IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

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

C.M.A.No.1303 of 2018
and CMP.No.10368 of 2018

Shriram General Insurance Co.Ltd.,
Plot No.5, 1st floor,
Ramachandran Street,
Saravana Nagar, Seevaram,
Perungudi, Chennai 600 096. ..Appellant/2nd Respondent

Vs

.. Respondent 1 & 3/Petitioners

1. Kokila
2. Devendran
3. Ragunath
4. R.Guganathan .. 4th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the judgment and decree dated 05.01.2018 made in MCOP.No.1989 of 2016, on the file of the Motor Accident Claims Tribunal, (Special Subordinate Court-1, Court of Small Causes) Chennai.

For Appellant : Mr. S.Dhakshnamoorthy

For Respondents : Mr. K.Suryanarayanan
1 to 3

J U D G M E N T
(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Special Sub Court-1, Court of Small Causes, Chennai in MCOP.No.1989 of 2016, dated 05.01.2018 the appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the award of a sum of Rs.23,77,000/- passed by the Claims Tribunal as erroneous.

2. Heard Mr.S.Dhakshnamoorthy, the learned counsel appearing for the appellant and Mr.K.Suryanarayanan, the learned counsel appearing for the respondents.

3. The brief facts of the case are as follows:-

On 01.02.2016 at about 8:00 hrs when the deceased Ranjith was riding his Motorcycle bearing Regn.No.TN-05-AM-6162 proceeding from North to South direction on the Maduravoyil bridge near Poonamallee Sub Bridge Junction, Chennai, a Lorry bearing Registration No.TN-18-H-3190 proceeding in the same direction driven by its driver in a rash and negligent manner with a greater speed without following the traffic rules, hit behind the motorcycle of the deceased and drag on the motorcycle and dashed on the Bridge wall and stopped, due to which the deceased was thrown out and sustained head injury and multiple fatal injuries all over the body. Immediately he was taken to Government KMC Hospital, Chennai but he died on the way to hospital. Postmortem was conducted by the Government KMC Hospital, Kilpauk, Chennai. Therefore it is the case that the driver of the Lorry bearing Registration No.TN-18-H-3190 alone is responsible for the accident.

4. The case of the appellant/second respondent is that the accident has not occurred due to the rash and negligent driving of the lorry driver but due to the rash and negligent driving of the rider of the two wheeler.

5. After considering the pleadings and evidences the Tribunal fixed the negligence on the part of the rider of the Motorcycle bearing Registration No.TN-05-AM-6162. The only issue that arise in the present appeal is pertaining to the quantum of compensation fixed by the Tribunal. Therefore the issue to be determined in the present appeal is that whether the compensation fixed by the Tribunal is just and fair?.

6. The age of the deceased was mentioned as 27 years in the claim petition, whereas, in the Death certificate which was marked as Ex.P.4 the age of the deceased was mentioned as 28 years. Further in the driving license which was marked as Ex.P.6 the age of the deceased was mentioned as 28 years. Therefore the Tribunal rightly took the age of the deceased as 28 years. Since there is no challenge with regard to the negligence as stated above the only issue to be decided in this appeal is the quantum.

7. The deceased was working as Electrician at the time of accident and according to the claim made on the part of the claimants the income of the deceased was Rs.40,000/- per month. However, there was no proof produced by the respondents/petitioners before the Tribunal with regard to the income of the deceased. Therefore the Tribunal fixed a sum of Rs.15,000/- as monthly notional income of the deceased. While fixing a sum of Rs.15,000/- as monthly notional income of the

deceased, the Tribunal did not provide any justification for the same.

8. The Hon'ble Apex Court 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. However the Tribunal fixed a sum of Rs.15,000/- as notional income for the deceased, without any rational and any application of mind. Before fixing the income, the Tribunal should have considered the notional income fixed by the Apex Court in Syed Sadiq case (cited supra) plus reasonable income addition to the deceased electrician and the following other factors.

> (i) The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.
>
> (ii) The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.
>
> (iii) Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhacement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a

tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour ”.

9. The Honourable Supreme Court 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. Since the Hon'ble Apex Court took notional income of a vegetable vendor as Rs.6,500/- during the year 2008, we fix a sum of Rs.7,500/- as notional income for an electrician during the year 2008 considering the nature of work. In the present case the accident occurred in the year 2016. Therefore, it is just and necessary to increase the minimum salary as fixed by the Hon'ble Apex Court corresponding to the cost of living and increase in price of the essentials which goes up from time to time. Therefore to determine the notional income of the deceased who was working as an Electrician, it is appropriate to apply the cost inflation index (CII) as issued by the Central Board of Direct Taxes (CBDT) for the purpose of determination of notional income of the deceased person.

