IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.1406 of 2011

ICICI Lombard General
Insurance Co., Ltd.,
Vigneshwara Crestal 1st floor,
1095 Abinais Road,
Pappanaickenpalayam,
Coimbatorev- 641 037.

.....Appellant/3rd Respondent

Vs

1.M.Raji, age 52 years,
S/o. Manickam.

2.Chinnappa @ Unnamalai,
age 48 years, W/o. M.Raja,

3.Sumathi, age 28 years,
W/o. Senthil,

4.BalaMurugan, age 27 years,
S/o.M. Raji

5.Pandian, age 26 years,
S/o. Raji, ..1 to 5th Respondents/Petitioners

6.S.K.Uvarajan, age 34 years,
S/o.Kumarasamy.

7.M.Thangamani,
W/o. A.R. Muthuraj,

.......6th & 7th Respondents/1st & 2nd Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 31.08.2010 made in M.C.O.P.No. 435 of 2008 on the file of the Motor Accident Claims Tribunal /Additional Subordinate Judge, Erode.

For Appellant : M/S. R.SreeVidhya
For Respondent : Mr. K.Govi Ganeshan

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal, (II Additional Subordinate Judge, Erode) in

M.C.O.P.No. 435 of 2008, the appellant herein, who is the third respondent in the claim petition filed this appeal, in which, he is seeking the relief to set aside the order passed by the Claim Tribunal. In the Claim Tribunal, the respondents 1 to 5 had filed a Claim Petition under Section 166 of the Motor Vehicles Act, in which, they claimed compensation of Rs.15,00,000/-. The respondents 1 and 2 here in are the parents and the 3rd respondent is the sister of the deceased, 4th and 5th respondents are the brothers of the deceased. After elaborate enquiry, the Claims Tribunal awarded compensation of Rs.5,23,000/- with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred.

2. In the Claims Tribunal, the case of the respondents 1 to 5 is as follows:

3. On 20.08.2008, at about 03.45 p.m., the deceased Suresh @ SureshKumar was riding in a Bike bearing registration No. TN 25 K 4326 slowly and carefully, observing all the traffic rules. At the time of accident, the first respondent being the driver of the bus bearing registration No. TN 33 AK 8899 driven the same, in a rash and negligent manner with high speed from north to south and dashed against the bike, which was driven by the deceased. Due to the accident the deceased was thrown away from the bike, and sustained multiple grievous injuries. Immediately he was taken to the Government Hospital Erode, and admitted as in patient in spite of giving necessary treatment, he is succumbed to the injuries at about 09.00 p.m.

4. During the time of enquiry, the learned counsel appearing for the appellant did not challenge the findings arrived at by the Tribunal in regard to the negligence of the bus driver. She challenges the quantum determined by the Claims Tribunal is an excessive one and she prayed to allow this appeal.

5. Now, on going through the findings arrived by the Claims Tribunal, it was held that the Tribunal determined income of the deceased is Rs.4,500/- per month. Further, in the Claims Tribunal in order to show the income derived by the deceased. the certificate given by the employer was exhibited as A10. In the certificate, It was mentioned that he was working as a supervisor in Rokini Garments, Tirupur, and getting salary of Rs.8,000/- per month. Eventhough, the said certificate is in favour of the claimants, during the time of enquiry in the Claim Tribunal the employer has not been examined to prove the genunity of the certificate. So, it would be just and reasonable to fix the monthly income of the deceased based on the surrounding circumstances. In this case the alleged accident has happened in the year of 2008. Further, there is no evidence on the side of the claimant to show the income of the deceased. In the said circumstances, the Claim Tribunal has fixed the income of Rs. 4,500/- for determining the compensation. So, I am

of the view, that the income determined by the Claims Tribunal for calculating the compensation is reasonable and interference is not necessary. Accordingly the monthly income of the deceased is fixed Rs.4,500/-

6. Now, on go through the "Future Prospects", it is necessary to follow the judgment of the Constitution Bench in the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which our Honourable Apex Court has held that if a person is self-employed under the age of 40, 40% of the Future Prospects has to be added for calculating the loss of dependency. On going through the evidence given by PW1 and PW2 it appears the age of the deceased is 25 years, at the time of an accident. Further on go through the particulars mentioned in the postmortem certificate of deceased it was mentioned, that the deceased is aged about 25 years at the time of an accident. Therefore, total monthly income of the deceased comes to

Total Monthly Income:: Rs.4,500/- (+) 40% (Rs.1,800/-)
:: Rs.4,500/- (+) Rs. 1,800/-
:: Rs.6,300/-

7. Now, coming to the point of deduction, it is an admitted fact that the deceased died in the accident without any marriage. So, it is necessary to deduct 50% of the monthly income towards his personal expenses. Accordingly, after deducting 50% towards personal expenses, the monthly income of the deceased comes to Rs.3,150/- [Rs.6,300-50%].

8. With regard to the multiplier, in the case of SARALA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121, our Honourable Apex Court has held that if a person is died in the age of 25, the appropriate multiplier is 18. In this case as already discussed that the age of the deceased at the time of accident was 25 years. Hence the appropriate multiplier for calculating the loss of dependency is 18. Accordingly, the pecuniary loss for the family is fixed as follows:

Loss of Income :: Rs. 3,150 X 12 X 18
:: 6,80,400/-

9. Now, on going through the conventional heads as per the case of NATIONAL INSURANCE COMPANY LIMITED vs.PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, it is necessary to add Rs.15,000/- towards "Funeral Expenses" and Rs.15,000/- towards "Loss of Estate". So, adding Rs.30,000/- with the pecuniary loss it comes around Rs.7,10,400/- as total dependency as follows:

HEAD	AMOUNT (Rs.)
Loss of Dependency	7,10,400.00
Funeral Expenses	15,000.00
Loss of Estate	15,000.00
Total	7,40,400.00

10. Hence, the compensation arrived at by the Claims Tribunal is modified to the extend of Rs.7,10,400/-. In the said amount 3rd to 5th claimants are entitled Rs.80,000/- each with proportionate interest in the remaining amount the parents of the deceased (i.e.,) 1 and 2 claimants are entitled equal share.

11. Accordingly, the compensation arrived at by the Claims Tribunal is modified to the extend of Rs.7,10,400/-. The modified compensation of Rs.7,10,400/-has to be apportioned among the claimants as stated in Para No.10. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. Though the Insurance Company has filed the appeal, the facts and circumstanced enable this court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.5,23,000/- is enhanced to Rs.7,10,400/- invoking Order 41 Rule 33 of CPC and Section 151 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 claimant, this court has got power and jurisdiction to enhance the compensation, which has been recognized by the Honourable Supreme Court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

12. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already paid, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the respondents 1 to 5 claimants through RTGS/NEFT within a period of one week.

13. In the result, the Civil Miscellaneous Appeal is disposed of. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1. The II Additional Subordinate Judge
   (Motor Accident Claims Tribunal)
   Erode.

+1 CC to M/s. R. Sreevidya, Advocate sr 59392.

Civil Miscellaneous Appeal No.1406 of 2011

SJ(CO)
SP(08/10/2018)