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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2018

CORAM :

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

C.M.A.No.1522 of 2018
and
C.M.P.No.12109 of 2018

M/s.Reliance General Insurance Company Limited,
No.2054, 2nd Avenue,
Next to Senthil Nursing Home,
Anna Nagar,
Chennai 600 040. ... Appellant /2nd Respondent

Vs

1.B.Chithra

2.Santhoshkumar (Minor)

3.Sanjana (Minor)

(Respondents 2 & 3 minors,
rep. by mother and NF 1st respondent)

4.Vaduvambal ... Respondents 1 to 4/Petitioners

5.K.Illayaraja ... 5th Respondent/Ist Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree made in MCOP.No.54 of 2014, dated 10.10.2017, on the file of the Motor Accident Claims Tribunal, 3rd Additional District Court, Poonamallee @ Tiruvallur.

For Appellant :Mr.M.B.Raghavan

For Respondents:Mr.K.Varadha Kamaraj (for R1 to R4)

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.16,79,000/- as compensation for the death of one D.Babu, aged about 40 years, an auto driver, allegedly earning about Rs.25,000/- per month, in the accident, which occurred on 15.12.2013, when he was driving his auto from south to north direction and while turning the auto to the east direction on Poonamallee Trunk Road, the Qualis car belonging to the 5th respondent and insured with the appellant/insurance company came from north to south direction, rashly and negligently and hit the auto.

2.Heard, Mr.M.B.Raghavan, learned counsel appearing for the appellant/insurance company and Mr.K.Varadha Kamaraj, learned counsel appearing for the respondents 1 to 4/claimants.

3.The Learned counsel appearing for the appellant/insurance company would submit that the auto was coming from south to north direction and it tried to enter the right side of the road, in an attempt to cross the said road, without giving any signal and therefore, the accident could not have been averted. He would further submit that the auto driver should have been careful enough, while turning, that too while crossing the main road. Therefore, the negligence is only on the part of the auto and in no way the driver of the Qualis car, insured with the appellant/insurance company is responsible for the accident. Hence, he seeks to set aside the award.

4.However, Mr.K.Varadha Kamaraj, learned counsel appearing for the respondents 1 to 4/claimants, would support the award.

5.It is true that the Auto was coming from south to north and while turning towards east, a Qualis car, which was coming from north to south direction collided with the auto. It is also equally true that the driver of the auto should have been careful enough, while crossing the main road. However, after seeing the auto crossing the road, the driver of the Qualis car could have avoided the accident. The very fact that the car hit against the auto would show that no effort was taken by the Qualis car to slow down and to avoid the accident.

6.Further, the manner of the accident was explained in detail by PW2-eyewitness, stating that the accident occurred because of the rash and negligent driving of the car and not because of the driver of the auto. There is no rebuttal evidence on the side of the insurance company. In the absence of any rebuttal evidence and in view of PW2-eyewitness's evidence, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the Qualis car. Hence, the Tribunal's finding in this regard is confirmed.

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7.Though the claimants claimed Rs.25,000/- as monthly income of the deceased, the Tribunal determined the monthly income at Rs.9,000/-. The same is confirmed.

8.However, no future prospects has been added. The age of the deceased as per Ex.P.3-Postmortem certificate is "40years". 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.12,600/- (Rs.9000/- + 40% of Rs.9000/-)

9.The Tribunal rightly deducted 1/4th towards personal expenses as the size of the family is 4. The same is confirmed. After deducting 1/4th towards personal expenses, the monthly contribution of the deceased to his family would be at Rs.9,450/- (Rs.12,600/- (-) 1/4th of Rs.12,600/-).

10.Since the age of the deceased is "40years", 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), the appropriate multiplier is "15". Therefore, the loss of income would be at Rs.17,01,000/- (Rs.9,450/- x 12 x 15).

11.Loss of consortium:

The Tribunal awarded a sum of Rs.2,00,000/- under this head, which is not in conformity with 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). Therefore, the same is reduced to Rs.40,000/-.