10. The CBDT vide Notification No.370142 (E) (No.26/2008) (F.No.370/42/3/2008-TPL) dated 13.06.2008 specifies the cost of inflation index as mentioned in column No.3, for the financial year mentioned in the corresponding entry in column No.2 in the below said tabular column:-

S.No.	Financial Year	Cost Inflation Index
1	2001-2002	100
2	2002-2003	105
3	2003-2004	109
4	2004-2005	113
5	2005-2006	117
6	2006-2007	122
7	2007-2008	129
8	2008-2009	137
9	2009-2010	148
10	2010-2011	167
11	2011-2012	184
12	2012-2013	200
13	2013-2014	220

S.No.	Financial Year	Cost Inflation Index
14	2014-2015	240
15	2015-2016	254
16	2016-2017	264
17	2017-2018	272
18	2018-2019	280

11. As per the above said index, the cost inflation index for the year 2007-2008 is 129 and for the year 2015-2016 is 254. Now we determine the notional income of the deceased in the manner stated below:-

The notional income fixed by the
Hon'ble Supreme Court of India   Cost of Inflation Index
for the vegetable vendor i.e., Rs.6,500/- X <u>for the year 2015-2016</u>
(+) reasonable addition of Rs.1,000/-
as the deceased being an Electrician Cost of inflation index for the
year 2007-2008

Therefore the notional income of the deceased after applying inflation index will be a sum of Rs.14,767/-. Hence, we re-fix the notional income of the deceased as Rs.14,767/- from Rs.15,000/-, as was fixed by the Tribunal.

12. In the present case the deceased was aged about 28 years. As per the judgment, in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, 40% of the income of the deceased should be added for future prospects, accordingly we fix the monthly income of the deceased along with future prospects as Rs.20,673/- (Rs.14767 + Rs.14767 x 40/100). Further, in order to calculate the personal expenses, the Hon'ble Apex Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation that if the deceased is a bachelor, 50% of the total income to be deducted towards the personal expenses of the deceased. Therefore, we decide to deduct 50% of the total annual income for calculating personal expenses.

13. Deducting half of the amount towards personal expenses, the loss of dependency per annum works out to Rs.10,336/- (Rs.20,673 x 50/100). Applying the multiplier of '17' the total loss of dependency would work out to Rs.21,08,544/-. Further the Tribunal awarded Rs.2,00,000/- towards loss of love and affection which we feel is too high and therefore we reduce the same to Rs.50,000/-each to the first and second respondents and Rs.25,000/- to the third respondent. The

Tribunal awarded Rs.5,000/- towards "Transportation" and the same is confirmed-. The Tribunal awarded Rs.15,000/- towards "Loss of estate" and the same is confirmed. The Tribunal has awarded Rs.15,000/- towards "Funeral Expenses"and the same is confirmed.

14. Hence the total compensation payable to the appellants is as hereunder.

Head	Amount (Rs.)
Loss of Dependency	Rs.21,08,544/-
Loss of love and affection to the mother of the deceased. Loss of love and affection to the father of the deceased. Loss of love and affectionto the brother of the deceased.	Rs.50,000/- Rs.50,000/- Rs.25,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Transportation	Rs.5,000/-
Total	Rs.22,68,544/-

Hence the total compensation payable in this case is Rs.22,68,544/- and the same is rounded off to Rs.22,70,000/-

15. The total amount of compensation shall be shared by the appellants 1 to 3 herein, in the following manner:-

The mother of the deceased who is the first respondent herein shall receive a sum of Rs.9,00,000/-, father of the deceased who is the second respondent herein shall receive a sum of Rs.9,00,000/-, and the brother of deceased who is the third respondent herein shall receive a sum of Rs.4,70,000/-.

16. The Insurance Company is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of one week thereon.

17. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.23,77,000/- is reduced to Rs.22,70,000/-. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

dpq

To

The Special Sub Court-1,
Court of Small Causes, Chennai.
(Motor Accident Claims Tribunal)

+1cc to Mr.S.Dhakshnamoorthy, Advocate SR.No.40846

+1cc to Mr.K.Suryanarayanan, Advocate SR.No.41280

C.M.A.No.1303 of 2018
and CMP.No.10368 of 2018

GJ II(CO)

GMY(26/10/2018)