IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1611 of 2017

1.Lakshmi.R
2.Sathish Babu
3.Minor Praveen
4.Dhana Ammal

(Minor 3rd appellant is represented by his mother 1st appellant) ... Appellant/Petitioner

Vs

1.Ravi
(R1 remained exparte before the Tribunal hence his presence may be dispensed with)

2.Reliance General Insurance Co. Ltd.,
Rai's Tower, Plot No.22054, 2nd Avenue,
2nd Floor, (Next to Senthil Nurshing Home)
Anna Nagar, Chennai 40. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 30.06.2015 made in M.A.C.T.O.P.No.5245/2012 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellants : Mr.F.Terry Chellaraja

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 questioning the quantum of compensation of Rs.23,76,200/- awarded for the death of one D.Rajendran, aged about 53 years, a railway employee, earning about a sum of Rs.33,476/- in the accident which occurred on 05.08.2012, when he was riding his motorcycle from Nellikuppam to Guduvanchery direction and was dashed down by another motorcycle belonging to the 1st respondent, insured with the 2nd respondent, driven by its rider rashly and negligently. Therefore, the claim petition.

2.On contest, the Tribunal found that the rider of the 1st respondent's two wheeler was rash and negligent and awarded a sum of Rs.23,76,200/-. Questioning only the quantum, the claimants are before this Court.

3.Heard, Mr.F.Terry Chellaraja, learned counsel for the appellant. The 1st respondent remained exparte before the trial Court itself and therefore, no notice is necessary as per the judgment of the Full Bench of the Madhya Pradesh High Court rendered in Mrs.Jamuna Bai Vs. V.Chhote Singh reported in I (2004) Acc. 190 (FB). Though 2nd respondent insurance company has been served and their name is printed in the cause list, no one has entered appearance. Therefore, based on the available records, this Court proceeds to decide the matter.

4.Though the claimants are before this Court only on the question of quantum, a perusal of the records would show that based on PW1's evidence and Ex.P.1-FIR against the 1st respondent, the trial Court, rightly fixed the negligence on the part of the 1st respondent in the absence of any rebuttal evidence on the side of the insurance company. Therefore, the finding reached by the Tribunal that the 1st respondent was negligent and cause for the accident is confirmed.

5.The appellants proved through Ex.P.5, Identity Card and Ex.P.6, Salary Slip of the deceased that he was working in Southern Railway-Chennai Division and one Mr.Dhanasekaran, P.W.2, who is a Senior Clerk, Court Cell, working in the office of the Senior Divisional Personnel Officer, Chennai Division was also examined to prove the avocation and income of the deceased. It is evident from the evidence of PW2 that the deceased was appointed as Kalasi on 16.12.1986 and at the time of accident, he was working as Technician I (Grade) and was drawing a salary of Rs.33,476/- per month, and has produced Ex.P.6, Ex.P.9 and Ex.P.10. However, inspite of the documentary evidence produced by P.W2, the Tribunal, without any reasoning wrongly determined the monthly income at Rs.25,097/- and the same is set aside and this Court based on the above evidence and documents re-determines the monthly income at Rs.33,476/-.

6.The deceased was aged about 53 years, as per Ex.P.6, salary slip and Ex.P.9, Service Register. Therefore, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 15% has to be added towards future prospects. After adding 15% towards future prospects, the monthly income would be at Rs.38,497/-

(Rs.33,476/- + 15% of Rs.33,476/-). Hence, the yearly income would be at Rs.4,61,964/- (Rs.38,497/- x 12). Since upto Rs.2,50,000/- there is no levy of income tax, the taxable income is Rs.2,11,964/-, out of which 10% has to be deducted towards income tax and after deducting 10% towards income tax, the annual income would be at Rs.4,40,768/- (Rs.2,50,000/- + ((Rs.2,11,964/- (-) 10% of Rs.2,11,964/-)).

7.The size of the family is 4 and therefore, ¼th has to be deducted towards personal expenses of the deceased and after deducting ¼th towards personal expenses, the annual contribution of the deceased to his family would be at Rs.3,30,576/- (Rs.4,40,768/- (-) ¼th of Rs.4,40,768/-).