12.Loss of love and affection:

The Tribunal awarded a sum of Rs.3,00,000/- to claimants 2 to 4 under this head. This Court reduces the same to Rs.75,000/- each, to the minor claimants 2 & 3 and Rs.25,000/- to the 4th claimant. Totally, a sum of Rs.1,75,000/- is awarded towards loss of love and affection to the claimants 2 to 4.

13.Loss of estate:

The Tribunal awarded a sum of Rs.10,000/- under this head. The same is enhanced to Rs.15,000/- 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).

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14.Funeral Expenses:

The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses. The same is reduced to Rs.15,000/-

15.Transportation:

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

Head	Amount (Rs.)
Total loss of income	1701000
Loss of consortium	40000
Loss of love and affection	175000
Loss of estate	15000
Funeral expenses	15000
Transportation	10000
Total	1956000

16.Hence, the total compensation payable in this case is Rs.19,56,000/-.

17.Though there is no rebuttal evidence on the side of the appellant/Insurance company, there is a specific stand taken by the appellant/insurance company, which has been incorporated in the award of the Tribunal as follows:

> "9)The second respondent contested the claim but the accident is not disputed. According to the second respondent the deceased did not possess driving license and insurance and the deceased with over load had driven the auto in a rash and negligent manner with two persons sitting on either side of the deceased and further the deceased had suddenly turned the auto from Poonamallee High Road to Noombal Road and capsized at the turning point but to substantiate the same no oral or documentary evidence has been produced on the second respondent side."

18.When such a stand was taken, the claimants should have exhibited the driving licence of the deceased. The non marking of driving licence of the deceased would show that he was not possessed with valid and effective driving licence. It has become a routine that almost about 50% of the drivers drive the vehicles without any valid and effective driving license and cause many accidents, resulting in loss of precious lives and injuries to many persons. Therefore, in an attempt to deprecate this kind of practice of driving vehicles without any valid and

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effective driving licence, 10% of the amount awarded towards compensation is deducted. If 10% is deducted, the compensation amount comes to Rs.17,60,400/- (Rs.19,56,000/- (-) 10% of Rs.19,56,000/-)

19.The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

20.Though the appeal has been preferred by the insurance company against the negligence aspect, by considering the facts and circumstances of the case and appreciating the same in toto, this Court while confirming the negligence aspect as reached by the Tribunal, re-appreciating the evidence invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India, has enhanced the compensation amount to Rs.17,60,400/-. 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 has enhanced the compensation.

21.Out of the amount awarded towards compensation, the 1st respondent/claimant is entitled to Rs.8,00,000/-, the 2nd and 3rd respondents are entitled to Rs.4,00,000/- each and the 4th respondent is entitled to Rs.1,60,400/-

22.The claimants are directed to pay the additional court fee, if any, within a period of four weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall be automatically deleted. The necessity to include the above clause is only to see that the additional court fee is paid promptly, as many complaints are received from the registry stating that the claimants' counsel are not paying the additional court fee for the enhanced award amount and thereby delaying the copy being made ready, preventingthe insurance company or transport corporation to receive the order copy, so that they could file an appeal or to act upon the order passed by this Court. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the Decree itself.

23.The Insurance company is directed to deposit the 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

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being made, the Tribunal is directed to transfer the share of the 1st and 4th claimants along with proportionate interest and costs to their bank accounts through RTGS within a period of one week thereon. As far as minor claimants 2 and 3 are concerned, their share shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st claimant/mother is permitted to withdraw interest accruing on such deposit once in three months.

24.Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.16,79,000/- to Rs.17,60,400/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sai

To

The III Additional District Judge,
(Motor Accident Claims Tribunal),
Poonamallee @ Tiruvallur.

+1cc to Mr.M.B.Gopalan Associates, Advocate Sr.48157
+1cc to Mr.K.Varadhakamaraj, Advocate Sr.46827

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