IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM

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

C.M.A.No.2140 of 2016

1. Dr.P. Muthamil
2. P.M.Arunan Periyasamy
3. P.Aarthi

(Appellants 2 & 3 suo moto declared as major vide this court dated 21.06.2018 made in CMA.No.2140 of 2016)
(NKKJ & KRJ)

4. Amirthammal ..Appellants/Petitioner

Vs.

1. S.Sudha

2. United India Insurance Co. Ltd.,
rep. by its Branch Manager,
1170, Mettur Road, II Floor,
Muthaiah Complex, Erode - 638 011
Divisional Office at No.2, 104-A,
Peramanur Main Road,Salem - 636 007.
..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under secction 173 of Motor Vehicles Act, 1988 as against the judgment and decree dated 07.11.2013 passed by the Motor Accidents Claims Tribunal (I Additional District Court), Salem in M.C.O.P. No. 309 of 2007.

For Appellants :: Mr.P. Jagadeesan

For Respondents:: Mr.T. Ravichandran for R2

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been preferred by the dependants of one Dr.M.Pasupathy, aged about 44 years, Orthopaedic Surgeon, working as Assistant Professor(Ortho) in Government Mohan Kumaramangalam Medical College Hospital, earning about Rs.25,940/-, who died in the accident, which occurred on 15.09.2006, when he was driving his Santro car, which was dashed by a lorry belonging to the 1st respondent and insured with the 2nd respondent Insurance Company.

2. Heard Mr.P.Jagadeesan, learned counsel for the appellants and Mr.T. Ravichandran, learned counsel for the 2nd respondent.

3. The Insurance Company has not come before this Court challenging the negligence aspect and only the claimants have come before this Court challenging the quantum. Therefore, the question of going into the aspect of negligence does not arise.

4. The claimants proved that the deceased was a Doctor working as an Assistant Professor in Government Mohan Kumaramangalam Medical College Hospital, by Ex-P5 Salary Certificate and Ex-P6 Income Tax Form 2D. Ex-P5, salary certificate issued by the Administrative Officer of Mohan Kumaramangalam Government Medical College Hospital, Salem, proves that the gross salary of the deceased was Rs.25,940/- and the net salary was Rs.18,000/-. However, the Tribunal, relying upon Ex-P6, Income Tax Form 2D for the year 2005-2006, determined the yearly income at Rs.1,95,620/- and added 30% towards Future Prospects and determined the annual income at Rs.2,54,306/-. When Ex-P5 Salary Certificate categorically states that the deceased was drawing a sum of Rs.25,940/- as gross salary, the said amount should be taken as the base amount. Accordingly, the monthly income of the deceased is fixed as Rs.25,940/-. Adding 30% towards "Future Prospects" to the said amount, following the judgment of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700), as the deceased was aged about 44 years, as evident from Ex-P6, Income Tax Form 2D, the "total monthly income" comes to

Monthly Income	::	Rs.25,940/-
Add: 30% towards "Future Prospects"	::	Rs.25,940/-(+)30% (Rs.25,940/-)
	::	Rs.25,940/- + Rs. 7782/-
	::	Rs.33,722/-

By making the above determination, this Court rejects the contention of Mr.T. Ravichandran, that the net salary alone has to be taken into consideration as the base amount for calculating loss of income. Though deductions would be made towards GPF, Insurance Premium, etc, those deductions would be paid back to the employee after retirement or to his/her legal heirs, in case of death. These amounts are payable deductions, which are made only for the benefit of the Government Servant or his/her family members and this has been clearly stated by the Honourable Apex Court in the judgment rendered in National Insurance Company Limited V. Indira Srivastava reported in 2008 1 TN MAC 166. Paragraph No.19 of the said judgment is usefully extracted:

> "19. If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute."

Now, the yearly income of the deceased comes to Rs.4,04,664/- (Rs.33,722 x 12). Out of the aforesaid amount, Rs.1,50,000/- would be standard deduction and the remaining amount of Rs.2,54,664/- would attract 10% income tax, which would be Rs.25466.4/-. Deducting the same from the yearly income, the "Annual Income of the deceased" would be, Rs.3,79,197/-.

5. Since the size of the family is four, one-fourth deduction has to be made towards " Personal Expenses". Therefore, after deduction of one-fourth, the "Annual Contribution of the deceased to his family" would be Rs.2,84,399/-. As already stated, the age of the deceased was rightly determined by the Tribunal as 44 years as per Ex-P6, income tax returns, wherein the date of birth of the deceased was given as 19.05.1963. Hence, the appropriate multiplier, as per the judgment of the Honourable Apex Court in Sarla Verma's case is 14. Therefore, applying the same, " Loss of Income" is calculated thus:

Loss of Income	::	Rs.2,84,399 x 14
	::	Rs.39,81,586/-

The Tribunal has awarded only Rs.10,000/- towards " Loss of Consortium" to the 1st appellant and the same is enhanced to Rs.40,000/- following the judgment of the Honourable Apex Court in Pranay Sethi's case. Likewise, Rs.5000/- awarded towards "Funeral Expenses" is enhanced to Rs.15,000/- The sum of Rs.5000/- awarded towards " Transport Expenses" is confirmed.

6. The minor children, namely, 2nd and 3rd appellants were aged about 11 and 14 years at the relevant point of time and they were awarded only a sum of Rs.20,000/- towards " Loss of Love and Affection". When a person dies, it is a loss for the

entire family. It is a loss not only for the wife, but also, for the children, who lost their father's love and affection, care and guidance, once and for all. When it is very difficult to groom a child, even when both the parents are alive, it would be all the more difficult for the mother to bring up the children in the absence of the father, the breadwinner of the family/head of the family. Therefore, this Court has to necessarily award more compensation towards "Loss of Love and Affection" to the children, though no amount of money can compensate or substitute the loss and therefore, a sum of Rs.2 lakhs is awarded, though it is pointed out that it is not referred to in Pranay Sethi's judgment. Since no amount was awarded towards " Loss of Estate", a sum of Rs.15,000/- is awarded towards the same. Hence, the total compensation payable to the claimants comes to Rs.42,56,586/- rounded off to Rs.42,56,000/-.

7. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. The 1st appellant/wife would be entitled to Rs.20,00,000/- and the 2nd and 3rd appellants would be each entitled to Rs.10,00,000/- and the 4th appellant would be entitled to Rs.2,56,000/-. The claimants shall pay additional court-fee for the enhanced amount, if any, within a period of two weeks from the date of receipt of a copy of this order.

8. Since the minor appellants would have attained majority by now, this Court suo motu declares them as major.

9. The 2nd respondent Insurance Company is directed to deposit the entire amount as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount already deposited, if any, 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 the claimants to their respective bank accounts, through RTGS, within a period of one week thereon.

10. The Civil Miscellaneous appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.23,36,176/- to Rs.42,56,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv

To

The Motor Accidents Claims Tribunal
(I Additional District Court),
Salem.

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

+1cc to Mr.P. Jagadeesan, Advocate, S.R.No.39041
+1cc to Mr.T. Ravichandran , Advocate, S.R.No.38982

C.M.A. No. 2140 of 2016

SSV(CO)
CS/26/11/2018