IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM:

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

CMA No.1881 of 2016 and
C.M.P.No.13762 of 2016

United India Insurance Co. Ltd.,
R.P.R.Complex, Bypass Road,
Near Government Hospital,
Dharmapuri - 636 701. ... Appellant

-vs-

1.Nathiya
2.Minor Manoj
(Minor rep. by his mother & NF Nathiya)
3.Gowramma
4.Ramamoorthy
5.Murugan ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.04.2015 made in M.C.O.P.No.773 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.T.Panchatsaram
for R1 to R3
R4 - Died
R5 - No appearance

J U D G M E N T

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

The insurer of the Car that met with an accident resulting in the death of one Sarvesh, who is the husband of the first respondent, father of the second respondent and son of the respondents 3 and 4 in a motor accident that occurred on 27.08.2012 is on appeal challenging the award of a sum of Rs.20 lakhs as compensation.

2. The case of the claimants before the Tribunal was that the deceased was riding his two wheeler bearing Registration No.TN-70-C-6481 from Palacode to Hosur and the car belonging to the 5th respondent insured with the appellant Insurance Company driven in a rash and negligent manner by the owner cum driver dashed against the two wheeler resulting in the death of the rider of the two wheeler. Contending that the deceased was earning about Rs.15,000/- per month, the respondents 1 to 4 sought for compensation of Rs.20 lakhs.

3. The claim petition was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. It was contended that the rider of the two wheeler viz.,

the deceased Sarvesh had contributed to the accident by his negligent driving. The Insurance Company denied the age and income of the deceased.

4. The Tribunal on a consideration of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the car insured with the appellant Insurance Company. In coming to the said conclusion, the Tribunal relied upon Ex.P1, the First Information Report and the evidence of P.W.2, who was an eye witness. Though the driver of the car was examined by the Insurance Company as R.W.1, his evidence was rejected as the same was against the documentary evidence on record.

5. On the quantum, the Tribunal arrived at a compensation of Rs.20,83,000/-. Out of the said amount, Rs.14,58,000/- was awarded towards Future Loss of Income. In calculating the Loss of Income, the Tribunal took the income of the deceased at Rs.9,000/- per month and deducted 1/4 towards his personal expenses. Since the age of the deceased was 25 years at the time of accident, the Tribunal applied the multiplier of "18". The Tribunal also awarded Rs.1,00,000/- towards loss of Consortium to the first respondent Wife, Rs.1,00,000/- towards

Loss of Love and Affection to the second respondent minor child and Rs.1,00,000/- (Rs.50,000/- each) to the parents of the deceased. The Tribunal also awarded Rs.2,95,000/- towards medical expenses evidenced by bills, Rs.10,000/- towards transportation and Rs.20,000/- towards Funeral Expenses. Aggrieved by the same, the Insurance Company is on appeal.

6. Though the Tribunal arrived at a compensation of Rs.20,83,000/-, it awarded Rs.20,00,000/- as the claimants have restricted their claim to Rs.20 lakhs.

7. We have heard Mr.S.Arunkumar, learned counsel for the appellant and Mr.T.Panchatsaram, learned counsel for respondents 1 to 3. The 5th respondent though served does not appear either in person or through counsel.

8. The 4th respondent, the father of the deceased had died during the pendency of this appeal. A memo has been filed by the learned counsel for the appellant seeking to record the third respondent, the mother of the deceased as the legal representative of the deceased 4th respondent. The said memo is recorded and the third

respondent is declared as the legal representative of the 4th respondent.

