IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 01.08.2018

Judgment Pronounced on 03.08.2018

CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
CMA.No.1204 of 2018

1. Chamundeswari
2. Minor Papana Venkata Geethesh Anurag
   Rep.by next friend / mother ... Appellants/Claimants
   Chamundeswari

Vs

1. M.Sakthivel
2. C.Kavitha
3. National Insurance Company Limited
   Rep. By its Branch Manager,
   1st floor, Karthikeya Complex,
   503, B-10, Mettu Main road, Bhavani,
   Erode District 638 302.
4. Tata AIG General Insurance Company limited
   Rep. By its Branch Manager,
   Peninsula Corporate Park, Piramal Tower,
   9th floor, Ganpatrao Kadam marg, Lower Parel,
   Mumbai 400 013.
5. Bargavi
6. P.V.D.Prasadaa Rao ....Respondents(Respondents)

PRAYER : Civil Miscellaneous Appeal filed against the judgment and decree dated 11.12.2017, made in M.C.O.P.No.842 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tirupur

For Appellants : M/s.Selvi George

For Respondents : Mr.Mohan Babu
for M/s. Gopalan & Associates [For R4]
Mrs.M.B.Sureka [for R3]
Mr.S.V.Vasanthakumar [for R5]

J U D G M E N T

(N.KIRUBAKARAN, J)

The appeal has been preferred by the claimants aggrieved over fixing of 75% negligence on the part of the 1^{st} appellant's husband, who was driving the Maruti car, insured with the 4^{th} respondent herein and 25% on the driver of the Tata Ace car belonging to the 1^{st} respondent, insured with the 3^{rd} respondent in the accident, which occurred on 14.10.2013, in which the 1^{st} appellant's husband Mr.Subash Babu, aged about 35 years, Manager – HR in a private limited Company, earning a sum of Rs.1,33,070/- died on the spot. Further, the appellants are aggrieved with regard to the quantum of compensation as the Tribunal awarded only a sum of Rs.10,40,500/-, especially, when the deceased was earning about a sum of Rs.1,33,070/-

2. Heard, Mrs.Selvi George, learned counsel appearing for the appellant; Mr.Mohan Babu, learned counsel appearing for the 4^{th} respondent and Mrs.M.B.Sureka, learned counsel appearing for the 3^{rd} respondent; Mr.Vasanthakumar, learned counsel appearing for respondent 5, who are parents of the deceased.

3. Mrs.Selvi George, learned counsel appearing for the appellant, find fault with the award passed by the Tribunal on the ground that the Tribunal merely went by the FIR, whereas it ignored the evidence of PW1 and PW3, who are the eyewitnesses. She would submit that the deceased was earning a sum of Rs.1,33,070/- and inspite of producing Ex.P.3 and Ex.P.11 to Ex.P.14, salary slips of the deceased, which shows that the monthly income of the deceased was Rs.1,33,070/-, the Tribunal only determined a negligible amount of Rs.20,000/-, merely because the claimants did not produced the Income Tax returns. Therefore, she seeks for higher amount as monthly income and enhancement in compensation amount.

4. Mr.Mohan Babu, learned counsel appearing for the 4^{th} respondent as well as Mrs.M.B.Surekha, learned counsel appearing for the 3^{rd} respondent would support the award of the Tribunal.

5. Heard the parties and perused the records. It is evident from the records that the deceased was driving a Maruti car from east to west following the Eicher van, belonging to the 1^{st} respondent. According to PW1 as well as PW3, the Eicher van, which was going in front of the car suddenly turn right side, without giving any signal, which resulted the car dashing against the Eicher van causing the accident. The evidence of PW1 and PW3 are very categorical. There is no rebuttal evidence on the side of the respondents, by examining the driver of the Eicher van. When PW1 herself travelled in the car and PW3, who

gave statement before the police was examined as eyewitness, PW2 categorically stated that the accident happened because of sudden turning of Eicher van. There was negligence on the part of the driver of the Eicher van alone. Whereas the Tribunal wrongly found that the accident occurred because of the 75% negligence on the part of the deceased, merely because Ex.P.1 - FIR was filed against the deceased. Therefore, we up hold that the negligence was on the part of the driver of the Eicher van.

