IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.07.2018
CORAM :

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

C.M.A.No.1435 of 2018
and
CMP.No.11475 of 2018

M/s.Magma HDI General Insurance Company Limited,
No.454/4, Ram Complex,
Near Bus Stand, Pallapatti,
Salem District. ... Appellant/2nd Respondent

Vs

1.Victoria
2.Sheeba .. Respondent 1 & 2/ Petitioners

3.A.P.Venkatachalam ... Respondents/1st Respondent

PRAYER :
Civil Miscellaneous Appeal filed against the Judgment and Decree in MCOP.No.216 of 2015, dated 28.04.2017, on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellant : Mr.R.Mohan Babu
for M/s.M.B.Gopalan Associate
For Respondents: Mr.Kaithamalai Kumaran
(for R1 and R2)

J U D G M E N T

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

The appeal has been preferred by the insurance company against the award of Rs.17,05,000/- as compensation for the death of one E.Naveen, aged about 17 years, XII standard student and part time xerox operator, allegedly earning about Rs.6,000/- per month, in the accident which occurred on 04.02.2015, when the deceased was travelling as a pillion rider in a two wheeler, which was hit down by the lorry, insured with the appellant/insurance company, driven rashly and negligently coming from the opposite direction. Therefore, the claim petition.

2.On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the lorry and awarded a sum of Rs.17,05,000/-. The said award is being challenged before this Court on the ground of adequacy.

3.Heard, Mr.R.Mohan Babu, learned counsel appearing for the appellant and Mr.Kaithamalai Kumaran, learned counsel appearing for the claimants.

4.It is evident that the deceased was a student as proved by Ex.P.10, Ex.P.12 and Ex.P.13. As far as income is concerned, the Tribunal relied upon V.Mekala Vs. M.Malathi and another, reported in 2014 (2) TN MAC 6 (SC), to determine the monthly income at Rs.10,000/-. Mr.R.Mohan Babu, learned counsel appearing for the appellant would submit that in Mekala's case, Rs.10,000/- was fixed as monthly income along with future prospects and therefore, he seeks to reduce the amount. However, a perusal of the judgment in Mekala's case, shows that CMA itself was filed in the year 2008, before the High Court and therefore, MACTOP would be at least three years old. For a student, who died in the year 2005, monthly income was determined along with future prospects at Rs.10,000/- by the Hon'ble Supreme Court, whereas in this case, the accident occurred on 04.02.2015 (i.e.,) after ten years and therefore, Rs.10,000/- taken by the Tribunal as notional monthly income has to be confirmed. One another reason to confirm the said amount is that the deceased was a very meritorious student as he secured 422 marks out of 500 in SSLC Examination, as proved by Ex.P.10. Further, Ex.P.14-Certificate of merit, Ex.P.15-Certificate of appreciation would definitely prove that the deceased was an extraordinary student, both academically as well as in extra curricular activities. Therefore, Rs.10,000/- taken by the Tribunal as notional income is confirmed.

5.The Tribunal took 50% towards future prospects, as per the law existing on the date of passing of award. 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. After adding 40% towards future prospects, the monthly income would be at Rs.14,000/- (Rs.10,000/- + 40% of Rs.14,000/-).

6.Though 50% has to be deducted towards personal expenses, if a bachelor dies, taking into consideration the fact that the 1st respondent is a widow, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) 1/3rd has to be deducted towards personal expenses. If 1/3rd is deducted towards personal expenses, the monthly contribution would be at Rs.9,333/- (Rs.14,000/- 1/3rd of Rs.14,000/-).

7.The appropriate multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is '18'. Therefore, the loss of income would be at Rs.20,15,928/- (Rs.9,333/- x 12 x 18).

8.Loss of love and affection:

The Tribunal awarded a sum of Rs.25,000/- each to the claimants under this head. The same is confirmed.

9.Funeral Expenses:

The Tribunal awarded a sum of Rs.25,000/-. 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), the same is reduced to Rs.15,000/-.

10.Transportation:

The Tribunal awarded a sum of Rs.10,000/- under this head. The same is confirmed.

11.Loss of estate:

Though no amount was awarded by the Tribunal under this head, 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), this Court awards a sum of Rs.15,000/- under this head.

Head	Amount (Rs.)
Total loss of income	2015928
Loss of love and affection	50000
Funeral expenses	15000
Transportation	10000
Loss of estate	15000
Total	2105928

12.Hence, the total compensation payable in this case is Rs.21,05,928/-, rounded off to Rs.21,00,000/-

13.The Tribunal awarded interest at the rate of 7.5% per annum. The same is confirmed.

14.Out of the award amount, the 1st respondent, who is the mother of the deceased is entitled to get Rs.15,00,000/- and the 2nd respondent, who is the sister of the deceased, is entitled to get Rs.6,00,000/-.

15.Though the appeal has been preferred by the insurance company against the award of Rs.17,05,000/-, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.17,05,000/- is enhanced to Rs.21,00,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC). Therefore, in an endevour to do complete justice, this Court enhanced the compensation.

16.The appellant/Insurance company is directed to deposit the award amount along with interest and costs as per the modified award passed by this Court, 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 the claimants 1 and 2 along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon.

17.Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.17,05,000/- to Rs.21,00,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sai
To
1. The Special District Judge,
(Motor Accident Claims Tribunal) Erode.

+1cc to Mr.Kaithamalai Kumaran, Advocate, S.R.No.44281
+1cc to M/s.M.B.Gopalan Associate, Advocate, S.R.No.44711

C.M.A.No.1435 of 2018

BR(Co)
CS/06/09/18