IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.170 of 2018
and
C.M.P.7334 of 2018 and Cros. Obj.23 of 2018

1.S.Lakshmi

2.Minor S.Harshit

3.Minor R.S.Nidharshan

4.Angammal
Minors rep.by his Next Friend cum Mother Lakshmi

... Appellants/Petitioners
Respondents in
Cross-Objection

Vs

1.S.Venkatesh

2.S.Dhanalakshmi Venkateshwara Finance ... Respondents 1&2/Respondent in appeal

3.National Insurance Co. Ltd., ...3rd respondent/Respondent in appeal/Cross-Objector

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 20.03.2017 made in M.C.O.P.No.691 of 2015, on the file of the Forum of Motor Accident Claims, Coimbatore, (Special Subordinate Judge), Coimbatore, Coimbatore District and to set aside the same and to enhance the award amount from Rs.44,30,000/- to Rs.67,55,000/-.

For Appellants/respondents 1 to 4 in Cross-objection : Mr.C.Veeraraghavan

For 3rd Respondent in appeal/Cross-objector : Mr.S.Vadivel

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 claimants not satisfied with the quantum of compensation of Rs.44,30,000/- awarded for the death of one R.Sekar, aged about 39 years, Proprietor of a printing press and also partner of another printing press, allegedly earning about Rs.50,000/- per month, in the accident which occurred on 03.02.2015, when the victim was travelling in his car, which was dashed by a town bus belonging to the 2nd respondent, insured with the 3rd respondent.

2.Cross Objection has also been filed by the insurance company, questioning the quantum of compensation.

3.Both the appeal and the cross appeal are taken together. For the sake of convenience, the appellants in CMA.No.170 of 2018 are hereinafter referred as claimants and the insurance company, who is the cross appellant is referred as insurance company.

4.Heard Mr.C.Veeraraghavan, learned counsel appearing for the claimants and Mr.S.Vadivel, learned counsel appearing for the insurance company.

5.The only question to be gone into, in both the appeal and cross appeal is with regard to quantum. Therefore, the question of fixing liability does not arise.

6.It is proved by the claimants before the Tribunal that the deceased was a partner in M/s.Kannimar Printers, by Exs.P.11, P.12 and P.14. Further, through Exs.P.15, P.16 and P.17, the claimants proved that the deceased was also a partner in a firm called M/s.Pressmaan. Subsequently, the said deceased retired from the firm Pressmann with effect from 31.10.2014, as per Ex.P.17. However, he continued as a partner in M/s. Kannimar Printers from the year 2010 till his death. Therefore, it is clear that the deceased was a partner in two firms and at the time of accident, he continued as a partner in M/s.Kannimar Printers.

7.Exs.P.20, P.24 and P.25 are the income tax returns, in respect of the press as well as the deceased. As per Ex.P.24, which is the certified copy of the income tax returns for the assessment year 2013-14, net income of the deceased after deduction is Rs. 3,52,710/- Based on Ex.P.24, the Tribunal rightly determined the income at Rs.30,000/- per month. Though Mr.Vadivel, learned counsel appearing for the cross appellant would question the determination of Rs.30,000/-, the determination made by the Tribunal is based on income tax returns filed by the deceased, even before the death, Therefore, the same cannot be set aside.

8.As rightly pointed out by Mr.C.Veeraraghavan, learned counsel appearing for the claimants, no future prospects has been added. Therefore, following the constitution bench's judgment of the Honourable Apex Court reported 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, as the deceased was about 39 years, which is proved by Ex.P.26, driving licence of the deceased. Since the deceased was earning about Rs.3,52,710/-, per year, as per Ex.P.24-income tax return, the monthly income is calculated as follows: Rs.29,392/- (Rs.3,52,710/12). After adding 40% towards future prospects, the monthly income comes to Rs.41,149/- (29392 + 40% of 29392). Therefore, the total annual income comes to Rs.4,93,788/- (41149 x 12).

9.As there is no income tax upto Rs.2,50,000/-, 10% has to be deducted towards income tax, from Rs.2,43,788/-, which is the taxable income, and the tax for the said amount is Rs.24,378/- (243788 x 10/100). The said amount has to be deducted from the yearly income of Rs. 4,93,788/- and after deduction the annual income comes to Rs.4,69,410/- (493788-24378).

10.As the size of the family of the victim is four, 1/4th has to be deducted towards personal expenses, which has been correctly done by the Tribunal. After deducting 1/4th towards personal expenses, the annual contribution of the deceased to his family comes to Rs.3,52,057.5/- (469410 – ¼ of 469410)

11.The appropriate multiplier for the age of the deceased is "15". Therefore, the total loss of income comes to Rs.52,80,862/- (352057.5 x 15).

12.Loss of consortium:

The Tribunal awarded a sum of Rs.1,00,000/- towards "Loss of Consortium", which is not in consonance with Constitution Bench's judgment of the Honourable Apex Court reported in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), and hence the same is reduced to Rs.40,000/-

13.Loss of love and affection:

The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection to the minors/2nd and 3rd claimants and the same is confirmed. A sum of Rs.50,000/- awraded to the mother of the deceased towards loss of love and affection is reduced to Rs.25,000/-.

14.Loss of Estate:

The Tribunal has awarded a sum of Rs.5,000/- towards loss of estate, which is not in consonance with Constitution Bench's judgment of the Honourable Apex Court reported in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), and hence the same is enhanced to Rs.15,000/-.

15.Funeral Expenses:

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

16.Transport charges:

No amount has been awarded by the Tribunal towards transport charges and this Court awards Rs.10,000/- towards Transport Charges.

17.Hence, the total compensation awarded in this case is Rs.54,85,862/- rounded off to Rs.55,00,000/-.

Head	Amount (Rs.)
Total loss of income	5280862
Loss of consortium	40000
Loss of love and affection	125000
Loss of estate	15000
Funeral expenses	15000
Transport charges	10000
	5485862

18.The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

19.Out of the award amount, the 1st claimant/wife of the deceased is entitled to get Rs.20,00,000/-; the 2nd and 3rd claimants /children of the deceased are entitled to get Rs.15,00,000/- each and the 4th claimant/mother of the deceased is entitled to get Rs.5,00,000/-. The Insurance company is directed to deposit the entire award amount, with interest and costs, as per the order of this Court within a period of six 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 1st and 4th claimants along with proportionate interest and costs to their respective bank accounts, through RTGS, within a period of one week thereon. The share amount of the minor claimants 2 and 3, shall be deposited in interest bearing fixed deposit in any of the nationalised banks until they attain majority. The 1st respondent, being the mother of the minors, is permitted to withdraw the interest accruing on such deposit once in three months.

20.With the above directions, this Appeal in C.M.A.No.170 of 2018 is partly allowed. The Cross objection filed by Insurance company is dismissed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

sai

To
The Special Subordinate Judge,
Forum of the Motor Accident Claims,
Coimbatore, Coimbatore District.

+ 1 cc to Mr.C.Veeraraghavan Advocate,SR.27196

+ 1 cc to Mr.S.Vadivel Advocate,SR.27056

C.M.A.No.170 of 2018
and
Cros. Obj.23 of 2018

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nr 26/04/2018