6. Income of the deceased:- As per the petition, the deceased was working as Manager - HR., Mountain Trail Foods Private Limited, Bangalore and earned Rs.1,33,070/- p.m., The petitioner examined PW2 and filed Ex.P.3 & Ex.P11 to Ex.P.14 to prove the income of the deceased. PW2 who is the HR Manager of Mountain Trail Foods Private Limited deposed that the deceased was employed as HR Manager in their company and appointment order was marked as Ex.P.3. The deceased was earning about Rs.1,33,070/- per month and the exhibits are marked as Ex.P.12 to Ex.P.14. Further, the petitioner stated that the deceased was an income tax assessee. Ex.P.5 Form No.16 was submitted for the assessment year 2014-2015 for the period from 01.04.2013 to 31.03.2014. It is pertinent to note that the deceased died due to the accident on 14.10.2013, therefore Ex.P5 was submitted after the death of the deceased, hence it was discarded. The Tribunal has taken the monthly income as Rs.1,33,070/- which is based on the pay slip for the month of August 2013 issued by the company/employer. There is no proof to substantiate this contention. However, apart from the pay slip no other document was produced to substantiate the same, so therefore we cannot accept the income of the deceased as Rs.1,33,070/- as decided by the Tribunal. We have also perused Form 16 filed by the deceased before the Income tax authorities for the assessment year 2011-2012, 2012-2013, 2013-2014, but however we have inclined to consider the income disclosed by the deceased in Form 16 for the financial year 2012-2013, in the said tax return, the salary of the deceased was disclosed as Rs.12,29,949/- p.a. Therefore for the purpose of determination of loss of dependency the deceased income is taken as Rs.12,29,949/- p.a.

7. Future Prospects:- The age of the deceased was 35 years at the time of death. Ex.P.6 Post mortem certificate and Ex.P.7 Death certificate also states that the age of the deceased was 35 years at the time of death. The Tribunal also took the age of the deceased as 35 years and we also concur with the findings of the Tribunal. The Tribunal fixed 40% towards future prospects. However in the present case, the deceased had permanent job and duly disclosed his income in the income tax returns. Therefore, we enhance it to 50% based on the Hon'ble Apex Court judgment in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, 50% of

the monthly income to be added as future prospects. Accordingly, the annual income of the deceased would be Rs.12,29,949/-p.a. Adding a component of 50% for future prospects, the income would stand at Rs.6,14,975/-p.a. The total loss of income of the deceased for the purpose of calculation of compensation to the claimants along with future prospects will be a sum of Rs.18,44,924/-. Now we have to deduct income tax on the income of Rs.18,44,924/- and the tax on this income would be a sum of Rs.3,13,354/-. If we deduct tax amount of Rs.3,13,354/- the balance amount available for the determination of compensation will be Rs.18,44,924 - Rs.3,13,354 = Rs.15,31,570/-.

8. There are four dependants to the deceased namely, wife, son , mother and father and therefore the Tribunal took 1/4th deduction as held by the Hon'ble Supreme Court in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, we also concur with the findings of the Tribunal in this regard. After deducting 1/4th from Rs.15,31,570/- the loss of income to the deceased will be Rs.11,48,677/- p.a. (15,31,570 - 3,82,892)

9. Now with regard to the multiplier, the Hon'ble Apex Court in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC held that if the person having the age of 31 to 35 years the multiplier of "16" to be taken into account for calculating the loss of dependency. Hence we take the multiplier of '16' for the purpose of calculating the loss of earning of the deceased. The total loss of dependency will be a sum of 11,48,677 x 16 = 1,83,78,832/- . The Tribunal also rightly taken the multiplier as "16".

10. The Tribunal awarded a sum of Rs.40,000/- to the first claimant/wife towards "loss of consortium", Rs.15,000/- towards "loss of estate", Rs.50,000/- towards "love and affection", Rs.15,000/- towards "funeral expenses" and Rs.10,000/- towards "transport expenses". Since this Court is of the view that the said amounts awarded by the Tribunal are just and proper, we confirm the same.

11. Hence the total compensation payable to the claimants is as hereunder.

Head	Amount
Loss of Dependency	Rs.1,83,78,832 /-
Transportation	Rs.10,000/-

Head	Amount
Loss of love and affection to the second claimant	Rs.50,000/-
Loss of estate	Rs.15,000/-
Loss of Consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.1,85,08,832 /-

12. The total amount of compensation shall be shared by the claimants 1 & 2 and respondents 5 & 6 in the following manner:-

1st appellant/wife of the deceased = Rs.71,00,000/-
2nd appellant/son of the deceased = Rs.71,08,832/-

5th respondent/mother of the deceased = Rs.23,00,000/-
6th respondent/father of the deceased = Rs.20,00,000/-

13. The 3rd respondent/National Insurance Company Limited is directed to deposit the entire amount, with interest and costs directly through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st appellant, 5th & 6th respondents are permited to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed this Court in the ratio fixed as stated above. The share of the minor shall be deposited in Fixed Deposit in any one of the Nationalised Banks for a period of three years. On maturity along with the accrued interest, the same shall be reinvested again in Fixed Deposit continuously till he attains the age of majority. The additional court fee shall be paid by the Appellant within a period of four weeks from the date of receipt of a copy of this Order.

14. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.10,40,500/- is enhanced to Rs.1,85,08,832/-. The said amount shall carry the same rate of interest as awarded by the Tribunal namely 7.5% per annum and the apportionment shall be as ordered by this Court. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dpq

To

1.I Additional District Judge,
The Motor Accident Claims Tribunal,
Tirupur

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 54140
+1cc to Mr.S.V.Vasantha Kumar, Advocate, S.R.No. 53439
+1cc to Mr.N.B.Surekha, Advocate, S.R.No. 53287

CMA. No. 1204 of 2018

SV(CO)
GN(28/11/2018)