IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.155 of 2015
and M.P.No.1 of 2015

M/s.National Insurance Company Limited,
Divisional Office,
No.1, L.R.N. Building,
Saradha College Road, Salem. ... Appellant/2nd Respondent

-vs-

1.B.Geetha
2.Minor V.Poojashree
3.Minor V.Shree Ram
4.Thangammal
5.R.Muniappan ...Respondents/Petitioners 1 to 5
6.S.Sakthivel ...6th Respondent/1st Respondent
(Minors represented by their mother,
B.Geetha, as next friend and natural guardian)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 28.02.2014 passed in M.A.C.T.O.P.No.840 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

For Appellant : Ms.N.B.Surekha

For Respondents: Mr.N.Manokaran (For R1 to R5)
No appearance (For R6)

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The Insurance Company challenges the award of a sum of Rs.67,29,720/- for the death of one M.Venkatesan in a motor accident that occurred on 17.09.2011.

2.The claimants who are the wife, children and parents of the deceased would contend that the deceased was employed as a Manager in Reliance Life Insurance Company Ltd., drawing a monthly salary of Rs.36,500/- and his death has resulted in pecuniary loss to the family. Contending that the accident occurred due to the rash and negligent driving of the driver of the Maruti Swift Car in which the deceased was a passenger, the claimants sought for a compensation of Rs.88,20,000/-, but they restricted the claim to Rs.80,00,000/-.

3.The Insurance Company resisted the claim contending that the driver of the car was not responsible for the accident. The quantum of compensation claimed was also termed as excessive. The Tribunal on a consideration of the evidence on record, concluded that the accident occurred due to rash and negligent driving by the driver of the Maruti Swift Car bearing Registration No.TN 28 AJ 1617. On the quantum, the Tribunal took the monthly income of the deceased at Rs.34,660/-, adding 50% towards future prospects and arrived at the monthly income of Rs.51,990/-, deducting 1/3 for personal expenses and applying the multiplier of '16', the Tribunal awarded a sum of Rs. 66,54,720/- towards loss of dependency. The Tribunal awarded a sum of Rs.25,000/- each towards loss of love and affection, loss of consortium and funeral expenses. In all, the Tribunal awarded a sum of Rs.67,29,720/-. Terming the compensation as excessive, the Insurance Company has come forward with this appeal.

4.We have heard Ms.N.B.Surekha, learned counsel for the appellant and Mr.N.Manoharan, learned counsel for the respondents 1 to 5/claimants.

5.Ms.N.B.Surekha, learned counsel for the Insurance Company would contend that the Tribunal erred in adding 50% towards future prospects and it is also claimed that the Tribunal erred in not deducting any amount towards Income Tax. The deceased was admittedly employed in a Private Company. Therefore, the future prospects could be taken only at 40% in view of the judgment of the larger bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331. Thus worked out, the monthly income would be Rs.34,660/- + Rs.13,864/- = Rs.48,524/-. ¼ of the said amount would be deducted towards personal expenses of the deceased, leaving the balance of Rs.36,393/-. 10% deduction has to be made towards Income Tax. Therefore, the loss of contribution would be Rs.32,754/- per month. Since the deceased was aged 38 years, the multiplier admissible is '15'. Therefore, the pecuniary loss would be Rs.32,754/- x 12 x 15 = Rs.58,95,720/-. The Tribunal awarded a sum of Rs.25,000/- towards loss of consortium. As per the judgment of the larger bench of the Hon'ble Supreme Court referred to above, we fix it at Rs.40,000/-. The Tribunal has awarded Rs.25,000/- towards loss of love and affection. Considering the fact that the deceased has left behind two minor children apart from his parents, we are of the opinion that the loss of love and affection should be fixed at Rs.1,20,000/-. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is awarded towards loss of estate and Rs.25,000/- granted towards funeral expenses is sustained. Total compensation thus works out to Rs.60,95,720/-

and the same is rounded off to Rs.61,00,000/-.

6.For the foregoing reasons, the appeal is partly allowed. The compensation awarded by the Tribunal is modified as Rs.61,00,000/- with 7.5% interest from the date of petition till the date of payment. It is stated that the Insurance Company has deposited the entire amount. The compensation is apportioned as follows: The minor children are entitled to a sum of Rs.20,00,000/- each with proportionate interest. The parents are entitled to Rs.1,00,000/- each with proportionate interest. The remaining amount of Rs.19,00,000/- with proportionate interest and the entire cost should be paid to the 1st respondent, wife of the deceased. The Tribunal is directed to deposit the share of the minor children with proportionate interest in a interest bearing Fixed Deposit, till they attain majority, in any one of the Nationalized Banks. The 1st respondent, mother would be permitted to withdraw quarterly interest for the maintenance of the minors. The respondents 1, 4 and 5 are entitled to withdraw the amounts apportioned to them as above with proportionate interest. The balance amount will be paid over to the Insurance Company. There will be no order as to costs in this Appeal. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To
1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

2. The Section Officer,
VR Section,
High Court, Madras (2 Copies)

+1cc to Mr.N.Manokaran, Advocate Sr.No.61105
+1cc to Mr.N.B.Surekha, Advocate Sr.No.60953

BR(CO)
sm:2.11.2018