IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.130 of 2018 and 3471 of 2017

The Oriental Insurance Co. Ltd.,
Motor Third Party Claims-Hub,
No.216, Prakasam Salai, Broadway,
Chennai 600 108. ... Appellant in CMA.130/2018 & 2nd respondent in CMA.3471/2017

Vs

1.G.Kalavathi
2.G.Shridharan (Minor)
3.G.Sharini (Minor)
Minors rep. by their mother,
N.F.G.G.Kalavathi)
4.K.Mahalingam
5.M.Saroja ...Respondents 1 to 5 in CMA.130/2018 & Appellants in CMA.3471/2017

6.K.Karunanithi ... 6th respondent in CMA.130/2018 & 1st respondent in CMA.3471/2017

PRAYER :

Civil Miscellaneous Appeals preferred against the Judgment and Decree passed by the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai in MACTOP.No.1630 of 2013 dated 22.08.2017.

For Appellant in CMA.130/2018 & R-2 in CMA.3471/2017 : Mr.M.Krishnamoorthy

For Respondents 1 to 5 in CMA.130/2018 & Appllants in CMA.3417/2017 : Mrs.P.T.Saleem Fathima

For R-6 in CMA.130/2018 & R-2 in CMA.3471/2017 : Set ex parte.

COMMON JUDGMENT

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

The insurance company has preferred C.M.A.No.130 of 2018 alleging the award of Rs.38,19,000/- as compensation on the higher side and the claimants have preferred C.M.A.No.3471 of 2017 seeking enhancement of compensation, for the death of M.Gopalakrishnan, aged about 39 years, running a proprietory business in the name of M/s.Marks Cargo Movers, allegedly earning about Rs.9 lakhs per annum, in the accident that occurred on 13.04.2012 when the deceased was proceeding in his car from west to east direction in Tiruchi-Thanjavur National Highway, and while the car was overtaking a Tipper lorry, the lorry driver swerved to the right side and hit the car, resulting in capsizing of the car.

2.Heard Mrs.P.T.Saleem Fathima, learned counsel appearing for the claimants and Mr.M.Krishnamoorthy, learned counsel appearing for the insurance company.

3.The only question to be decided in these appeals is with regard to the quantum, as there is no appeal preferred by the insurance company questioning the negligence aspect.

4.Mrs.Saleem Fathima would submit that the deceased was an income-tax assessee right from the Assessment Year 2007-08 onwards and the assessment orders, Exs.P.6 to P.8 would undoubtedly prove that the income tax return shown was Rs.3,02,067/-, Rs.6,10,653/- and Rs.5,81,909/- for the respective assessment years of0 2009-10, 2010-11 and 2011-12. However, the Tribunal took Rs.18,750/- as monthly salary and determined the compensation, which is erroneous.

5.On the other hand, Mr.Krishnamoorthy, would submit that the award of the Tribunal is on the higher side and the award of 9% interest is also exorbitant and therefore, seeks interference of this Court.

6.A perusal of the award would show that the Tribunal took the five years average annual income from 2007-08 to 2011-12 and arrived at the best average of Rs.4,50,000/-. Whereas, the settled position of law is that the average of last three years alone should be taken into consideration and therefore, the determination of the Tribunal is set aside and if the average of income for the last three years 2009-10, 2010-11 and 2011-12 is taken into account, the total income would be Rs.3,02,067/- + Rs.6,10,653/- + Rs.5,81,909/- = Rs.14,94,629 / 3 = Rs.4,98,209/-.

7.The Tribunal, as per the law which was in force at the time of passing of the award, arrived 50% of the future prospects, whereas 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), 40% has to be added towards future prospects, as the deceased was privately employed or self-employed. Thus, if 40% is added towards future prospects, the annual income would be Rs.6,97,493/- (i.e., Rs.4,98,209/- + Rs.1,99,284/- (40% of Rs.4,98,209/-)].

8.In the aforesaid yearly income, standard deduction, which does not attract income tax during the year 2012 is Rs.2,00,000/- and if Rs.2,00,000/- is deducted, the taxable income would be at Rs.4,97,493/-. Out of the taxable income of Rs.4,97,493/-, upto Rs.3,00,000/-, 10% is to be deducted towards income tax, which comes to Rs.30,000/- and from the balance of Rs.1,97,493/-, 20% is to be deducted, which comes to Rs.39,499/- and thus, Rs.69,499/- is to be deducted towards income tax. After deducting the said amount of income tax, the yearly income would be Rs.6,27,994/- [Rs.6,97,493/- (-) Rs.69,499/-].

9.As the size of the family is 5, one-fourth has to be deducted towards personal expenses and the loss of income would be Rs.4,70,996/- (Rs.6,27,994/- (-) Rs.1,56,998/-).

10.The proper multiplier, as per the age of the deceased, i.e., 39 years, is 15 and if multiplier 15 is applied, the loss of income would be Rs.4,70,996/- x 15 = Rs.70,64,940/-.

11.While calculating the above amount, this Court rejects the contention of the learned counsel for the appellant/insurance company, Mr.Krishnamoorthy, that the business is now being run by the first claimant/wife. The business run by the deceased was a transport business and it is very impossible for a lady to manage the transport business. Even though originally she admitted that she is running the business, subsequently, she clarified that the business was closed. Practically, this Court is of the opinion that a lady would not be in a position and she would have closed down the business given the nature of the business.

12.The Tribunal awarded a sum of Rs.1,50,000/- towards love and affection to claimants 2 to 5 and the same is confirmed. Rs.1,00,000/- awarded towards loss of consortium is reduced to Rs.40,000/-. The award of Rs.25,000/- towards funeral expenses is reduced to Rs.15,000/- and a sum of Rs.15,000/- and Rs.10,000/- is awarded towards loss of estate and transport expenses respectively. Thus, the total amount of compensation would be Rs.72,94,940/-, rounded off to

Rs.73,00,000/-.

13.The Tribunal has awarded 9% interest, which is reduced to 7.5% per annum.

14.In the result, C.M.A.No.130 of 2018 filed by the Insurance Company is dismissed and C.M.A.No.3471 of 2017 filed by the claimants is partly allowed, enhancing the award of the Tribunal from Rs.38,19,000/- to Rs.73,00,000/- with interest. Out of the aforesaid award amount of Rs.73,00,000/-, the 1^{st} claimant is entitled to Rs.30,00,000/- and the 4^{th} and 5^{th} claimants are each entitled to Rs.4,00,000/-. The 2^{nd} and 3^{rd} claimants are entitled to Rs.17,50,000/- each.

15.The 2^{nd} respondent/Insurance company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest and costs, before the Tribunal, 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 claimants, except the minors' shares, along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon. The shares of the minors be deposited in a fixed deposit in any nationalised bank, initially for a period of three years and renewed periodically, till they attain majority. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sra

To

The II Judge, Court of Small Causes
(Motor Accident Claims Tribunal)
Chennai.

+2ccs to Mr.M.Krishnamoorthy, Advocate, S.R.No.44204, 43967
+1cc to Mr.M.Swamikannu, Advocate, S.R.No.43894

C.M.A.Nos.130 of 2018
and 3471 of 2017

GJ(CO)
CS/28/08/18