IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 1216 of 2014

&

M.P. No. 1 of 2014

The Divisional Manager,
New India Assurance Co. Limited,
Chennai - 1. ..Appellant/Respondent - 2

Vs.

1. Tmt. Clara @ Kamatchi
2. Minor Sai @ Sanjith Kumar
3. Minor Deveshwar
(Minors 2 & 3 rep. by their mother, guardian and next friend Tmt. Clara @ Kamatchi)
4. Tmt. Jamuna @ Sundari
5. Thiru. Chandrasekar @ Chandrasekaran
6. Thiru. Thamodharan ..Respondents/Petitioners/ Respondent - 1

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 20.11.2013 passed by the Motor Accidents Claims Tribunal (Sub Court), Tiruttani, in M.C.O.P. No. 347 of 2012.

For Appellant :: Mr.S. Manohar

For Respondents:: Mr.N.M. Elumalai
for R1 to R5
R6 - Not ready in notice.

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

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.72,17,545/- granted as compensation to the legal heirs of one C. Dinesh

Babu, aged 27 years, Sales Manager, in a private company, earning a sum of Rs.34,276/- per month, who died in the accident, which occurred on 21.09.2012, when he was riding his motor cycle from South to North at Service Road Opposite to Lady Wellington College, Chennai, which was hit down by another motor cycle belonging to the 6th respondent and insured with the appellant Insurance Company.

2. Heard Mr.S. Manohar, learned counsel appearing for the appellant and Mr.N.M. Elumalai, learned counsel for the claimants.

3. The only question to be decided is with regard to the quantum of compensation.

4. Mr.S. Manohar, learned counsel for the appellant would submit that the Tribunal took Rs.3,36,154/- as the annual income of the deceased, relying upon Ex-P25 balance sheet of the Company, wherein the deceased was employed whereas the Bank Pass Book, marked as Ex-P14, showed different amounts as monthly salary. Therefore, according to the learned counsel, the said amount should not have been taken as annual income. Further, he would submit that the said document should have been fabricated as the deceased is stated to be working in the said company even before its registration. It is also his submission that there was no income tax deduction made and Rs.1 lakh awarded towards "Loss of Consortium" is on the higher side and against the judgment of the Constitution Bench of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi and Others reported in 2017 ACJ 2700. Therefore, he seeks to reduce the compensation amount.

5. However, Mr.N.M. Elumalai, learned counsel for the claimants would support the award passed by the Tribunal.

6. A perusal of the records would show that the deceased was earning about Rs.34,376/- in the month of May, 2012, Rs.30,492/- in the month of June, 2012, Rs.32,237/- in the month of July, 2012 and Rs.32,357/- in the month of August, 2012 and the variation in the monthly salary of the deceased was attributed to incentive by the claimants. Therefore, the Tribunal rightly relied upon Ex-P25, the balance sheet of Sri Vari Enterprises, in which the deceased was employed and took the annual income of the deceased as Rs.3,36,154/-. Though the Tribunal noted that the said amount of Rs.3,36,154/- should have been paid after deducting income tax, the usual income tax deduction was not made, as in the balance sheet of the company, only the gross salary will be shown and therefore, this Court holds that Rs.3,36,154/-, as per Ex-P25 is confirmed as the annual income of the deceased.

7. Though the Tribunal added 50% towards "Future Prospects", considering the age of the deceased, in the light of the recent pronouncement of the Constitution Bench of the Honourable Apex Court, 40% has to be added towards "Future Prospects". Accordingly, adding 40% to the annual income of the deceased, "the total annual income" would be,

Annual Income	::	Rs.3,36,154/-
Add:40% towards "Future Prospects"	::	Rs.3,36,154/- (+)40%(Rs.3,36,154/-)
Total Annual Income	::	Rs.3,36,154/- (+) Rs.1,34,461/-
	::	Rs.4,70,615/-

As already observed, income tax deduction was not made by the Tribunal and therefore, this Court proceeds to deduct a sum of Rs.29,061/-

towards income tax payable by the deceased. Accordingly, after deducting the same, the "total annual income" of the deceased comes to Rs.4,41,554/-.

8. Since the size of the family is five, one-fourth has to be deducted towards "Personal Expenses" of the deceased, as per the judgment of the Honourable Apex Court in Sarla Verma's case (2009 (2) TN MAC 1(SC)). After deducting one-fourth towards "Personal Expenses" of the deceased, the "Annual Contribution of the deceased to his family" would be,

Total Annual Income	::	Rs.4,41,554/-
Less:1/4th towards "Personal Expenses"	::	Rs.4,41,554/-(-)1/4(Rs.4,41,554/-)
	::	Rs.3,31,165/-

9. The age of the deceased was rightly determined by the Tribunal as 27 years as per Ex-P13, School Transfer Certificate and appropriate multiplier 17 was adopted by the Tribunal. Applying the same multiplier, "Loss of Income" is calculated as follows:

Loss of Income	::	Rs.3,31,165/- x 17
	::	Rs.56,29,805/-

10. Coming to the amounts awarded under the other heads, Rs.1 lakh awarded towards "Loss of Consortium" is reduced to Rs.40,000/- in the light of the judgment of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700). The sum of Rs.2 laksh awarded towards "Loss of Love and Affection" to respondents 2 to 5 is reduced to Rs.1,50,000/-. The amount of Rs.10,000/- awarded towards

"Funeral Expenses" is enhnced to Rs.15,000/-. No amounts were awarded towards "Loss of Estate" and " Transportation Expenses". Hence, Rs.15,000/- and Rs.10,000/- are awarded under the said heads respectively. The total compensation payable to the claimants comes to Rs.58,59,805/- rounded off to Rs.58,60,000/- (Rs.56,29,805/- + Rs.40,000/- + Rs.1,50,000/- + Rs.15,000/- + Rs.15,000/- + Rs.10,000/-). The rate of interest awarded by the Tribunal @ 7.5% per annum remains intact.

11. Out of the total compensation amount of Rs.58,60,000/-, the 1st respondent/wife of the deceased would be entitled to Rs.20 lakhs; the 2nd and 3rd respondents/minors would be entitled to Rs.15 lakhs each; the 4th respondent would be entitled to Rs.4,60,000/- and the 5th respondent would be entitled to Rs.4 lakhs.

12. The appellant Insurance Company is directed to deposit the entire award 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 four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of major claimants to their respective bank accounts, through RTGS, within a period of one week thereon. The share of the minor respondents shall be deposited in interest bearing Fixed Deposit, in any one of the Nationalised Banks, till they attain majority. The 1st respondent would be entitled to withdraw interest accruing on such deposit once in three months.

13. In the result, the Civil Miscellaneous Appeal is partly allowed reducing the compensation awarded by the Tribunal from Rs.72,17,545/- to Rs.58,60,000/- with interest @ 7.5% per annum. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

nv

To
The Sub Court
Motor Accidents Claims Tribunal,
Tiruttani.

+1cc to Mr.ELUMALAI, Advocate, S.R.No. 50827
+1cc to Mr.S.MANOHAR, Advocate, S.R.No. 50466

C.M.A. No. 1216 of 2014

GJ (CO)
TR(27/08/2018)