pay the requisite court-fee, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. If the requisite court-fee is not paid by the claimants, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimants and thereafter, transfer the remaining award amount as per the ratio fixed by this Court to the accounts of the claimants.

18.Accordingly, this appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sai

To
1. The Additional District Judge, (FAC)
Motor Accident Claim Tribunal,
Ariyalur.

2.Mahalingam
S/o.Krishnamoorthy,
Chetty Kuzhi Village, Kovilur Post,
Ariyalur Taluk and District

3.Alamelu,
W/o.Mahalingam
Chetty Kuzhi Village, Kovilur Post,
Ariyalur Taluk and District

Copy to:The Record Keeper
VR Section,
High Court, Madras

+1cc to M/s.K.Padmanabhan, Advocate Sr.No.37620

CP(CO)
sm:27.7.2018

C.M.A.No.1197 of 2018