IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

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

C.M.A.No.383 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.New India Assurance Co. Ltd.,
No.45, Moore Street, 5th Floor,
Chennai 600 001
... Appellant/2nd Respondent

Vs

1.S.Shanthi

2.T.Rani

3.S.Nandini (Minor)

4.S.Vasantha Kumar (Minor) ...Respondents 1to4/Petitioners
(Minor 3to4th Petitioner rep.by their
Mother 1st Respondent/S.Shanthi)

5.K.Vishnu Kumar
... 5thRespondents/1st Respondent

PRAYER :Civil Miscellaneous Appeal filed against the judgment and decree passed in M.C.O.P.No.26 of 2013 on 05.11.2014 on the file of the Motor Accident Claims Tribunal (Small Causes Court - IV Judge) at Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mr.A.A.Venkatesan (for R1 to R4)
R5 - (Exparte)

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

The appeal has been filed by the Insurance Company against the award of Rs.26,62,000/-, awarded to the respondents towards compensation for the death of 1st respondent's husband viz., Mr.T.Srinivasan, aged about 38 years, who was working as a

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Conductor in Tamil Nadu State Transport Corporation Limited and allegedly earning Rs.13,600/- per month, in the accident, which occurred on 18.08.2012, when the Transport Corporation bus in which the deceased was working as a Conductor dashed against a private bus.

2.Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.A.A.Venkatesan, learned counsel appearing for the respondent.

3.The only question to be decided in this matter is with regard to quantum of compensation.

4.Mr.J.Chandran, learned counsel appearing for the appellant would submit that the Tribunal, contrary to the judgment of the Constitution Bench in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), awarded a sum of Rs.1,00,000/- towards loss of consortium and Rs.3,50,000/- towards loss of love, happiness, paternal care and mental shock and Rs.25,000/- towards funeral expenses. He would further submit that the judgment of the Honourable Apex Court puts a ceiling on the conventional headings at Rs.70,000/- viz., Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses.

5.On the other hand, Mr.A.A.Venkatesan, learned counsel appearing for the respondents would submit that the Supreme Court's judgment was delivered only on 30.10.2017, whereas the Tribunal passed the award on 05.11.2014.

6.A perusal of the records would show that the deceased was a Conductor and salary certificate for the month of July 2012 was produced before this Court, which would show that he was drawing a sum of Rs.12,490/-. The tribunal rightly deducted 10% towards income tax and after deduction, his monthly income would be , Monthly Income =(Rs.12,490/-(-)10%(Rs.12,490/-)

= Rs.11,241/-.

7.The Hon'ble Supreme Court, in Pranay Sethi's Judgment stated that an addition of 50% of actual salary to the income of the deceased towards future prospects has to be made if the deceased had a permanent job and was below the age of 40 years. In this case, as proved by Ex.P.20/Postmortem certificate, the age of the deceased was 38 years. Therefore, 50% of the actual salary has to be added towards future prospects and hence, the total income of the deceased along with future prospects is as follows:

Total Income = Rs.11,241/- (+) 50% (Rs.11,241/-)

= Rs.11,241/- (+) Rs.5620.5

= Rs.16,862/-

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8.As per the judgment of the Honourable Supreme Court rendered in Sarala Verma & Others ...Vs... Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the appropriate multiplier for the age of 38 is "15". Therefore, the loss of income would be as follows:

Loss of Income = Rs.16,862 x 12 x 15 = Rs.30,35,160/-.

9.The family of the deceased consists of four members. Therefore, as per Sarala Verma's judgment, 1/4th has to be deducted towards personal expenses. Accordingly, if 1/4th is deducted from Rs.30,35,160/-, the compensation payable under "Loss of Income" comes to Rs.22,76,370 /-.

10.The Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium and Rs.3,50,000/- towards loss of love, happiness, paternal care and mental shock and Rs.25,000/- towards funeral expenses, which have been reduced by the Constitutional Bench of the Honourable Apex Court in the judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), and the relevant portion of the judgment at paragraph No. 54 is usfully extracted below:

> "54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and guidance for minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said

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heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

Therefore Rs.1,00,000/- awarded by the Tribunal towards loss of consortium is reduced to Rs.40,000/-; Rs.25,000/- awarded by the Tribunal towards funeral expenses is reduced to Rs.15,000/- and Rs.3,50,000/- awarded by the Tribunal towards loss of love, happiness, paternal care and mental shock is set aside and instead a sum of Rs.15,000/- is awarded towards loss of estate. Hence, the total compensation to be awarded in this case is,

=Rs.22,76,370/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- =Rs.23,46,370/-.

Accordingly, award of the Tribunal (i.e.,) Rs.26,62,000/- is reduced to Rs.23,46,370/-. The rate of interest awarded by the Tribunal at 7.5 % remains unaltered.

11.Since the entire award amount has already been deposited, the Tribunal is directed to follow the ratio fixed by it for distribution of the award amount to the claimants as per the order passed by this Court. The balance amount, as per the order of this Court, shall be reimbursed to the appellant/insurance company.

12.Since the 3rd and 4th respondents are minors, their shares shall be deposited in interest bearing fixed deposit in any of the nationalized 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. Respondents 1 and 2 are entitled to receive their share of the award amount within two weeks from the date of receipt of a copy of this order.

13.With the above directions, this Appeal is disposed of. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1.The IV Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai 104.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.73738

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.73434

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GSP(12/02/2019)

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