IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.1341 & 1708 of 2018

C.M.A.No.1708 of 2018
M/s.Oriental Insurance Company Limited
No.115, II Floor, Oriental House
Broadway, Prakasam Salai
Chennai - 600 108. ... Appellant/2nd Respondent

Vs.

1.Sushma Jitaraja
2.M.Jitaraja
3.J.Sushmitha Jain ... Respondents 1 to 3in CMA 1708/18
Appellants in CMA 1341/18/Claimants
4.S.Ashwin ...4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in MCOP No.5592 of 2015, dated 22.02.2018, on the file of the Motor Accidents Claims Tribunal, Subordinate Court No.1, Small Causes Court, Chennai.

For Appellant : Mr.M.B.Raghavan
For Respondents : Ms.R.Reena for M/s.T.Charless

C.M.A.No.1341 of 2018
1.Sushma Jitaraja
2.M.Jitaraja
3.J.Sushmitha Jain ... Appellants/Claimants

Vs.

1.S.Ashwin
2.M/s.Oriental Insurance Company Limited
No.115, II Floor, Oriental House
Broadway, Prakasam Salai
Chennai - 600 108. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 22.02.2018 made in M.A.C.T.O.P. No.5592 of 2015, on the file of the Motor Accidents Claims Tribunal, Special Judge-

1, Small Causes Court, Chennai.

For Appellants : Ms.R.Reena

For 2nd Respondent : Mr.M.B.Ragavan

COMMON JUDGMENT

These appeals have been filed against the common award passed by the Tribunal. C.M.A. No.1341 of 2018 has been filed by the Claimants for enhancement of the award amount and C.M.A. No.1708 of 2018 has been filed by the Insurance Company for reduction of the award amount.

2.The appeal filed by the Insurance Company is against the award amount of Rs.60,17,000/- as compensation for the death of one J.Amitesh Jain, 21 years, III year B.E. Student studying in S.S.N. College of Engineering, Kalavakkam, Chennai, in the accident, which occurred on 21.03.2015, when the deceased was travelling as a pillion rider, which was driven in a rash and negligent manner at a high speed and without observing the traffic rules and hit the pavement and further, hit against a tree due to which he died.

3.Heard Mr.M.B.Raghavan, learned counsel for the Insurance Company and Ms.Reena representing M/s.T.Charless, learned counsel for the Claimants.

4.The only issue, which is focused before this Court, is with regard to the quantum of compensation fixed by the Tribunal.

5.Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company would submit that determining the monthly income of Rs.36,000/- is based on surmises and conjectures in the absence of any concrete proof. He found fault with the Tribunal for having relied upon the income of PW3, who studied along with the deceased. It cannot be said the same income would be earned by another classmate of PW3 (ie) deceased. Therefore, he seeks to reduce the amount fixed as monthly income by the Tribunal.

6.However, Ms.Reena, learned counsel appearing for the claimants would submit that the deceased was a bright student and right from school, he had participated in many competitions and won many medals as proved by Exs.P14 to P46. The deceased also worked along with PW3 as a team in the project called "Development of an air cooled compact spiral radiator". When one of the Team members got a job and is earning Rs.36,000/-, the

Tribunal is justified in taking the said amount. Therefore, the learned counsel would support the monthly income determined by the Tribunal.

7.It is an admitted fact that the victim was a III year B.E.Student as proved by Ex.P12 - B.E. Mark sheet and Ex.P13 - College fees structure of the deceased. As rightly pointed out by Ms.Reena, learned counsel appearing for the Victim, right from school days, the deceased was a meritorious student and had participated in many competitions as proved by Exs-P20 to P46, which are extracted as follows:-

Exhibits	Particulars
Ex.P20	Certificate issued by Swamy's School for Hindi Oratorical to deceased
Ex.P21	Certificate issued by Swamy's School for Quiz to deceased
Ex.P22	Certificate issued by Swamy's School for subject topper in Hindi to deceased
Ex.P23	Certificate issued by Swamy's School for subject topper in Maths to deceased
Ex.P24	Certificate issued by Kamarajar Academy for subject English essay to deceased
Ex.P25	Certificate issued by National Biodiversity authority of India for Flipper fest to deceased
Ex.P26	Certificate issued by Devi Academy for power point presentation to deceased
Ex.P27	Certificate issued by L&T for self development to deceased
Ex.P28	Certificate issued by Vel Tech for inspire internship science to deceased
Ex.P29	Certificate issued by Mathematics olympiad to deceased
Ex.P30	Certificate issued by TN Science & Tech centre to deceased
Ex.P31	Certificate issued by L&T for grow your potential to deceased
Ex.P32	Certificate issued by Devi academy for quiz to deceased
Ex.P33	Certificate issued by Swamy School for quiz for year 2011 to deceased
Ex.P34	Certificate issued by Swamy School for English extempore to deceased

Exhibits	Particulars
Ex.P35	Certificate issued by Swamy school for Hindi Oratorical to deceased+
Ex.P36	Certificate issued by Swamy school for quiz for year 2012 to deceased
Ex.P37	Certificate issued by Swamy School for school topper in Hindi to deceased
Ex.P38	Certificate issued by Swamy School for school topper in Biology to deceased
Ex.P39	Certificate issued by L&T for internship training part to deceased
Ex.P40	Certificate issued by Coimbatore Int. of Tec. for paper presentation to deceased
Ex.P41	Certificate issued by Goodwin motors to deceased
Ex.P42	Certificate issued by Govt. of India defense ministry to deceased
Ex.P43	Certificate issued by Sathyabama University to deceased
Ex.P44	Certificate issued by IAETSD to deceased
Ex.P45	Certificate issued by SSN College for project presentation to deceased
Ex.P46	Certificate issued by SSN College for paper presentation to deceased

Unless, the victim is meritorious, he would not have the inclination to participate in any of the competition. The above certificates would undoubtedly prove that the deceased was a very bright, intelligent and meritorious student.

