IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA. No.1240 of 2018

1.Radhika Srinivasan
2.Srinivasan ... Appellants /Petitioners

-vs-

1.Ashok

2.The ICIC Lombard General Insurance Company Limited,
No.142, 1st Floor,
E.C.R. Main Road,
Pondicherry - 1. ... Respondents /Respondents
(R1 remained Ex parte before
Tribunal, hence his presence may be
disposed with)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to enhance the award 1988 against the judgment and decree dated 08.11.2017 made in M.A.C.T.O.P.No.435 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruvallur, Poonamalle.

For Appellants : Mr.F.Terry Chella Raja
For Respondents: Mrs.R.Sreevidhya for R2
R1 - Exparte



J U D G M E N T
[Judgment of the Court made by R.SUBRAMANIAN,J.]

The claimants who are the parents of one Srikanth who died in a motor accident that occurred on 04.10.2015 having sustained a greivious head injury due to the collision between the motor cycle driven by him bearing Registration No.TN-10-AB-0421 with another motor cycle belonging to the 1st respondent bearing Registration No.TN-22-CL-6383 insured with the 2nd respondent had filed a claim petition in MCOP.No.435 of 2016 seeking a compensation of Rs.70,00,000/-.

2. The said claim petition was resisted by the 2nd respondent Insurance Company contending that the deceased was responsible for the accident inasmuch as he was not wearing a helmet. It is also claimed that the deceased was driving the vehicle in a rash and negligent manner. A plea regarding non-joinder of necessary parties was also taken inasmuch as the insured and the insurance company of the motor cycle bearing Registration No.TN-10-A-0421 were not made parties to the original petition. The Insurance Company also disputed the claim relating to the income of the deceased.

3. The Tribunal on a consideration of the evidence on record found that the accident occurred due to the rash and negligent driving of the motor cycle belonging to the 1st respondent, insured with the 2nd respondent. In arriving at the said finding, the Tribunal had also taken note of the fact that the FIR was registered against the driver of the motor cycle belonging to the 1st respondent. As regards the quantum of compensation, the Tribunal took the income of the deceased at Rs.32,000/- per month and after deducting 1/3rd towards his personal expenses arrived at the loss of dependency at Rs.21,335/-. Taking into account the age of the claimants, the Tribunal applied a multiplier of 11 and arrived at the loss of dependency at Rs.28,16,220/-. The Tribunal granted a further sum of Rs.25,000/- for funeral expenses and Rs.2,00,000/- (Rs.1,00,000/- each claimant) for loss of love and affection and pain and sufferings. Thus the Tribunal arrived at a total compensation of Rs.3,41,220/-. Aggrieved by the said award, the claimants are before us by way of this appeal. The Insurance Company has accepted the award.

4. We have heard. Mr.F.Terry Chella Raja, learned counsel appearing for the appellants and Mrs.R.Sreevidhya, learned counsel appearing for the 2nd respondent.

5. Mr.F.Terry Chella Raja, learned counsel appearing for the appellants would contend that the deceased was an engineering graduate and he had very bright future prospects. He would contend that the Tribunal was not justified in not taking into account the future prospects. He would also rely upon the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 271, in order to buttress his claim regarding future prospects. The learned counsel would further contend that, the Tribunal again fell in error in adopting a multiplier based on the age of the claimants. On the other hand, the Tribunal should have adopted the multiplier based on the age of the deceased. He would also draw our attention to the judgment of the Hon'ble Supreme Court in Sarla Verma & Others vs. Delhi Transport Corporation & Another, reported in 2009(2) TN MAC (1) (SC), wherein the

Hon'ble Apex Court has held that multiplier should be based on the age of the deceased and not on the age of the claimants.

6. Per contra Mrs.R.Sreevidhya, learned counsel appearing for the Insurance Company would submit that on an over all assessment, the compensation awarded by the Tribunal is justified.

7. We have considered the rival submissions. Being a claimants appeal, the only question that is to be gone into is the quantum of compensation. We find from the evidence on record that the deceased was drawing a gross salary of Rs.35,918/- per month. Therefore, the Tribunal was not right in fixing the salary of Rs.32,000/- per month. Being an Engineering Graduate, working in a reputed software Company, it cannot be said that the deceased did not have any future prospects.

8. In view of the larger bench judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd. vs Pranay Sethi and others reported in 2017 (2) TN MAC 271, the future prospects is to be taken at 40%. Therefore, the monthly income of the deceased should be fixed at Rs.49,000/- (35,000+14,000). Out of this Rs.49,000/-, 10% viz., Rs.4,900/- is to be deducted for income tax, leaving a balance of Rs.44,100/-. The deceased being a bachelor and his parents are the only claimants 50% of the amount should be deducted for his personal expenses. Thus the monthly loss of dependency works out to Rs.22,050/-. Admittedly the deceased was aged 24 years at the time of the accident, the multiplier applicable as per Sarla Verma & Others vs. Delhi Transport Corporation & Another, reported in 2009(2) TN MAC (1) (SC) is 18. Therefore, the total loss of dependency would be Rs.22,050/- x 12 x 18 = Rs.47,62,800/-. The Tribunal has granted a sum of Rs.25,000/- for funeral expenses and the same is sustained, the award of Rs.2,00,000/- towards loss of love and affection at Rs.1,00,000/- per claimant is on the higher side and the same is reduced to Rs.40,000/- per claimant.

9. Based on the above, the total compensation payable is determined at Rs.48,67,800/- and the same is rounded of to Rs.48,70,000/-.

10. In view of the above, the appeal is partly allowed, the award of the Tribunal is modified granting a sum of Rs.48,70,000/- as compensation with interest at 7.5% from the date of the claim petition till date of payment and proportionate costs. The claim amount is apportioned between the appellants/ claimants as follows. The 1st appellant, mother will be entitled to a sum of Rs.30,00,000/- and the 2nd appellant father will be entitled to Rs.18,70,000/-. The appellants shall pay the difference in Court fee. The Insurance Company will deposit the enhanced amount within a period of six weeks from

the date of receipt of a copy of this order. There will be no costs in this appeal.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Motor Accident Claims Tribunal,
II Additional District Judge,
Tiruvallur, Poonamalle.

2. The Section Officer,
VR Section, High Court,
Madras 600 104.

+1cc to Mr. M.Malar, Advocate, S.R.No. 56026
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 56923

CMA. No.1240 of 2018

EV(CO)
GN(07/09/2018)