8.The appropriate multiplier as per the judgment of the Honourable Supreme Court in Smt. Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is "11", as the age of the deceased was 53. Therefore, loss of income would be Rs.36,36,336/- (Rs.3,30,576 /- X 11).

9.Loss of consortium:

The Tribunal awarded a sum of Rs.25,000/- towards loss of consortium to the 1st appellant and the same has to be enhanced to Rs.40,000/- as per the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Accordingly, loss of consortium is enhanced to Rs.40,000/-.

10.Loss of love and affection:

The Tribunal awarded only a sum of Rs.1,00,000/- towards loss of love and affection. Since the same is too low, the same is enhanced to Rs.1,25,000/-.

11.Funeral expenses:

A sum of Rs.15,000/- was awarded by the Tribunal towards funeral expenses. The same is confirmed

12.Loss of estate:

No amount was awarded by the Tribunal, towards loss of estate. As per the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), a sum of Rs.15,000/- is awarded towards loss of estate.

13.Transportation charges:

No amount was awarded by the Tribunal towards transportation charges and therefore, this Court awards a sum of Rs.10,000/- under this head.

14.Hence, the total compensation payable in this case is Rs.38,41,336/- rounded off to Rs.38,40,000/-.

Head	Amount (Rs.)
Loss of income	3636336
Loss of consortium	40000
Loss of love and affection	125000
Loss of estate	15000
Funeral expenses	15000
Transportation	10000
	3841336

15.The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. Out of the award amount, the 1st appellant is entitled to get Rs.17,00,000/-, appellants 2 and 3 are entitled to get Rs.9,00,000/- each and the 4th appellant is entitled to get Rs.3,40,000/-. The claimants are directed to pay the requisite court-fee, if any, within a period of one week from the date of receipt of a copy of this order.

16.It is observed in paragraph 8 of the award of the Tribunal as follows:

> "The 1st respondent's vehicle was validly insured with the 2nd respondent at the time of accident and furnished the Policy Number as Motorcops VRN/0000246/01/2012 valid from 10.01.2012 to 09.01.2013".

Hence, it is proved that on the date of the accident, there was valid insurance policy issued by the 2nd respondent in favour of the 1st respondent. Therefore, the 2nd respondent is liable to pay the compensation amount. The Tribunal also came to the conclusion that the 2nd respondent was liable to pay the amount as there was no rebuttal evidence with regard to the same. Therefore, findings regarding the coverage of insurance policy and the liability, as reached by the Tribunal is confirmed. If the claim is made by any of the victims of the road traffic accident, the same should be swiftly settled, so that the claimants would be in a position to enjoy the fruits at the earliest. On giving risk policy coverage for the offending vehicle, the 2nd respondent cannot evade his responsibility by not appearing before this Court. Therefore, a sum of Rs.1,00,000/- is awarded as costs to the 2nd respondent to be paid to the ***Cancer Institute (WIA), Sardar Patel Road, Adayar, Chennai-20**, within a period of two weeks from the date of receipt of a copy of this order.

17.The insurance company is directed to deposit the entire award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of claimants 1, 2 and 4 along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon. As far as minor claimant/3rd appellant is concerned, his share shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till he attains majority. The 1st claimant/mother is permitted to withdraw interest accruing on such deposit once in three months.

18.Accordingly, this appeal is partly allowed, enhancing the award of the Tribunal from Rs.23,76,200/- to Rs.38,40,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CS VI)
Dated:02/08/2018

*Corrected order to be issued
Sd/-
Assistant Registrar(CS-V)
Dated:18/09/2018

//True Copy//

Sub Assistant Registrar

sai

To

1.The II Judge,
(Motor Accident Claims Tribunal)
Court of Small Causes,
Chennai.

To be substituted to the order already despatched on 28/08/2018

2. The General Manager,
Reliance General Insurance Co. Ltd.,
Rai's Tower, Plot No.22054, 2nd Avenue,
2nd Floor, (Next to Senthil Nurshing Home)
Anna Nagar, Chennai 40.

3.The Dean,
***Cancer** Institute (WIA),
Sardar Patel Road,
Adyar, Chennai-20.

Copy to

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

+1cc to M/S.M.Malar, Advocate Sr.35932

C.M.A.No.1611 of 2017

rsy[co]
srg 6/8/2018
srg 18/09/2018