8.On a perusal of the certificate issued by S.S.N. Engineering College dated 06.11.2014, which is marked as Ex.P45, it is seen that a group of students including the deceased, J.Amitesh Jain and PW3, M.Jayaarun Prasanth submitted a project called "Development of an air cooled compact spiral radiator". The victim as a II year student had successfully completed the "In-plant Training in Combat Vehicles Res & Dev Estt. and had received the certificate issued by the Ministry of Defence, Government of India, which is marked as Ex.P42. Ex.P41 is the certificate issued by Goodwin Motors, Automobile Training and Soft Skill Training Institution, which would prove that the deceased had attended Automotive Technical cum Practical Training Program. Ex.P43 and P44 are the certificates issued for having participated in Paper presentation of International Conference on "Energy Materials" (ICEM-2014) titled as "A Review of Energy Materials used in Devices for Harnessing Non-

Conventional Energy Sources” and and International Conference on “Current Trends in Engineering Research ICCTER - 2014 titled as “Analytical Study of General Failure in Prominent Components” respectively. Ex.P39 is the certificate issued by L&T Construction stating that the deceased successfully underwent his internship training during the year 2013. Ex.P46 is the Certificate issued to the Deceased for having participated in an International Conference on “Sustainable Energy Resources, Materials and Technologies (ISERMAT-2015)” and he has presented a paper titled “Effect of Ethanol on the Fuel Consumption of a Two Stroke Unmodified used Commercial Petrol Engine”. The above certificates are a few from Ex.P20 to P46, which would undoubtedly prove that the deceased was a very brilliant student and had potential of developing himself as a Scientist or a C.E.O. or a Corporate Officer. Therefore, he certainly had potential to earn Rs.36,000/- per month.

9.The Tribunal's determination with regard to monthly income by taking the monthly income of PW3, namely, M.Jayaarun Prasanth, who was a co-student and a team mate of the deceased, who is employed in Hyundai Company as proved by Ex.s.P49 to P51, namely, P49, which is the job appointment and absorption of PW3 and Ex-P50, which is Employment I.D. Card of PW3 and Ex-P51, Pay slips for the months from June 2017 to December 2017 of PW3, is justified. From the evidence of PW3 as well as Exs.P49 to P51, it is evident that PW3, who is a co-student of the deceased, is earning monthly salary of Rs.36,000/-. Considering similarly placed meritorious student, who is employed in Hyundai Company, the Tribunal rightly determined the monthly income of the deceased @ Rs.36,000/-. Therefore, Rs.36,000/- determined notionally as monthly income of the deceased is confirmed.

10.Though the Tribunal would have been justified in adding future prospects @ 40% to the actual income of the deceased, the Tribunal considering the age of the deceased as 21, added 50% towards future prospects and determined the income at Rs.54,000/- per month. However, as per the judgment of National Insurance Co. Ltd. Vs. Pranay Sethi and Others in SLP (Civil) 25590/2014 dated 31.10.2017, 40% has to be added for persons who are privately employed. Therefore, instead of 50%, this Court adds 40%. If 40% is added as future prospects, the monthly income would be Rs.36,000/- + Rs.14,400/- = Rs.50,400/-.

11.The deceased was a bachelor. The Tribunal rightly deducted 50% towards Personal Expenses. After deduction of personal expenses, the loss of monthly contribution to the family would be Rs.50,400/2=Rs.25,200/-. The Tribunal adopted the multiplier of 18 as per the age of the deceased, as proved by Ex.s.P10 and P12, which are X and XII mark sheets respectively. The loss of income to the family would be

Rs.25,200/- X 18 X 12 = Rs.54,43,200/-.

12.The claimants 1 and 2 had lost their only son and the 3rd claimant, who is the sister had lost her only brother. Therefore, the Tribunal rightly awarded Rs.1,50,000/- towards love and affection, Rs.15,000/- towards loss of estate, Rs.15,000/- towards Funeral expenses. The same are confirmed. The Tribunal awarded a sum of Rs.5,000/- towards Transport Charges and the same is increased to Rs.10,000/-. The total award amount comes to Rs.56,33,200/-, which is rounded of to Rs.56,35,000/-. Hence, the award of the Tribunal to tune of Rs.60,17,000/- is reduced to Rs.56,35,000/-. The Tribunal awarded interest at the rate of 7.5% per annum and the same is confirmed. Out of the award amount, the First and Second claimants are entitled to Rs.25,00,000/- each and the third claimant/sister is entitled to Rs.6,35,000/-.

13.The Insurance Company is directed to deposit the entire amount as per the modified award passed by this Court along with interest and costs, before the Tribunal, after deducting the amount already deposited, if any, within a period of six(6) weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the respective shares of the claimants to their respective bank accounts as per the ratio fixed by this Court through RTGS within a period of one week thereon.

14.The Appeal bearing C.M.A.No.1341 of 2018 filed by the claimants is dismissed and the appeal bearing C.M.A.No.1708 of 2018 filed by the Insurance Company is partly allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

maya

To

The SpecialSubordinate Judge-I
Small Causes Court
Chennai - 104.

+1cc to Mr.T.Charles, Advocate SR.No.53437

+2cc to Mr.N.Vijaya Raghavan, Advocate SR.No.54143

GMY(08/10/2018)