9. Mr.S.ArunKumar, learned counsel for the Insurance Company would contend that though the Insurance Company had raised the question of negligence, the Tribunal relying upon the FIR rejected the evidence of R.W.1 and concluded that the accident occurred due to the rash and negligent driving of the driver of the car alone. He would submit that the evidence of R.W.1 would show that he was called to the Police Station after two days of the accident and the entire blame was shifted on the car driver subsequently. We are unable to countenance the said submission in view of the fact that R.W.1s evidence runs counter to the other available material on record. A perusal of the evidence of P.W.2, the eye witness, shows that his evidence is more natural and believable. On the quantum, Mr.S.Arunkumar, learned counsel would contend that the Tribunal was not justified in taking the monthly income of the deceased at Rs.9,000/-. He would also find fault at the Tribunal for awarding Rs.1,00,000/- towards Loss of Consortium, Rs.1,00,000/- towards Loss of Love and Affection to the minor child and Rs.1,00,000/- towards loss of love and affection to the parents of the deceased relying upon the larger bench judgment of the

Hon'ble Supreme Court in **National Insurance Co. Ltd., v. Pranay Sethi and others [2018 (1) L.W. 331].**

10. Per contra, Mr.T.Panchatsaram, learned counsel for the claimants would contend that the deceased was actually earning Rs.15,000/- per month. He would also point out that the Tribunal has not taken into account the future prospects. If future prospectus are taken into account, the compensation awarded towards loss of Dependency would be much more than what has been awarded.

11. We have considered the rival submissions.

12. Considering the date of the accident, i.e., 27.08.2012, we do not think that the Tribunal was in error in adopting Rs.9,000/- as the monthly income. Even assuming that there is some scope of reduction of monthly income, the fact that the Tribunal has not taken into account the future prospects would desist us from doing so. We therefore confirm the Award passed by the Tribunal granting a sum of Rs.14,58,000/- towards Future Loss of Income.

13. As regards the conventional damages are concerned, we see some force in the submission of the learned counsel for the appellant, in view of the larger bench judgment of the Hon'ble Supreme Court in **Pranay Sethi** (cited supra). The conventional heads are thus modified as follows:-

Loss of Consortium to the Wife : Rs.40,000/-

Loss of love and Affection
to the minor child : Rs.40,000/-

Loss of Love and Affection
to the parents (Rs.25,000 x 2) : Rs.50,000/-

14. The amounts awarded by the Tribunal under Medical Expenses, Transportation, Funeral Expenses are confirmed. The Tribunal has not awarded any amount towards Loss of Estate. Hence, we award a sum of Rs.15,000/- towards Loss of estate.

15. Thus the total compensation would be as follows:-

Heads	***Amount in Rs.***
Future Loss of Income	14,58,000
Loss of Consortium to the wife/first respondent	40,000
Loss of Love and Affection to the minor child/second respondent	40,000

Heads	***Amount in Rs.***
Loss of Love and Affection to Parents (Rs.25,000 x 2)	50,000
Medical Expenses	2,95,000
Transportation	10,000
Funeral Expenses	20,000
Loss of Estate	15,000
Total	**19,28,000**

16. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.20,00,000/- to Rs.19,28,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

iii) The compensation is apportioned as follows:-

a) The first respondent wife will be entitled to Rs.6,00,000/- with proportionate interest and entire costs.

b) The second respondent minor child will be entitled to Rs.10,00,000/- with proportionate interest.

c) The remaining amount of Rs.3,28,000/- shall be taken by the mother of the deceased, the third respondent with proportionate interest.

iv) It is stated that the appellant - Insurance Company had deposited the entire award amount.

v) The share of the minor/2nd respondent is directed to be deposited in an interest earning Fixed Deposit in any one of the nationalised bank till he attains majority. The 1st respondent/Wife is permitted to withdraw her share of the award amount as ordered by this court. The first respondent is also permitted to withdraw the quarterly interest from out of the Fixed deposit. The third respondent is also permitted to withdraw her share of the award amount as ordered by this Court.

vi) The remaining amount is to be paid over to the appellant Insurance Company.

No costs. Consequently, connected miscellaneous petition is closed.

(K.K.SASIDHARAN, J.) **(R.SUBRAMANIAN, J.)**
5 October 2018

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To

The Motor Accidents Claims Tribunal,
Special District Judge, Krishnagiri.

K.K.SASIDHARAN,J.
and
R.SUBRAMANIAN,J.

(svki)

CMA No.1881 of 2016

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